

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

TREATY
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING
DEFENSE TRADE COOPERATION

Sydney, 5 September 2007

Not yet in force
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**TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING DEFENSE TRADE COOPERATION**

The Government of Australia and the Government of the United States of America (hereinafter “the United States Government”), hereinafter collectively referred to as “the Parties”:

Desiring to strengthen and deepen the relationship between the United States of America (hereinafter “the United States”) and Australia to achieve and sustain fully interoperable forces;

Considering that their mutual security and defense interests require a closer framework for national security and defense cooperation;

Desiring to leverage the respective strengths of the security and defense industries of the United States and of Australia;

Recognizing that, in furtherance of the above aims, the Parties seek to establish a framework that is necessary for the protection of the Parties’ essential security and defense interests and that facilitates the movement of Defense Articles within an Approved Community, while ensuring there are proper safeguards against unauthorized release beyond that Approved Community;

Seeking to enhance the protection afforded to Exports and Transfers within this framework;

Recognizing the principles established under the Security Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information, dated 25 June 2002, as amended, and implementing arrangements thereto (hereinafter “the GSA”);

Recalling the commitments of the Parties relating to the export of defense articles arising from international arrangements in which they are participants; and

Understanding that the provisions of this Treaty are self-executing in the United States;

Have agreed as follows:

ARTICLE 1

Definitions

- (1) For the purposes of this Treaty:
 - (a) “Approved Community” means the United States Community and the Australian Community;

- (b) “Australian Community” means the community identified in Article 4(1);
- (c) “Defense Articles” means articles, services, and related technical data, including software, in a tangible or intangible form, listed on the United States Munitions List;
- (d) “Export” means the initial movement of Defense Articles from the United States Community to the Australian Community;
- (e) “Government of Australia Facilities” means those facilities identified in Article 4(1)(a);
- (f) “Government of Australia Personnel” means those persons identified in Article 4(1)(b);
- (g) “Implementing Arrangements” means the implementing arrangements concluded by the Parties pursuant to Article 14;
- (h) “Re-export” means the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location outside the Territory of Australia;
- (i) “Re-transfer” means the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location within the Territory of Australia;
- (j) “Scope” means the Treaty’s coverage as identified in Article 3;
- (k) “Territory of Australia” means the territory of the Commonwealth of Australia excluding all External Territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands and the Coral Sea Islands Territory;
- (l) “Transfer” means the movement of previously Exported Defense Articles within the Approved Community;
- (m) “United States Community” means the community identified in Article 5; and
- (n) “United States Munitions List” (hereinafter “USML”) means the articles, services and related technical data designated as defense articles and defense services pursuant to Section 38 of the United States Arms Export Control Act (22 U.S.C. Section 2778) as enumerated in 22 Code of Federal Regulations Part 121, as may be modified or amended.

(2) Terms capitalized in this Treaty, and their variants, shall have the meaning established in this Article.

ARTICLE 2

Purpose

This Treaty provides a comprehensive framework for Exports and Transfers, without a license or other written authorization, of Defense Articles, whether classified or not, to the extent that such Exports and Transfers are in support of the activities identified in Article 3(1).

ARTICLE 3

Scope

- (1) This Treaty shall apply to Defense Articles required for:
 - (a) United States and Australian combined military or counter-terrorism operations as described in the Implementing Arrangements;
 - (b) United States and Australian cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;
 - (c) Mutually determined specific security and defense projects where the Government of Australia is the end-user that are identified pursuant to the Implementing Arrangements; and
 - (d) United States Government end-use.
- (2) This Treaty shall not apply to those Defense Articles that are identified in the Implementing Arrangements as exempt from the Scope of this Treaty.
- (3) This Treaty shall apply to Defense Articles acquired by the Government of Australia pursuant to the United States Foreign Military Sales (hereinafter “FMS”) program and which fall within the Scope of this Treaty, once they are delivered to the Government of Australia, as if such Defense Articles had been Exported under this Treaty. The existing processes for the acquisition of such Defense Articles under the FMS program will continue to apply. Once delivered pursuant to a FMS Letter of Offer and Acceptance, such Defense Articles may be treated as if they were Exported under this Treaty in accordance with procedures mutually determined in the Implementing Arrangements.
- (4) This Treaty shall not prevent the issuance of a defense export license or other authorization should an entity eligible to Export or Transfer Defense Articles under this Treaty seek to obtain an individual defense export license or other authorization for a

particular transaction, in which case the terms of any such license or authorization granted shall apply instead of the terms of this Treaty.

ARTICLE 4

Australian Community

- (1) The Australian Community shall consist of:
 - (a) Facilities of the Government of Australia that are located within the Territory of Australia, accredited by the Government of Australia pursuant to the GSA and related to the Scope of this Treaty, which shall be identified pursuant to the Implementing Arrangements;
 - (b) Personnel of the Government of Australia meeting mutually determined criteria as set out in the Implementing Arrangements including, at a minimum, appropriate Australian security accreditation and a need-to-know;
 - (c) Specifically identified nongovernmental Australian entities and facilities located within the Territory of Australia that meet mutually determined eligibility requirements, are accredited by the Government of Australia in accordance with the Implementing Arrangements, and are mutually determined by the Parties for inclusion on a list of approved Australian entities and facilities (hereinafter “the List”); and
 - (d) Employees of those entities and facilities referred to in subparagraph (c), who meet criteria set out in the Implementing Arrangements, including, at a minimum, appropriate Australian security accreditation and a need-to-know.
- (2) Entities or facilities included on the List pursuant to subparagraph (1)(c) shall be removed from the List at the request of either Party when it considers such removal to be in its national interests, following consultation in accordance with Article 17.

ARTICLE 5

United States Community

The United States Community shall consist of:

- (1) Departments and agencies of the United States Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and
- (2) Nongovernmental United States entities registered with the United States Government and eligible to export Defense Articles under United States law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

ARTICLE 6

Exports

- (1) The United States Community may Export Defense Articles within the Scope of this Treaty without prior defense export licenses or other authorizations.
- (2) The United States Government shall establish procedures to ensure that all Defense Articles to be Exported under this Treaty are clearly marked or identified as Exported under this Treaty.
- (3) The Government of Australia shall establish procedures to ensure that all Defense Articles marked or identified as Exported under this Treaty shall, upon entry into the Australian Community, be further marked or identified, at a minimum, as “Restricted USML”.

ARTICLE 7

Transfers

All Defense Articles Exported pursuant to this Treaty may be Transferred without prior written authorization by the United States Government.

ARTICLE 8

Australian Community Exports and Transfers

- (1) The Government of Australia shall maintain procedures to ensure that all Defense Articles to be exported to the United States Community under this Treaty shall not require export licenses or authorizations except as provided in subparagraphs (a) and (b). In meeting this requirement, the Government of Australia may permit:
 - (a) The Australian Community to export Australian Defence Articles within the Scope of this Treaty in accordance with Government of Australia blanket authorizations; and
 - (b) All Defense Articles Exported pursuant to this Treaty to be Transferred in accordance with Government of Australia blanket authorizations.
- (2) The Government of Australia shall establish procedures to ensure that all Australian Defence Articles exported to the United States Community under this Treaty are clearly marked or identified as such.
- (3) The United States Government shall ensure that all Australian Defence Articles imported to the United States under this Treaty shall upon entry to the United States be treated as USML items.

(4) The marking, identification, transmission, storage and handling of classified Australian Defence Articles exported to the United States Community shall be in accordance with the GSA.

(5) The United States Government maintains procedures to regulate the export of Defense Articles from the United States. Australian Defence Articles exported from the United States shall be handled pursuant to these procedures, and the United States Government shall consult with the Government of Australia in accordance with Article 17 on countries of national security and foreign policy concern to the Government of Australia.

(6) If the Government of Australia becomes concerned about the ability of a particular nongovernmental United States entity referred to in Article 5(2) to protect Australian Defence Articles, the Government of Australia may provide directions to the Australian Community concerning the access of the entity to Australian Defence Articles, following consultation with the United States Government in accordance with Article 17.

(7) For the purposes of this Article, “Australian Defence Articles” means Defense Articles the initial movement of which is from the Territory of Australia to the United States.

ARTICLE 9

Re-transfers and Re-exports

(1) All Re-transfers or Re-exports of Defense Articles shall require approval by the Government of Australia. In reviewing requests for such approval, the Government of Australia shall, with certain exceptions that shall be mutually determined by the Parties and identified in the Implementing Arrangements (such as the operational use of a Defense Article in direct support of deployed Australian Defence Force personnel), require supporting documentation that includes United States Government approval of the proposed Re-transfer or Re-export. The procedures for obtaining United States Government and Government of Australia approval shall be identified in the Implementing Arrangements.

(2) All Defense Articles that have approval to be Re-transferred or Re-exported shall be governed by the terms and conditions of such approvals of the United States Government and the Government of Australia.

ARTICLE 10

Protection of Proprietary Information

(1) Nothing in this 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.

(2) Nothing in this Treaty shall affect any provisions for the protection of intellectual property and other proprietary information that may be agreed between the Parties or the persons or entities referred to in paragraph (1).

ARTICLE 11

Security and Classification

(1) The marking, identification, transmission, storage and handling of Exports, Transfers, Re-exports, or Re-transfers of Defense Articles under this Treaty shall be in accordance with the GSA.

(2) All relevant Australian law, including applicable criminal law and export control law, shall apply to all Exports, Transfers, Re-exports, or Re-transfers pursuant to this Treaty.

(3) In addition to being marked or identified as Exported under this Treaty and as “Restricted USML”, in the event that Defense Articles are classified at a higher level pursuant to either Party’s classification procedures they shall be so marked or identified and transmitted, stored, handled, and safeguarded, in accordance with such higher classification, as provided by the GSA.

ARTICLE 12

Recordkeeping and Notification

(1) Each Party shall require that entities within its Community that are Exporting, Transferring, Re-transferring, Re-exporting, or receiving Defense Articles pursuant to this Treaty maintain detailed records of all such movements.

(2) Each Party shall ensure that such records maintained by entities within its Community are made available upon request to the other Party, or otherwise in accordance with procedures established in the Implementing Arrangements.

(3) The Parties may establish procedures to ensure appropriate legislative notifications.

ARTICLE 13

Enforcement

(1) Compliance with the procedures established pursuant to this Treaty, its Implementing Arrangements, and any regulations promulgated to implement this Treaty’s effect on existing law, by persons or entities Exporting and Transferring Defense Articles, shall constitute an exemption to the applicable licensing requirements and the implementing regulations of the United States Arms Export Control Act.

(2) Conduct falling outside the terms of this Treaty, its Implementing Arrangements explicitly invoking this Article, and any regulations promulgated to implement this Treaty's effect on existing law, remains subject to applicable licensing requirements and implementing regulations, including any criminal, civil, and administrative penalties or sanctions contained therein.

(3) Each Party shall promptly investigate all suspected violations and reports of alleged violations of the procedures established pursuant to this Treaty, and shall promptly inform the other Party of the results of such investigations. Each Party shall cooperate with respect to investigations conducted by the other Party, in accordance with procedures established in the Implementing Arrangements.

(4) The Parties shall keep each other informed of the progress of any prosecutions, or of any civil or administrative actions, resulting from investigations referred to in paragraph (3). The Parties shall cooperate, as appropriate, with respect to such prosecutions or actions.

(5) The Parties, in accordance with currently established procedures, as may be modified and reflected in the Implementing Arrangements, may conduct post-shipment verifications and end-use or end-user monitoring of Exports and Transfers under this Treaty and, at the request of either Party, provide assistance to each other on such matters.

ARTICLE 14

Implementing Arrangements

(1) The Parties shall conclude, on an expedited basis, Implementing Arrangements for this Treaty. The Implementing Arrangements may be amended or supplemented as mutually determined by the Parties.

(2) The Implementing Arrangements shall include a process by which entities in the Approved Community may move from the requirements of United States Government defense export licenses or other authorizations issued under the International Traffic in Arms Regulations to the processes established under this Treaty.

ARTICLE 15

Implementing Agencies

(1) Each Party shall designate an authorized agency to implement its obligations under this Treaty.

(a) The United States Government hereby designates the Department of State as its authorized agency.

- (b) The Government of Australia hereby designates the Department of Defence as its authorized agency.
- (2) A Party may change the designation of its authorized agency by written notice to the other Party through diplomatic channels.

ARTICLE 16

Relationship to Other International Agreements

This Treaty shall not affect the rights and obligations of the Parties under other international agreements to which they are a party.

ARTICLE 17

Consultations

The Parties shall consult at least annually and more frequently, as needed, at a senior level, on cooperative aspects of their export control relationship and to review the operation of this Treaty. These consultations shall provide a mechanism to review and address all relevant export control issues.

ARTICLE 18

Dispute Resolution

Any disputes between the Parties arising out of or in connection with this Treaty shall be resolved through consultations between the Parties and shall not be referred to any court, tribunal, or third party.

ARTICLE 19

Amendments

This Treaty may be amended by written agreement of the Parties.

ARTICLE 20

Entry into Force

This Treaty shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic requirements to bring this Treaty into force.

ARTICLE 21

Duration and Withdrawal

- (1) This Treaty shall, subject to paragraph (2), be of unlimited duration.
- (2) The Parties shall have the right to withdraw from this Treaty in accordance with this Article. If a Party decides that extraordinary events related to the subject matter of this Treaty have jeopardized its national interests, it shall give notice of its intention to withdraw from this Treaty to the other Party. Such notice of intention to withdraw shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its national interests. The Parties shall commence consultation within 30 days of the provision of the notice of intention to withdraw, with the aim of allowing the continuation of this Treaty. If, after such consultation, the notifying Party does not agree to the continuation of this Treaty, the withdrawal of the notifying Party shall take effect upon the expiry of 6 months from the provision of the notice of intention to withdraw.
- (3) Notwithstanding withdrawal from this Treaty by either Party, the procedures for protection of Defense Articles Exported under this Treaty and for handling Australian Defence Articles as referred to in Article 8 shall continue in effect until such time as appropriate defense export licenses or other authorizations are in place. The Parties shall endeavour to expedite the approval of such licenses or authorizations.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Sydney on the fifth day of September two thousand and seven.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

.....
Hon John Howard
Prime Minister

.....
George W Bush
President