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How to Expand Defense Trade Cooperation Between the U.S., the United Kingdom, Australia, and Canada

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Of the United States' alliances, none are stronger than those it enjoys with Australia, Canada, and the United Kingdom. The U.S. has stood shoulder to shoulder with these English-speaking allies in two World Wars, the Cold War, two wars in Iraq, and the war in Afghanistan, and that collaboration continues today in the fight against ISIS. The U.S. also works closely with these allies in the Five Eyes intelligence-sharing community, which includes New Zealand. It is therefore in America's interest to promote even closer defense collaboration with Australia, Canada, and the United Kingdom. A major pillar of improved collaboration is improved defense trade cooperation.

The U.S. has Defense Trade Cooperation Treaties (DTCTs) with Australia and the United Kingdom that were intended to foster improved defense trade collaboration. Unfortunately, these DTCTs have not delivered the anticipated benefits, and bureaucratic obstacles continue to stifle or delay collaboration between the U.S. and its most important allies.

The U.S. should reform its system for controlling defense exports and work to integrate its defense industrial base seamlessly with those of its allies in Australia and the U.K. while also further enhancing its already close collaboration with Canada. This would give both the U.S. and its best allies faster and cheaper access to the best technology while reducing cost, redundancy, and risk and enhancing cooperation in the field. It would also help U.S. defense industry to attract the most innovative minds to meet the security challenges that America and its closest allies jointly face.

Defense Trade Cooperation Treaties with the United Kingdom and Australia

The International Security Assistance and Arms Export Control Act of 1976 "provides the authority to control the export of defense articles and services, and charges the President to exercise this authority."[1] The President does this through International Traffic in Arms Regulations (ITAR) overseen by the Department of State. The intention of ITAR regulations is to safeguard sensitive U.S. defense technology and intellectual property.

ITAR was put in place to prevent adversaries like the Soviet Union from accessing advanced U.S. technology. Today, however, private industry has replaced government as the leading driver of defense technology innovation. Projects are complex and often draw on designs, technology, workers, and suppliers from across several nations to bring a capability to completion.

Although the U.S. strives in many cases to work closely with its most trusted allies to design and procure the best technology for its forces, barriers established in the past frustrate closer cooperation today. As America's increasingly sophisticated adversaries use espionage to steal defense industrial secrets, its best allies face unnecessary administrative and legal hurdles that impede collaboration.

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Companies with offices or subsidiaries in more than one nation even have to surmount burdensome barriers to intracompany transfers between nations.

In an attempt to reduce the barriers to collaboration, the United States in 2007 signed separate DTCTs with Australia and the United Kingdom. In 2010, the Senate provided its advice and consent to both treaties, and Congress passed the necessary implementing legislation. According to the Department of State:

> [The U.S.–U.K. DTCT] seeks to simplify the movement of equipment and information between and within the U.S. and the UK by creating an Approved Community of government and private sector entities and facilities. Approved Community Members may receive certain defense articles (including technical data) and defense services solely for an end-use that is within the Treaty scope...without the need for ITAR export licenses or other written authorizations so long as all of the requirements outlined in the ITAR are followed.[2]

An Approved Community was also created between Australia and the U.S.

Why the Defense Trade Cooperation Treaties Have Not Worked

The DTCTs were a sincere and well-intentioned effort to break down barriers to the export of U.S. defense technology and to the sharing of defense technologies among the U.S., Britain, and Australia. Regrettably, this effort fell short.

The core problem is that Britain (and Australia) still need new or additional licenses for transfers of technology to or from the United States. This makes it difficult for their industries to work on upgrades or repairs, to carry out intracompany transfers, and in certain cases for U.S. allies to deploy capabilities covered by U.S. licenses. This is true even when a transfer does not change the end user of the technology in question or when a British (or Australian) firm is bound by obligations of confidence to the British (or Australian) government.

The DTCTs sought to solve these problems through the device of the approved community, but in practice, this device has not been fully effective. Remaining barriers include the difficulty of joining the approved communities, the number and scope of technologies that are exempted from the DTCTs, and the DTCTs' often-onerous marking requirements. Outside the scope of the DTCTs, similar barriers affect U.S. transactions and exports under FMS (Foreign Military Sales), DCS (Direct Commercial Sales), and CP (Cooperative Programs).

Today, while the DTCTs are suitable for simple transactions, they are more problematic for complex capability-level transactions, which is where they were intended to produce the greatest gains. There are excellent reasons for the U.S. to control sensitive technologies to prevent them from reaching its adversaries, but in the case of the U.S.'s most trusted allies, the U.S. should be promoting collaboration, not making it more difficult.

A final difficulty is that the Export Control Reform (ECR) initiative under the Obama Administration commendably moved many articles from the U.S. Munitions List (USML) governed by the ITAR under the Department of State to the Commerce Controlled List (CCL) governed by the Export Administration Regulations (EAR) under the Department of Commerce. The DTCTs were negotiated prior to the ECR and allow license-free transfers only for USML items and only for articles that are not classified or otherwise prohibited. As a result, in spite of some efforts to harmonize the DTCTs with the U.S. control system as revised by the ECR, disparities remain.

Moreover, the list of articles eligible for DTCT treatment differs between the Australian and U.K. DTCTs, and these lists, in turn, are different from the ITAR exemptions granted to Canada. The result is a confusing set of disparate lists for defense trade with the U.S.'s closest allies.

The U.S. Goal Should Be to Expand the Perimeter of Defense Trade Cooperation

The goal of defense trade cooperation is simple: to procure the best technology for the U.S. warfighter at the best possible price for the U.S. taxpayer so as to

1. U.S. Department of State, Directorate of Defense Trade Controls, "The Arms Export Control Act," updated August 25, 2016, https://www.pmddtc.state.gov/regulations_laws/aeca.html (accessed April 21, 2017).
2. U.S. Department of State, Directorate of Defense Trade Controls, "Frequently Asked Questions (FAQs)—Defense Trade Cooperation Treaties and Resources," updated April 20, 2015, https://www.pmddtc.state.gov/faqs/treaties.html (accessed April 21, 2017).

stay ahead of increasingly capable adversaries while at the same time enabling our closest allies with U.S. technologies to allow them to make significant contributions to U.S.-led coalitions. In order to do this, the U.S. seeks to work with its closest allies in Britain, Canada, and Australia and with their own advanced defense industries, thus tapping into the reservoir of innovation within private industry in those nations.

This approach can be summed up as expanding the perimeter of defense cooperation. Today, the U.S. and Canada cooperate very closely while, in spite of the DTCTs, barriers still exist to cooperation with the U.K. and Australia. The U.S. goal should be to move the perimeter of seamless cooperation outward so that it fully includes all three of America's closest allies.

This approach to improving the efficiency of U.S. defense procurement and promoting allied collaboration was set out in the National Defense Authorization Act for Fiscal Year 2017. The act required the Secretary of Defense by January 1, 2018, to "develop a plan to reduce the barriers to the seamless integration between the persons and organizations that comprise the national technology and industrial base."[3] The NDAA also amends the definition of the NTIB to include the U.K. and Australia.[4] The inclusion of these nations in the NTIB is a positive change, but further work—to be undertaken in part as a result of the plan mandated by the NDAA—is necessary to achieve the NDAA's intention.

How to Expand Defense Trade Cooperation

The Secretary of Defense's plan, as mandated by the NDAA, will address all of the barriers to collaboration that affect the U.S., the U.K., Canada, and Australia. Some of these barriers will relate to problems supposedly addressed by the DTCTs, and addressing them will not require fundamental changes. For example, the approved community lists for both treaties could be expanded by relying on the U.S.'s allies to designate firms for inclusion.

However, other barriers will require reforms that are more significant. To expand defense trade cooperation, the U.S. should therefore:

- **Move to a permissive export control system for the U.S.'s closest allies.** The Exempted Technologies List for Britain and Australia could be limited to Not Releasable to Foreign Nationals items and to those controlled by other agreements (such as the Missile Technology Control Regime). The U.S. would thus move to a system of export controls for its closest allies that allows all defense-related exports to proceed absent a positive decision to refuse within a specified and short time period. The Canadian exemption in ITAR should be treated identically. This would eliminate the disparities between the items eligible under the Canadian ITAR exemption, the U.K. treaty, and the Australian treaty. It would also mean that, as Export Control Reform continues, there would be no need to harmonize the various lists of controlled items because, for Canada, Australia, and the UK, the export of defense items except those Not Releasable or otherwise controlled would be treated identically.

- **Allow systems-based treatment for exports to the U.S.'s closest allies.** Under this mechanism, all relevant exports would be licensed at the system level within the authorized community and would automatically include all follow-on parts, components, servicing, and technical plans, removing the need for additional licenses. For systems procured under DCS or FMS, any follow-on article procured through the DTCT should be transferred automatically onto the system of management for the overarching system. Currently, if a supplier uses the DTCT to import an item, such as a spare part for a larger system that is procured under DCS or FMS, then that item remains a DTCT item in inventory unless it is formally transferred. This requirement is burdensome and unnecessary.

- **Enhance U.S. industry's ability to sell directly to the U.S.'s closest allies.** The U.S. sometimes requires that foreign purchasers obtain U.S. defense goods and services through FMS. These are known as "FMS-only" transactions.[5] For example, all military training must be obtained

3. National Defense Authorization Act for Fiscal Year 2017, Public Law 114-328.
4. Ibid.
5. U.S. Department of Defense, Defense Security Cooperation Agency, "FAQ," http://www.dsca.mil/resources/faq (accessed April 21, 2017).

through FMS. The U.S. should expand the range of DCS sales and allow U.S. industry to sell any commercial defense item covered by the permissive export control system—in other words, any defense item except those Not Releasable to Foreign Nationals or controlled by other agreements—directly to the governments of Canada, Australia, or the United Kingdom. This would widen the pathways for U.S. industry in defense sales to these closest allies and reduce the burden on the FMS system. It would also relieve our allies of the burden of paying the surcharges that the U.S. levies on FMS purchases.

- **Complete export control reform.** The Obama Administration either completed or came close to finalizing 18 of the 21 ITAR categories. However, it made no public progress on Categories I ("Firearms"); II ("Guns," meaning artillery); and III ("Ammunition").[6] This is unfortunate for many reasons, one of which is that the U.S. issues approximately 10,000 licenses a year relating to exports under Category I. The State Department has seen a 56 percent reduction in licenses for completed categories,[7] and a reformed Category I, which consists largely of firearms under .50 caliber, would likely see an even more substantial decrease. In short, the U.S. is still wasting a significant amount of time and effort in licensing exports under Categories I–III, and because of the importance of Anglo–American trade, this disproportionately affects exports to the U.K. Completing export control reform is no substitute for broader reforms, but the impact of those broader reforms will be limited if Categories I–III remain unreformed.
- **Avoid "Buy America."** One of the purposes of these reforms is to allow U.S. industry to export more freely to the U.S.'s closest allies, but the U.S. military also relies on imports from these nations. Both the taxpayer and the warfighter suffer when Congress mandates the purchase in the United States of goods that U.S. allies can provide more efficiently. Expanding the perimeter of defense trade cooperation with America's closest allies is a two-way street: It means more U.S. exports, but it also means a U.S. willingness to buy British (or Australian or Canadian) when that is appropriate.[8]

Conclusion

The U.S. undoubtedly has an interest in protecting sensitive defense technology. Its closest allies in Canada, Britain, and Australia share this interest. The U.S. and its closest allies also have much to gain in seamlessly integrating their defense industrial bases with one another and reducing technology transfer controls among themselves. This will lower costs, reduce risk, and produce the best possible technology for American men and women in uniform.

The U.S. and its allies have already taken important steps to reduce the barriers that divide them: namely, the signing, ratification, and implementation of defense trade cooperation treaties. Now the U.S. should improve the implementation of these treaties and fulfill their promise by fully and equally including the United Kingdom, Australia, and Canada in an expanded perimeter of U.S. defense trade cooperation.

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6. Ted R. Bromund, "With Obama Gone, Firearms Industry Hopes for New Freedom for Gun Owners," The Daily Signal, January 26, 2017, http://dailysignal.com/2017/01/26/with-obama-gone-firearms-industry-hopes-for-new-freedom-for-gun-owners.
7. Brian Nilsson, Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, "Statement Before the House Small Business Committee," February 11, 2016, https://2009-2017.state.gov/t/pm/rls/rm/2016/252401.htm (accessed April 21, 2017).
8. Justin Johnson, "'Buy America' Provisions Have No Place in the National Defense Authorization Act," Heritage Foundation *Issue Brief* No. 4421, June 15, 2015, http://www.heritage.org/defense/report/buy-america-provisions-have-no-place-the-national-defense-authorization-act.