

No. 24051

**AUSTRALIA
and
NEW ZEALAND**

**Exchange of notes constituting an agreement concerning the
supply of phosphate from Christmas Island. Canberra,
13 and 21 December 1983**

Authentic text: English.

Registered by Australia on 24 April 1986.

**AUSTRALIE
et
NOUVELLE-ZÉLANDE**

**Échange de notes constituant un accord relatif à l'appro-
visionnement en phosphates en provenance de l'île
Christmas. Canberra, 13 et 21 décembre 1983**

Texte authentique : anglais.

Enregistré par l'Australie le 24 avril 1986.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND CONCERNING THE SUPPLY OF PHOSPHATE FROM CHRISTMAS ISLAND

I

AUSTRALIA
MINISTER FOR FOREIGN AFFAIRS

13 December 1983

I have the honour to refer to the Agreement signed on 22 November 1982² between our two Governments to provide for the termination of the Christmas Island Agreement 1958-81 (the Terminating Agreement). Recognising the joint desire of the two Governments to provide an equitable basis for the supply of phosphate from Christmas Island to Australia and New Zealand, I have the honour to propose the following:

1. The assets and liabilities of the Christmas Island Phosphate Commission (the "Commission") shall be apportioned pursuant to Article 2 of the Terminating Agreement, in accordance with the following:

(a) Within 10 days after the entry into force of this Agreement a cash payment of A\$3.3 million shall be made to each of the two Governments.

(b) Within 120 days after the entry into force of this Agreement, the following additional cash payments shall be made:

- (i) To the New Zealand Government a sum equivalent to 50 percent of the amount if any by which the difference as at 30 June 1983 between the net equity of the Commission (excluding that part of the equity of the Commission that is the equity of the Commission in the Phosphate Mining Company of Christmas Island Ltd.) and the estimated cash shortfall of the Phosphate Mining Company of Christmas Island Limited exceeds A\$9.65 million;
- (ii) To the New Zealand Government a payment in respect of interest earned between 30 June 1983 and the date of final payment;
- (iii) To the Australian Government the balance of the funds of the Commission remaining after the foregoing payments have been made.

(c) It is noted that the payment provided in paragraph 1(a) above has been calculated after taking account of an adjustment of A\$2,537,591 due from New Zealand to Australia arising from the apportionment of stockpiles as at 30 June 1981 between the two Governments.

2. Within 120 days after the entry into force of this Agreement, a payment shall be made by the New Zealand Government to the Australian Government of a

¹ Came into force on 21 December 1983, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 367 of this volume.

sum equivalent to 50 percent of the amount if any by which the difference as at 30 June 1983 between the net equity of the Commission (excluding that part of the equity of the Commission that is the equity of the Commission in the Phosphate Mining Company of Christmas Island Ltd.) and the estimated cash shortfall of the Phosphate Mining Company of Christmas Island Limited is less than A\$9.65 million.

3. Each Government shall have the right to purchase, through such purchasing organisations as each may designate, up to half the total output of phosphate produced on Christmas Island, until such time as phosphate production on Christmas Island ceases.

4. Should the designated purchasing organisations of one country purchase less than half the total output of phosphate in any year, the designated purchasing organisations of the other country shall have the right to purchase the balance of the output.

5. Should it appear likely that a portion of the output of phosphate will, in any year, remain unpurchased after the designated purchasing organisations of both countries have either:

- (a) Exercised their rights as specified in paragraphs 3 and 4, or
- (b) Indicated that they will not exercise their rights;

such portion of the output may be disposed of on the world market.

6. Subject to paragraph 7, phosphate supplied to designated purchasing organisations in Australia and New Zealand, pursuant to paragraphs 3 and 4, shall be at the lowest possible f.o.b. price consistent with meeting long term liabilities of the mining operation on Christmas Island.

7. The price referred to in paragraph 6 shall reflect the break-even basis on which the mining operation on Christmas Island shall be conducted during the economic life of the phosphate deposits and shall take into account:

- (a) Working and capital expenses;
- (b) Depreciation;
- (c) The net cost of Government administration on the Island (with the exception of the cost of the administrator and his immediate staff) for as long as existing, or substantially similar territorial funding arrangements, including absence of taxation, continue; and
- (d) Such termination costs as may accrue at the cessation of the mining operation on Christmas Island.

8. Such funds as may accrue in any one year from the supply of phosphate under paragraphs 3, 4 and 5 after expenses referred to in paragraph 7 have been met, and after making provision for such other longer term expenditure requirements as may be deemed necessary, shall be used to abate the f.o.b. price of phosphate to Australia and New Zealand in subsequent years.

9. The Government of Australia and the Government of New Zealand shall each arrange for the purchase of 400,000 tonnes of 'A' grade rock from Christmas Island in the year ending 30 June 1984.

If the foregoing is acceptable to the Government of New Zealand, I have the honour to propose that this note together with your confirmatory reply shall

constitute an Agreement between our two Governments on this matter which shall enter into force on the date of your reply.

[Signed]

BILL HAYDEN, M.P.

His Excellency Sir Laurie Francis
High Commissioner for New Zealand
New Zealand High Commission
Commonwealth Avenue
Canberra, A.C.T.

II

NEW ZEALAND HIGH COMMISSION
COMMONWEALTH AVENUE,
CANBERRA, A.C.T.
AUSTRALIA

21 December 1983

Dear Bill,

I have the honour to refer to your Note of 13 December 1983 which reads as follows:

[See note I]

I have the honour to confirm that the foregoing is acceptable to the Government of New Zealand and accordingly your Note and this confirmatory reply shall together constitute an agreement between our two Governments on this matter which shall enter into force on the date of this reply.

Yours sincerely,

[Signed]

Sir LAURIE FRANCIS
High Commissioner

Mr. Bill Hayden, M.P.
Minister for Foreign Affairs
Parliament House
Canberra