Backgrounder

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Defense Trade Cooperation Treaties with Australia and the U.K. Will Improve Security

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The United States and the United Kingdom signed a defense trade cooperation treaty on June 21 and 26, 2007.[1] The United States and Australia signed a similar treaty on September 5.[2] The purpose of these two treaties is to permit the United States to trade most defense articles with these two close allies without an export license or other written authorization.

Both treaties require the Senate's consent prior to ratification and entry into force. President George W. Bush transferred the treaty with the United Kingdom to the Senate on September 20, 2007, and the treaty with Australia on December 3, 2007. Before voting on these treaties, the Senate needs to understand how they would benefit U.S. security interests.

Current Defense Trade

The existing defense trade relationships between the U.S. and these two close allies are based on issuing licenses for arms exports from the U.S., which is managed by the State Department. This licensing process can be both time-consuming and confusing. For example, in 2007, an industry coalition expressed concerns about arms export control procedures, noting that the State Department had a backlog of 10,000 license applications in 2006.[3] Likewise, in February 2007, defense trade representatives from a number of U.S. allies, including Australia and the United Kingdom, expressed concern that the U.S. arms export licensing process was creating barriers to defense cooperation.[4]

Frequently, the process has become an impediment to an efficient defense trade relationship that

Talking Points

- The U.S. arms export licensing process, even for exports to close allies, can be time-consuming and confusing. Ratification of defense trade cooperation treaties with the United Kingdom and Australia would reduce such barriers to the advantage of all three countries.
- Ratification would facilitate closer and more efficient relationships, providing U.K. and Australian defense suppliers with a more direct route to participate in U.S. defense acquisition programs and putting better weapons and equipment in the hands of U.S. military personnel more quickly and efficiently.
- The treaties would also facilitate U.S. defense exports to the U.K. and Australian militaries, which would expand and strengthen the U.S. defense industrial base.
- The closer defense trade relationship would facilitate joint defense acquisitions with Australia and the United Kingdom, reducing the unit price to the U.S. military and facilitating efficient joint operations with the U.K. and Australian militaries.

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could otherwise provide the best quality weapons to the U.S. military as quickly and cheaply as possible. The Department of Defense acquisition system operates in the context of a globalized defense industrial base, which presents advantages to the Defense Department by including suppliers from allied countries.[5]

As odd as it sounds, U.S. law requires U.S. export licenses for imports of weapons and equipment for use by the U.S. military. This is because the foreign suppliers require access to U.S. defense technology and systems to participate in Defense Department acquisition programs. Under U.S. law, such access is defined as an "arms export" and is subject to the licensing process.[6] The treaties with Australia and the United Kingdom would facilitate closer and more efficient relationships with defense suppliers from these two countries by effectively exempting them from the licensing process in most instances and providing a more direct route to participating in U.S. defense acquisition programs.

Further, the treaties are reciprocal in that they would give U.S. defense suppliers easier access to the Australian and U.K. defense markets. They are not just tools for facilitating defense imports from Australia and the United Kingdom. From this perspective, the licensing exemption would facilitate defense exports to the militaries of these two reliable allies in the traditional meaning of the word "exports." Such exports would expand and strengthen the U.S. domestic defense industrial base.

Finally, a closer defense trade relationship would facilitate joint defense acquisitions with Australia and the United Kingdom. Joint acquisitions provide two advantages to the United States.

First, they would improve the economies of scale, particularly in major acquisition projects. For example, Australian and U.K. participation in the acquisition of the Joint Strike Fighter (JSF) will increase the total number of JSFs produced and thereby reduce the unit price to the U.S. military.

Second, joint acquisition will also facilitate efficient joint operations because all three militaries will be using the same platform.

The Content of the New Treaties

The object of the two treaties with Australia and the United Kingdom is to exempt most defense exports from export licensing procedures. Specific provisions within the treaties reveal how defense trade will work between the U.S. and these two allies under the exempted system. The Senate needs to understand these specific provisions because they explain how appropriate security standards would be applied under the exempted system.

Provision #1: The treaties apply to most, but not all, defense articles.

Article 3 of both treaties contains a number of limits on the scope of arms export licensing exemptions. Specifically, the treaties' implementing arrangements, which are not yet fully drafted, may continue to require export licenses for identified defense articles. Further, an exporter may choose to obtain a license for a certain article, and the licensing procedure would continue to apply under that circumstance. Thus, these treaties are not a wholesale abandonment of due diligence standards in the export of arms and other defense articles that would compromise sensitive technology or permit U.S. weapons to fall into the hands of potential enemies.

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1. U.S. Senate, "Treaty with Australia Concerning Defense Trade Cooperation," Treaty Doc. 110–10, 110th Cong., 1st Sess., December 3, 2007.
2. U.S. Senate, "Treaty with United Kingdom Concerning Defense Trade Cooperation," Treaty Doc. 110–7, 110th Cong., 1st Sess., September 20, 2007. President George W. Bush and Prime Minister Tony Blair signed on different dates.
3. Press release, "Eight Associations Urge President Bush to Implement Modern Export Control System to Enhance U.S. Security, Competitiveness," Coalition for Security and Competitiveness, March 6, 2007, at *www.securityandcompetitiveness.org/resources/show/2243.html* (February 4, 2008).
4. The Heritage Foundation, "Reforming U.S. Arms Export Controls: The Views of the Allies," audio recording, February 14, 2007, at *www.heritage.org/Press/Events/ev021407a.cfm*.
5. Jack Spencer, ed., *The Military Industrial Base in an Age of Globalization: Guiding Principles and Recommendations for Congress* (Washington, D.C.: The Heritage Foundation, 2005).
6. In limited circumstances, the licensing process is also applied directly to arms imports.

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Provision #2: The treaties cover only government agencies and relevant private industries with security accreditation.

The treaties identify the "communities" within each country that may operate under the licensing exemptions. Under all circumstances, the communities are limited to public agencies and departments and private entities that are eligible to export defense articles and have appropriate security accreditations. Thus, the scope of the institutions entitled to operate under the treaties is carefully limited.

Provision #3: The licensing exemptions focus on exports of defense articles between the U.S. and its allies.

These two treaties are designed to facilitate defense trade between the U.S. and Australia and between the U.S. and the United Kingdom. They do not provide unlimited authority to either ally to re-export the covered defense articles. Article 9 of the treaties specifically requires appropriate documentation of U.S. approval for any re-export of covered defense articles under most circumstances.[7]

Provision #4: The existing rules governing the protection of proprietary information continue under the treaties.

The question of protecting proprietary information in defense contracting is complex in any circumstance, and these treaties are not designed to alter the existing rules regarding this sensitive matter. Article 10 of the treaties states that nothing in the treaty "shall be construed as granting, implying, diminishing, or otherwise affecting rights to, or interest in, intellectual property or other proprietary information of the Parties or of persons or entities within the Approved Community pursuant to this Treaty." However, there is an understanding that a reciprocity standard between the U.S. and Australia will pertain under this provision in the U.S.–Australia treaty.

Provision #5: Security and classification procedures, including the keeping of accurate records, will be observed.

Article 11 of the treaties explicitly requires both countries to honor and observe the classification requirements that pertain to any defense articles transferred under the treaty. In relevant cases, this includes the application of marking, storage, handling, and safeguarding standards. These standards are in accordance with previously established general security agreements.

Provision #6: The parties are required to strictly enforce the treaties' rules covering the transfers of defense articles.

Article 13 of the treaties requires the parties to investigate promptly all suspected violations of the procedures established by the treaty and its implementing arrangements. Each party is obliged to inform the other of the results of such investigations. The parties are also required to cooperate with each other in conducting such investigations.

Provision #7: Disputes between the parties regarding the treaties will be resolved by direct negotiations.

Article 18 of the treaties limits the dispute resolution procedures to direct consultations between the parties. It expressly prohibits referring such disputes to any international court or tribunal or to any third party. Unlike the U.N. Convention on the Law of the Sea, this treaty does not permit, let alone establish, mandatory dispute settlement procedures that would allow international institutions to intrude into sensitive U.S. arms export policies and procedures.[8] Such procedures would constitute an attack on U.S. sovereignty. This provision therefore avoids what otherwise would have been a fatal flaw in the treaties.

The Implementing Arrangements

The defense trade cooperation treaties with Australia and the United Kingdom envision the adoption of detailed implementing arrangements to govern how they will be interpreted and applied. These implementing arrangements will fill in many important details under the treaties, including:

7. This provision permits the implementing arrangements to identify narrow areas, such as re-exports directly to the deployed armed forces of Australia and the United Kingdom, in which such documentation is not required.
8. Baker Spring, Steven Groves, and Brett D. Schaefer, "The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea," Heritage Foundation *WebMemo* No. 1638, September 25, 2007, p. 1, at *www.heritage.org/Research/InternationalOrganizations/upload/wm_1638.pdf* (January 3, 2008).

- A description of the process for government agencies and private contractors to make the transition from the arms export licensing and other authorizations under U.S. International Trade in Arms Regulations (ITAR) to the new procedures to be established under the treaties;
- The scope of the weapons and equipment that are covered under the treaties;
- A list of the government agencies and private entities in Australia and the United Kingdom that are given licensing exemptions under the treaties; and
- Procedures for obtaining approvals for the re-export of weapons and equipment covered under the treaties.

The treaties require the parties to conclude these implementing arrangements on an "expedited basis." The Senate Foreign Relations Committee, which is the committee of jurisdiction for these treaties, may put off consideration of the treaties until the implementing arrangements are drafted. Given the importance of the details in the implementing arrangements, the Senate Foreign Relations Committee has an interest in what they will say. However, unless provisions of the implementing arrangements depart from the stated intent or meaning of the treaties in a material way, the implementing arrangements should not become a basis for the Senate to withhold its consent to ratification.

What the Senate Should Keep in Mind

Some Senators may be tempted to focus on the perceived risks to national security posed by the defense trade cooperation treaties with Australia and the United Kingdom and may therefore largely ignore how these treaties would improve the U.S. national security posture. The primary perceived risk is that exempting weapons and equipment exports to these countries from the existing licensing process will increase the likelihood that sensitive defense technology will fall into the hands of potential enemies.

Aside from the perceived risk's underlying assumption that the licensing process is the primary tool in preventing unwise or illicit technology transfers, the treaties themselves offer an alternative approach to preventing diversion of defense technology. The treaties preserve security and classification procedures and the expansive approval obligations regarding the re-export of weapons and equipment, and they also require strict enforcement. The implementing arrangements will spell out the details of the alternative procedures. The Senate should recognize that a simpler and more tailored arms export control process for these two allies can still guard against unwise transfers to potential adversaries, as the treaties account for the standing of close and reliable allies like Australia and the United Kingdom.

The Senate should also examine the treaties' value from a broader perspective. An overly narrow focus on the risks of the diversion of defense technology fails to account for the considerable benefits to national security that are offered by a simpler and more efficient system of defense trade with Australia and the United Kingdom. The Senate would do well to keep the following opportunities in mind as it considers ratification of these two treaties.

Opportunity #1: Ratification of the treaties would create a more discriminating arms export control process.

Australia and the United Kingdom are among the closest and most reliable allies of the United States. A more effective arms export control process would discriminate between close, reliable allies and less reliable countries.

Clearly, the broad exemption to export licensing requirements granted by these treaties is appropriate only for close, reliable allies. This is why Australia and the United Kingdom have been chosen for such treatment under these treaties. U.S. ratification of these treaties would not be a precedent for dismantling the broader arms export licensing process. Other countries that are not as close to the U.S. will continue to be subject to the licensing requirements. This is why these treaties were negotiated as bilateral treaties and not as a broader multilateral agreement.

Further, the potential efficiencies offered by a more discriminating arms export control process are considerable. The Department of State has stated that the treaty with the United Kingdom in particular will permit its Directorate of Defense

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Trade Controls to redirect some of its resources elsewhere.[9] With the State Department attempting to overcome a significant backlog in export license applications, ratification of these treaties would provide much-needed relief to the State Department. More important, it would allow the State Department to devote more time and attention to considering the license applications in which the risk of technology diversion is greater.

Opportunity #2: Ratification would better position the Department of Defense to take advantage of the globalizing defense industrial base.

Congress needs to recognize that the defense industrial base is globalizing. If the U.S. manages this properly through carefully chosen instruments such as these treaties, U.S. national security could tangibly benefit from globalization by acquiring superior weapons more quickly and efficiently.

In 2005, The Heritage Foundation published a study that examined the scope of the globalization process in the defense industrial base.[10] In addition to confirming the trend toward globalization in the defense industrial base, the study included a series of tabletop exercises in which the participants, who played the roles of governments and defense suppliers, addressed four hypothetical bottlenecks in the defense supply chain based on scenarios designed by Heritage Foundation analysts.[11] The four defense articles identified in the scenarios were submarines, a specific component for precision-guided munitions, satellites, and small-caliber ammunition. The participants in the exercises were instructed to take steps to relieve the bottlenecks by acquiring the identified defense articles in sufficient quality and quantity in a timely manner and at a reasonable cost. In all four cases, the exercises revealed that foreign suppliers would play a significant positive role in relieving the bottlenecks.

The defense trade cooperation treaties with Australia and the United Kingdom would permit the Department of Defense to access a broader and more flexible defense industrial base. Such access would provide a wider array of technological choices and reduce costs for taxpayers. In short, defense suppliers in Australia and the United Kingdom can provide high-quality goods and services to the Department of Defense.

The alternative approach is for the U.S. to establish an autarchic defense industrial policy that would seek to supply the U.S. military exclusively through domestic suppliers. Although it would reduce the risk of the diversion of military technology to potential enemies, such a policy is all but unobtainable in today's world. In fact, the investment costs of even attempting to establish an autarchic policy would be extremely high, and it would fail to ensure the supply of cutting-edge technology to the military. The latter shortcoming stems from the fact that isolated and protected industries tend to be less creative. For example, the Soviet Union made enormous investments in its defense industrial base but could not match the U.S. in defense technology. In short, global interaction tends to foster creativity in the defense industrial base.

If the legitimate security risks can be limited by engaging suppliers from reliable allies, then global industrial engagement would be the preferred option for the Department of Defense. The defense trade cooperation treaties with Australia and the United Kingdom offer the opportunity for global defense industrial engagement at a limited risk that defense technology would be diverted to potential enemies.

Opportunity #3: Ratification would be a step toward a more open defense market for potential suppliers.

Congress should recognize that the U.S. needs to ease entry into the U.S. defense market by suppliers that have not participated in the past. This is essential to improving the Defense Department's access to cutting-edge technology.

9. U.S. Department of State, "The U.S.–U.K. Defense Trade Cooperation Treaty," August 10, 2007, at *www.state.gov/t/pm/rls/fs/90740.htm* (February 4, 2008).

10. Spencer, *The Military Industrial Base in an Age of Globalization*.

11. *Ibid.*, pp. 32–33.

In the past, the Defense Department funded a large share of U.S. research and development.[12] Today, non-defense government and private-sector funds account for the bulk of U.S. investment in research and development.[13] This trend is all but certain to continue, which means that the Defense Department will need to find ways to encourage potential suppliers—especially suppliers that have not participated in the past—to participate more in the defense market.

Complicated regulations may become contributing factors in discouraging non-traditional or new suppliers from entering the defense market. Arms export regulations under ITAR are a significant portion of this body of complicated regulations. Companies operating in the civilian market may be reluctant to supply products to the Defense Department because the department, after acquisition, could identify the products, which previously were not subject to arms export licensing requirements, as defense articles and therefore subject to controls. Pressures from foreign competitors offering "ITAR-free" products are prompting even U.S. defense suppliers to state that they are at a competitive disadvantage in international markets.[14]

It may be just a matter of time before current defense suppliers follow suit by offering new ITAR-free products, shunning the defense sector with certain high-technology product lines for civilian applications. The opportunity cost to the defense sector that is created by high-technology companies shunning the defense market is difficult to calculate, but it could become substantial.

Ratification of the defense cooperation treaties with Australia and the United Kingdom would be a step toward a more open U.S. defense market for suppliers in two ways.

First, it would directly facilitate easier market access for potential defense suppliers that are located in Australia and the United Kingdom. Particularly in niche technologies, suppliers from these countries can provide advanced components that will improve the quality of the weapons and equipment in the hands of the U.S. military.

Second, the treaties would create a more open defense market that would give potential American defense suppliers broader access to the Australian and U.K. markets without confronting a complex licensing process. This would encourage more suppliers to enter the defense market because they could supply Australia and the United Kingdom, in addition to the Department of Defense, without confronting the export licensing process.

Opportunity #4: Ratification would expand the opportunities for joint U.S.–allied acquisition strategies.

The Senate should recognize that these treaties could assist in joint U.S.–ally acquisition of major weapons, which would lower costs by increasing the economies of scale. Advanced weapons systems are expensive. One approach to reducing the unit cost of such weapons is to increase production by including allied militaries in the overall acquisition strategy. The Department of Defense is using this approach in procuring the Joint Strike Fighter. Both Australia and the United Kingdom signed memoranda of understanding on cooperative development of the JSF a little over a year ago.[15]

However, arms export control policies have complicated execution of the joint acquisition

12. National Science Foundation, "Federal Research and Development Funding by Budget Function: Fiscal Years 2005–07," December 2006, pp. 45–46, Table 38, at *www.nsf.gov/statistics/nsf07303/pdf/nsf07303.pdf* (February 4, 2008), and American Association for the Advancement of Science, "U.S. R&D Surges to $312 Billion in 2004," May 10, 2006.
13. For analysis regarding these trends in U.S. research and developing investment, see Baker Spring, "Ten Myths About the Defense Budget," Heritage Foundation *Backgrounder* No. 2022, March 30, 2007, pp. 7–8, at *www.heritage.org/Research/Budget/bg2022.cfm*.
14. Wes Bush, "Wes Bush at the Strategic Space and Defense 2006 Conference," Northrup Grumman, October 11, 2006, at *www.northropgrumman.com/presentations/2006/101106_wb_space.html* (January 16, 2008).
15. News release, "Department of Defense and United Kingdom Sign Next Stage Joint Strike Fighter Agreement," U.S. Department of Defense, December 12, 2006, at *www.globalsecurity.org/military/library/news/2006/12/mil-061212-dod02.htm* (February 4, 2008).

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strategy for the JSF.[16] The JSF case shows how reforming U.S. arms export control policies and procedures could strengthen the relationships between the U.S. and its allies in joint development and acquisition.

Opportunity #5: Ratification would improve coalition military operations.

The U.S.–allied joint acquisition strategies would allow the U.S. military to operate with its Australian and U.K. partners in a more integrated fashion on the battlefield because it would increase the likelihood that all three forces would be using common weapons and equipment.

Among U.S. allies, Australia and the United Kingdom are the most likely to join the U.S. in coalition operations. For example, both nations have been major contributors to operations in Iraq. However, different weapons and equipment can impede efficient integration, undermining the effectiveness of coalition forces. Separate command, control, and communication systems are only the most obvious barriers to integrated coalition forces.

Ratification of these two treaties would improve the likelihood of successful joint acquisition strategies among the U.S., Australia, and the United Kingdom, which would provide a direct solution to the problems of integrating coalition forces. For example, the joint acquisition of the JSF will help to integrate air operations among the three militaries because all three forces will be using the same weapons platform.

Conclusion

Australia and the United Kingdom are among the closest and most reliable allies of the United States. Both countries have participated in U.S.-led military operations, including ones in which popular support for the operations among other nations was low. Both countries have also been responsible partners in preventing diversion of sensitive defense technology. Finally, both countries can make important contributions as suppliers to the U.S. military and as acquirers of weapons and equipment produced by U.S.-based defense companies.

The defense trade cooperation treaties with Australia and the United Kingdom that are pending in the Senate would exempt most arms trade with Australia and the United Kingdom from the licensing process. Thus, they would enable the U.S. to leverage its close relationships with both countries to improve both the weapons and equipment provided to the U.S. military and the fighting ability of joint U.S.–allied forces.

The Senate should keep the benefits of this closer relationship in defense trade with Australia and the United Kingdom firmly in mind as it considers granting its consent to the ratification of these two treaties.

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16. U.S. Government Accountability Office, *Joint Strike Fighter: Management of the Technology Transfer Process*, GAO–06–364, March 2006, at *www.gao.gov/new.items/d06364.pdf* (February 4, 2008).