

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

May 20, 2024

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Biden,

I write today regarding your administration's unwillingness to certify the United Kingdom (UK) and Australian export control systems as comparable to those of the United States. This is not only a disappointment, it also risks severely diminishing the potential that AUKUS promises. In addition, your failure to adhere to the intent of AUKUS legislation passed in last year's National Defense Authorization Act (NDAA) with respect to the Missile Technology Control Regime (MTCR) and your list of excluded technologies is a significant concern. Failure to acknowledge the comparability of the export control systems of the UK and Australia means defense trade between our nations will continue to be governed by Cold War-era regulations until at least August 19, 2024, when the next certification deadline arrives. This process is not moving at the speed of relevance.

Our two closest allies already have regulatory systems comparable to ours. Your administration's inability to acknowledge this reflects continued failure to characterize risk properly. The UK has an Official Secrets Act, passed the National Security Act in 2023 to strengthen protections against industrial espionage, and put in place an investment screening system with its National Security Investment Act of 2022. Furthermore, Australia passed its Defense Trade Controls Act in March 2024 to bolster its already robust export control regime. Both countries have also passed laws regulating military training with our adversaries.

These delays in certification do not come without a cost. The costs of inaction deny us benefits that outweigh the real and enduring risk to our technology from compromise by China, Russia, and other actors. U.S. and western technology are the gold standard, so it is all but certain that China will continue to target the AUKUS partners as it has always done. We should continue to strengthen our collective defenses against espionage, but not allow this challenge to further delay the implementation of AUKUS.

Despite my concern regarding your failure to certify our partners, I am pleased the State Department posted its draft International Trafficking in Arms Regulations (ITAR) for public comment and industry consideration last month.

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As you await public comment on the exemption, I want to clarify the intent of other provisions related to AUKUS's Pillar 2 that were passed in the FY 2024 NDAA (Public Law 118-31). Congress expects the ITAR exemption will cover all items except those associated with Weapon of Mass Destruction (WMD) or the MTCR. While WMD-related cooperation is obviously outside the scope of AUKUS, the same cannot be said of technologies captured under the MTCR. Indeed, your administration identified cooperation on hypersonic missiles and unmanned autonomous systems as key focus areas under Pillar 2.

There are several other provisions in the AUKUS implementing legislation explicitly intended to facilitate cooperation on MTCR-related technologies. These include:

- Pub. L. 118-31, Division A, Title XIII, Section 1341 – Priority for Australia and the UK in Foreign Military Sales and Direct Commercial Sales (DCS). This provision prioritizes defense trade with the UK and Australia and creates an anticipatory release policy for AUKUS Pillar 1 and 2 technologies not covered by the ITAR exemption. It also directs the secretaries of State and Defense to promulgate guidance to this end.
- Pub. L. 118-31, Division A, Title XIII, Section 1342 – Directs the president to create a list of items pre-cleared for release to the UK and Australia, irrespective of whether a Letter of Request has been submitted for a given capability. This provision is intended to reduce delays associated with U.S. government deliberations on technology release, and notes explicitly that hypersonic technologies and unmanned systems are to be included on this pre-clearance list.
- Pub. L. 118-31, Division A, Title XIII, Section 1341 – Makes clear that DCS cases not covered by the ITAR exemption (limited to the aforementioned WMD and MTCR associated capabilities) will be subject to an expedited licensing review of no more than 45 days.
- Pub. L. 118-31, Division A, Title XIII, Section 1345 – Requires a review of the United States Munitions List every three years for relevance and alignment with the current security environment. It also encourages the State Department to work with the Defense Trade Advisory Group in undertaking this periodic review with the intent to ease technology sharing.

These provisions were passed into law to ensure that MTCR-related capabilities, while not subject to the ITAR exemption, would benefit from a strong presumption of approval, thus avoiding lengthy review processes and delays. This is sensible, not only because your administration promoted cooperation on hypersonics and unmanned systems when announcing AUKUS, but also because we already share our Trident ballistic missile technology with the UK and have approved the export of MTCR Category I conventional missile technologies to Australia.

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Despite this, I understand some personnel at the State and Defense Departments are resisting cooperation on the sharing of MTCR-related capabilities. This belies the purpose of AUKUS which, as your administration explained in its rollout, is supposed to enable cooperation on high-end, cutting edge military technologies to ensure we retain our qualitative edge over China. Indeed, cooperation on technologies captured under the MTCR should be expanded well beyond AUKUS partners given China's massive advantage in the fielding of theater-based missiles. China is also arguably the world's leading power in hypersonic technologies and its capture of significant market share in the production of unmanned systems should be of grave concern.

I remain a supporter of AUKUS, but it is time to start delivering on the promise of this pact. The simple fact is that we have very little to show for AUKUS as we approach its three-year anniversary in September. While small-scale training efforts are underway in support of Pillar 1's Optimal Pathway, the production of submarines remains dependent on our collectively fragile industrial bases, rendering timelines for the transfer of submarines under AUKUS both a distant and highly contingent prospect. The challenges associated with Pillar 1 make it an imperative that we show progress on Pillar 2 in the near-term. It is time to start delivering results. Our inaction only rewards China, which is not suffering from the same self-imposed paralysis.

Sincerely,



JAMES E. RISCH
Ranking Member
Senate Foreign Relations Committee

CC:

The Honorable Antony Blinken, Secretary, U.S. Department of State