

No. 48

UNITED STATES OF AMERICA AND AUSTRALIA

Agreement on settlement for lend-lease, reciprocal aid, surplus war property, and claims. Signed at Washington and at New York, on 7 June 1946

Came into force on 7 June 1946 by signature.

English official text communicated by the United States representative to the United Nations. The registration took place on 20 May 1947.

ETATS-UNIS D'AMERIQUE ET AUSTRALIE

Accord relatif au règlement des questions concernant le prêt-bail, l'aide réciproque, les biens militaires en surplus et les créances. Signé à Washington et à New-York, le 7 juin 1946

Entré en vigueur le 7 juin 1946 par signature.

Texte officiel anglais communiqué par le représentant des Etats-Unis auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 20 mai 1947.

No. 48. AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA ON SETTLEMENT FOR LEND-LEASE, RECIPROCAL AID, SURPLUS WAR PROPERTY, AND CLAIMS. SIGNED AT WASHINGTON AND AT NEW YORK, ON 7 JUNE 1946

The Government of the United States of America and the Government of the Commonwealth of Australia (hereinafter referred to as the Commonwealth of Australia) have reached agreement as set forth below regarding settlement for lend-lease, reciprocal aid, and surplus war property located in Australia and for the financial claims of each Government against the other arising as a result of World War II. This settlement is complete and final. Both Governments, in arriving at this settlement, have taken full cognizance of the benefits already received by them in the defeat of their common enemies, and of the aid furnished by each Government to the other in the course of the war. No further benefits will be sought as consideration for lend-lease, reciprocal aid and surplus war property, or for the settlement of claims or other obligations arising out of the war, except as herein specifically provided.

1. (a) The term "lend-lease article" as used in this Agreement means any article transferred by the Government of the United States under the Act of March 11, 1941

(i) to the Commonwealth of Australia, or

(ii) to any other government and retransferred to the Commonwealth of Australia.

(b) The term "reciprocal aid article" as used in this Agreement means any article transferred by the Commonwealth of Australia to the Government of the United States under reciprocal aid.

2. In recognition of the mutual wartime benefits received by the two Governments from the interchange of lend-lease and reciprocal aid, neither Government will make any payment to the other for lend-lease and reciprocal aid articles and services used in the achievement of the common victory.

3. The Commonwealth of Australia, in discharge of its pre-existing commitment to compensate the Government of the United States for the postwar value of machine tools transferred during the war to the Commonwealth of Australia by the Government of the United States under lend-lease, and in consideration of the postwar value of other capital equipment transferred during the war under lend-lease, including the non-combat aircraft and spare parts therefor described in the Annex of this Agreement, and the transfer of the surplus property described in paragraph 8 (a) hereof, and in order to further educational and cultural relationships between the two countries by means of scholarships or otherwise in a manner mutually agreeable, will pay to the Government of the United States the sum of \$27,000,000 as follows:

(a) \$20,000,000 in United States dollars within ninety days from the effective date of this Agreement; and

(b) \$7,000,000 by any of the following methods, or any combination thereof designated by the Government of the United States (employing the rate of exchange between United States dollars and Australian pounds now in effect):

- (i) By delivery to the Government of the United States by the Commonwealth of Australia of title to real property and improvements of real property in Australia, as selected and determined by agreement between the two Governments, aggregating in value not more than \$2,000,000;
- (ii) by establishment of a fund in Australian pounds for expenditure by the Government of the United States, in accordance with agreements to be reached between the two Governments for carrying out educational and cultural programs of benefit to the two countries;
or
- (iii) in the event that, after three years from the date of this Agreement, the two Governments should mutually agree that the purposes described in subsections (i) and (ii) above cannot be carried out to the full extent now contemplated, and residue will be paid by the Commonwealth of Australia in United States dollars.

4. (a) The Commonwealth of Australia hereby acquires, and shall be deemed to have acquired as of September 2, 1945, full title, without qualification as to disposition or use, to all lend-lease articles in the possession of the Commonwealth of Australia, its agents or distributees, on September 2, 1945, and not subsequently returned to the Government of the United States, other than

lend-lease articles on that date in the possession of the armed forces of the Commonwealth of Australia, but including the non-combat aircraft and spares described in the Annex to this Agreement.

(b) The Government of the United States agrees to complete as early as possible the transfer (which term, except as hereinafter provided, shall include delivery aboard ocean vessel in a United States port) of the articles selected by the Commonwealth of Australia which were covered by lend-lease requisitions filed by the Commonwealth of Australia with the United States Foreign Economic Administration and which were under contract, or were completed, but had not been transferred, on September 2, 1945, and such other articles and services as have been designated by agreement between the two Governments for inclusion in the lend-lease pipeline of the Commonwealth of Australia. Such transfer will be made in the quantities and according to the specifications and other conditions, except as to time of delivery, set forth in the covering requisitions, to the extent that such articles are or will be available to the Government of the United States for transfer to the Commonwealth of Australia. Title to the articles covered by this paragraph shall pass to the Commonwealth of Australia immediately upon loading of the articles on board ocean vessel in a United States port, provided that risk of loss not recoverable from the supplier, carrier or other third party, shall be assumed by the Commonwealth of Australia upon shipment from the factory or other premises of the supplier. Title to any articles that shall not have been loaded on board ocean vessel in a United States port prior to midnight on July 31, 1946, or two months after receipt by the Commonwealth of Australia of notice of availability, whichever is later, shall be deemed to have been transferred as of such later date, and thereafter the Commonwealth of Australia shall be responsible for storing and moving such articles within the United States and for delivering such articles aboard ocean vessel in a United States port. The Government of the United States will pay the cost of ocean transportation to Australia on United States flag vessels only of such of the articles covered by this paragraph as were loaded aboard ocean vessel berthing in United States ports prior to January 1, 1946.

5. The Government of the United States hereby acquires, and shall be deemed to have acquired as of September 2, 1945, full title, without qualification as to disposition or use (a) to all reciprocal aid articles transferred to the Government of the United States and not subsequently returned to the Commonwealth of Australia or lost, destroyed or consumed, other than reciprocal aid

articles which on that date were in the possession of the armed forces of the Government of the United States, and (b), to all reciprocal aid articles transferred to the Government of the United States between September 2, 1945 and December 31, 1945, both dates inclusive, and not subsequently returned to the Commonwealth of Australia.

6. (a) The Government of the United States, with respect to lend-lease articles (other than those described in the Annex to this Agreement), and the Commonwealth of Australia, with respect to reciprocal aid articles, reserve a right to recapture, respectively, at any time after September 1, 1945, any such articles which as of the date upon which notice requesting return is communicated to the other Government, are in the possession of the armed forces of the other Government, although neither Government intends to exercise generally this right of recapture, except that the Commonwealth of Australia will return to the Government of the United States all vessels of the United States Navy transferred under lend-lease and in the possession of the Commonwealth of Australia on September 2, 1945. In respect of cases where either Government wishes from time to time to exercise this right of recapture, each Government will give reasonable notice of its intention and will provide full opportunity to the other Government for discussion of that Government's need for the articles in question, without limiting the right of recapture.

(b) The Commonwealth of Australia may, without restriction, divert any lend-lease articles now held by the armed forces of the Commonwealth of Australia to any uses in or outside Australia, but will not transfer, without the prior consent of the Government of the United States and without payment of any proceeds to the Government of the United States, any lend-lease articles held by the armed forces of the Commonwealth of Australia in the categories of arms, ammunition and other lethal weapons, to any third country.

(c) The Government of the United States may, without restriction, divert any reciprocal aid articles now held by the armed forces of the Government of the United States to any uses in or outside the United States, but will not transfer, without the prior consent of the Commonwealth of Australia and without payment of any proceeds to the Commonwealth of Australia, any reciprocal aid articles held by the armed forces of the Government of the United States in the categories of arms, ammunition and other lethal weapons, to any third country.

7. (a) The Commonwealth of Australia hereby assumes responsibility for the settlement and payment of all claims against the Government of the United States or members of the United States armed forces, arising from acts or omissions occurring before June 30, 1946, in the course of military duties of members of the armed forces of the Government of the United States in Australia.

(b) Financial claims between the two Governments where the liability for payment has heretofore been acknowledged, and the method of computation mutually agreed, are not covered by this settlement, as they will be settled in accordance with such arrangements; the following are examples of such claims, which will be dealt with in accordance with procedures already established or to be established after appropriate discussion:

- (i) claims arising out of cash reimbursement lend-lease requisitions filed by the Commonwealth of Australia;
- (ii) claims covered by the "Memorandum Concerning Disposition of and Payment for Cargoes Carried on Twelve Dutch Ships Diverted to Australia"¹ and "Memorandum Concerning Disposition of and Payment for Cargoes Carried on Certain United States Ships Diverted to Australia",¹ both dated December 20, 1944;
- (iii) obligations or claims arising out of the "Knock-for-Knock" Agreement of March 8, 1945,² covering the mutual waiver of, and legal aid in connection with, maritime claims;
- (iv) the obligation heretofore assumed by the Commonwealth of Australia in connection with silver transferred by the Government of the United States under lend-lease

(c) In consideration of the mutual undertakings described in this Agreement, and with the objective of arriving at as comprehensive a settlement as possible and of obviating protracted negotiations between the two Governments, all other financial claims whatsoever of one Government against the other which arose out of lend-lease or reciprocal aid, or otherwise arose on or after September 3, 1939 and prior to September 2, 1945, out of or incidental to the conduct of World War II, and which are not otherwise dealt with in this Agreement, are hereby waived, and neither Government will hereafter raise or pursue any such claims against the other.

¹ Not printed.

² *United States Executive Agreement Series 467.*

8. (a) The Government of the United States, in partial consideration of the payments to be made by the Commonwealth of Australia pursuant to section 3 of this Agreement, agrees to transfer property, selected by mutual agreement, located in or outside Australia, heretofore or hereafter declared to the Office of the Foreign Liquidation Commissioner, United States Department of State, as surplus to the requirements of any department or agency of the Government of the United States, of a total value aggregating \$6,500,000 computed at prices to be mutually agreed. There shall be included in the property covered by this paragraph

- (i) all property so declared as surplus included in sales or agreements to sell heretofore entered into between the two Governments; and
- (ii) all such property included in sales or agreements to sell to any firms or individuals in Australia or in Australian territories, heretofore or hereafter made by the Government of the United States, in respect of which import licenses have been or may hereafter be issued by the Commonwealth of Australia;

and the contract value of the property included in such sales or agreements to sell shall be taken into consideration in computing the total value of surplus property transferred hereunder. This Agreement shall govern in any case in which the terms hereof are in conflict with the terms of any of the agreements described in paragraphs (i) and (ii) above.

(b) The amounts paid and to be paid to the Government of the United States for the property included in the sales and agreements to sell described in paragraphs 8 (a) (i) and 8 (a) (ii) of this Agreement shall, when paid, be treated as payments by the Commonwealth of Australia in partial discharge of the obligation of the Commonwealth of Australia assumed in section 3 of this Agreement to make payments to the Government of the United States.

(c) The Commonwealth of Australia agrees that it will not cause, and will use its best endeavors to prevent, the exportation to the United States, its territories or possessions, of any of the property covered by paragraph (a) above in the same, or substantially the same form, if such property was originally produced in the United States and is readily identifiable as such, and agrees that it will not resell any of such property to any person, firm or government, for the purpose of export to the United States, its territories or possessions, contrary to any statute or regulation of the Government of the United States as notified by the Government of the United States.

9. Both Governments, when they dispose of articles acquired pursuant to sections 4, 5 and 8 of this Agreement, will use their best endeavors to avoid discrimination against the legitimate interests of the manufacturers or producers of such articles, or their agents or distributors, in each country.

10. This Agreement shall take effect on the date of signature.

Signed in duplicate, at Washington for the Government of the United States and at New York for the Commonwealth of Australia, this seventh day of June 1946.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

James F. BYRNES

Secretary of State of the United States of America

FOR THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA:

H. EVATT

Minister of External Affairs of the Commonwealth of Australia

ANNEX

AIRCRAFT

<i>Number</i>	<i>Type</i>
109	C-47 (Dakota)
11	PBY (Catalina)
41	PB2B (Catalina)

SPARES

164 Engines for Dakota C-47 aircraft

127 Dakota propellers

Spare parts for 382 Dakota engines

Airframe spares for 48 Dakota aircraft

136 Catalina engines

68 Catalina propellers

Spare parts for 272 Catalina Engines

Airframe spares for 21 Catalina aircraft

U. S. lend-lease content of 29 PB2B aircraft obtained from Canada.