



**Australian Government**  
**Department of Defence**

## **QUESTIONS AND ANSWERS**

### **AUSTRALIA US TREATY ON DEFENSE TRADE COOPERATION**

#### **When will the Treaty be finalised?**

- The Australia-United States Treaty on Defense Trade Cooperation was signed by Prime Minister John Howard and President George W. Bush on 5 September 2007.
- Both countries will need to complete processes under their respective domestic laws to bring the Treaty into force.
- Implementing arrangements will be developed over the coming months to define precisely how the Treaty will operate in both Australia and the US, and how its obligations will be implemented to the mutual satisfaction of both countries. These arrangements include identifying the changes that might be needed to our legal and regulatory regimes, and putting these changes into effect.

#### **What is the significance of the Treaty?**

- This treaty opens up new avenues for industrial cooperation between the defence industries of United States and Australia. It allows for effective partnering and technology sharing.
- As an indication of the benefit of the Treaty, the State Department has told us that 2361 export licences and 312 technical data agreements were approved for Australia in 2006. Many of these approvals, which can take three months or more, will no longer be required under the Treaty.
- As a result, the Treaty will significantly improve the timeliness of our access to US technology, and will speed up the delivery of new defence projects and improve the whole-of-life sustainment of military equipment.
- Equally importantly, the Treaty will also allow Australian and US companies to share technical data without the need for an export licence, and this will reduce the lead time before Australian and US companies can discuss potential business opportunities or capability solutions for our respective Defence forces.

#### **What products and services will be covered by the Treaty?**

- The Treaty creates a comprehensive framework for two way trade between Australia and the United States in defence articles, including equipment, spare parts, services and related technical data, within an 'approved community' of government facilities and private companies in the United States and Australia without the need for licences.
- Defence articles covered by the scope of the Treaty include those articles, services and related technical data required for combined United States and Australian military or counter-terrorism operations and cooperative security and defence research.
- Implementing arrangements will specify more exactly articles covered by the Treaty. The Treaty will also remove the need for licences for transfers within the 'approved community' for defence articles provided under the United States Foreign Military Sales program.
- The arrangements for approving the export of US defence equipment to Australia on a government-to-government basis under the Foreign Military Sales (FMS) program will not be included under the Treaty. But once the equipment has been received in Australia, retransfers of the FMS-origin technology within the approved community of Australian companies will be permitted without the need for further approvals, significantly enhancing our ability to support this equipment in country and creating improved opportunities for Australian companies.

**Is the ADF the only agency that will benefit from the Treaty?**

- No. The Treaty envisages greater opportunities for industry through broader collaboration across other national security agencies.

**Will the Treaty help Australian industry win more US contracts?**

- Treaty provisions will improve the prospects of Australian companies participating in US defence requirements.
- It will facilitate the exchange of defence related work between Australian and US companies which will allow industry to be more competitive when competing for defence business.

**Who else has similar agreements with the US?**

- In late June 2007 President Bush and former Prime Minister Blair signed a Treaty on Defence Trade Cooperation between the US and the UK.
- This is a significant step forward in our relationship with the United States and demonstrates the high value placed on the relationship by both countries.

**How will this improve Australian industry access to US technology?**

- The Treaty will give Australia privileged access to US military technology by providing for licence-free access to US defence equipment.
- The Treaty will also benefit Australian defence capability development by accelerating our access to US technical data during the capability development process before second pass.
- Treaty provisions will improve the prospects of Australian companies participating in US defence requirements and facilitate the exchange of defence related work between US companies, their Australian subsidiaries and independent Australian designers and manufacturers.

### **How will Australian industry benefit from the Treaty?**

- We expect the Treaty will enhance business opportunities for Australian companies because Australian and US companies will be able to share technical data without the need for an export licence. This will eliminate the lead-time before Australian and US companies can discuss potential business opportunities or capability solutions for our respective Defence forces.
- The ability of Australian companies to compete for work in US global supply chains is also likely to improve. In the longer term the treaty could encourage US firms to see their Australian subsidiaries as ‘natural’ industrial partners in the region.
- By reducing the export control burden on US companies, the Treaty could also encourage smaller US companies to enter the export market, further enhancing the opportunities for Australian companies to team with US firms of a similar size.
- The treaty could also offer enhanced opportunities for Australian companies to bid for support work for equipment Defence acquires through the US Foreign Military Sales (FMS) program. Out-sourcing of FMS equipment support is currently slowed down by the need to gain State Department approval for retransfers. The current average time to gain a retransfer approval is about 12 months. Under the treaty retransfer of equipment and data purchased under the FMS program will be possible without prior approval by State Department.

### **What is meant by the ‘approved community’?**

- The approved community will include the Australian and US Governments and companies in both countries that have been qualified to receive licence-free exports under the Treaty. The details of the qualification program, including the qualification criteria, have still to be mutually determined.

### **Under what circumstances could an Australian company have membership of the ‘approved community’ denied?**

- An application for membership of the approved community could be denied or a company subsequently disqualified if:

- There is a serious failure to comply with Australian export control laws and regulations and/or the commitments undertaken in joining the approved community;
- A company fails to meet its security obligations under the Defence Industry Security Program;
- There is a failure to provide written notification of material changes in the facts provided with the company's application for qualification;
- There is a significant risk that there will be unauthorised diversion of articles or data provided under the treaty;
- There are false statements, misrepresentations or omissions of fact in the application or export related documentation, or significant failures to provide or maintain records of US defence articles and data in the company's possession.

**What additional security arrangements will Australian industry have to implement to participate in the Treaty?**

- Some Australian companies working in the defence sector may need to enhance their existing security arrangements. This will not only safeguard our continued improved access to US technology, but will provide a more robust security environment that offers benefits beyond the provisions of the Treaty.
- The security enhancements may affect the number of national security clearances issued to employees and enhancement of the industrial security environment, reporting of overseas travel and complying with prescribed security procedures.

**What is the cost to industry for additional security and regulatory requirements?**

- The overall regulatory cost impact of the Treaty is expected to be low.
- The security provisions of the Treaty will create some additional regulatory costs, but these are expected to be wholly, or mostly, offset by savings due to the streamlining of the US export licence process.

**Will all Australian businesses have to agree to the conditions of the treaty?**

- No. Participation in the Treaty arrangements will be voluntary. Those companies that choose not to participate will be able to continue to work under the present ITAR arrangements.

**Will the Government provide support to businesses to offset additional security costs?**

- Under current arrangements security costs, as with other costs, are factored into overall contract bids. We expect this to continue under the treaty arrangements. However, there will be significant cost and time savings as a result of the Treaty.

### **How will the Government monitor compliance with the Treaty?**

- The Treaty will stipulate the setting up of a compliance and audit regime, the details of which have yet to be mutually determined.

### **Will the Treaty require Australian companies and personnel to undergo background security checks before participating in the Treaty?**

- As a member of the approved community, an Australian company will need to meet the required accreditation standards.
- Accreditation standards include areas that are the subject of existing arrangements such as facility clearance, business history, export licensing and compliance record and relationships to countries of concern.

### **Will foreign nationals employed in Australia be excluded from the Treaty?**

- Third country nationals who do not hold Australian nationality will not be permitted access under the Treaty without prior authorisation by the US and Australian governments.

### **What impact will the Treaty have on the FTA and our other international obligations?**

- US defence technology and services covered by the FTA still required a US export licence before it could be exported to Australia. Under the Treaty, many of these exports will be licence-free.
- The Treaty only applies to bilateral defence trade between the US and Australia, and it has no impact on our other international obligations.

### **Will US companies have access to Australian technology?**

- Yes. US companies will have the same opportunities to access Australian technology and services as Australian companies.

### **How does the treaty affect the International Traffic in Arms Regulations (ITAR)?**

- The Treaty will not affect the ITAR. Australian companies that are not part of the “approved community” will still be able to receive US defence articles, services and technical data under existing US export control arrangements. These arrangements will also apply to any highly sensitive exports (still to be mutually determined) that are not covered by the Treaty.
- Under the Treaty, US exporters will only need to advise the State Department that they have engaged in an eligible defence export activity; they will not need to apply for a licence. Eligible exports will include exports for:

- Mutually determined security and defence projects where the Commonwealth of Australia is the end-user
- Cooperative security and defence research, development, production and support programs; and
- Combined military or counter-terrorism operations.

**Does the Treaty offer something similar to the ITAR Exemption?**

- Yes, but it is likely to go further than the ITAR exemption by providing for a wider range of eligible exports and for approval for transfers of US-origin equipment and technical data with the approved community of companies in Australia without the need for licences.

**Will the Treaty have an impact on existing Defence projects such as JSF and Super Hornets?**

- The acquisition phase of the JSF program is unlikely to be included because it is a multinational cooperative program, and not a bilateral Australian/US program. But subsequent transfers of JSF technology within the approved community of Australian companies will be permitted without the need for prior US approval. This will not only enhance our ability to support the JSF in country, but will also enhance Australian companies' access to JSF-related work in the future.
- The export of Super Hornets to Australia under the Foreign Military Sales program will not be included. But, as for the JSF program, our ability to subsequently transfer Super Hornet technology within the approved community of Australian companies for through life support will considerably aid Australian companies' access to work on the Super Hornet, as well as our ability to support the aircraft in country.

**Does the Treaty need to go through US congress and Australian Parliament?**

- Yes. Under US law this Treaty must be approved by the US Senate.
- Under Australian treaty practice, the Joint Standing Committee on Treaties (JSCOT) will have an opportunity to consider the Treaty.

**Will the text of the Treaty be made public?**

- The usual Australian practice is for the text of a treaty to be tabled in Parliament at the time of JSCOT consideration – this practice will be followed.

**What new legislation will be required to support the Treaty?**

- The creation of an approved community will require changes to legislation to ensure that export control and security are sufficiently robust to ensure that sensitive technologies and data are not provided outside of the approved community.

- Key legislation that may require amendments are the *Customs Act 1901*, *Customs (Prohibited Exports) Regulations 1958* and *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (WMD Act)*.