

Statement of Assistant Secretary Andrew Shapiro
Senate Foreign Relations Committee
Defense Trade Cooperation Treaties
December 10, 2009

Mr. Chairman:

Thank you for holding this hearing and for the opportunity to testify before the Committee on the two bilateral defense trade cooperation treaties between the United States and the United Kingdom (Treaty Document 110-7), and the United States and Australia (Treaty Document 110-10). The ratification of these Treaties is strongly supported by this Administration.

First, I would like to take this opportunity to thank the members of the Committee and the Committee staff for their diligent work on this initiative. Our interaction with the Committee on these Treaties has been invaluable. The insights and questions provided by the Committee have helped to guide this Administration's review of the Treaties and informed the detailed draft regulations that the State Department will publish once the Treaties are ratified.

This Administration has conducted an exhaustive review of the Treaties and their effect on United States' national security and foreign policy interests. I have met officials from the United Kingdom and Australia to discuss the Treaties and their importance to our bilateral relationships. We have worked closely with representatives from the Department of Defense to evaluate the Treaties' ability to

enhance interoperability with these important partners, while maintaining our national security interests. We have also worked with the Department of Justice and the Department of Homeland Security in order to ensure that the provisions of the Treaties can be implemented and enforced under current U.S. law. Today, I affirm to you that the President and his Administration fully support the Treaties and believe they will establish a stable framework through which we can enhance our strategic relationship and battlefield readiness with these two key allies in the future.

When we speak about the details of these Treaties and the framework that they establish, it is easy to lose sight of the exceedingly important role that these Treaties are designed to play. I would like to share a few examples with you.

When U.S. and Coalition forces are attacked, an IED explodes, or a suicide bomber murders civilians, conducting a forensic investigation of the scene is essential. The information gained by such an investigation helps determine the sources of insurgent arms, ammunition, and explosives; it greatly supports the gathering and analysis of intelligence, which helps us stem the flow of arms to insurgents. It allows us to identify ways in which we can better protect our forces in combat and it allows us to identify the dead and to prosecute the guilty. Our military has highlighted the fact that there is an urgent need to improve current capabilities in this key area. The Office of the Under Secretary of Defense for Acquisition,

Technology and Logistics has stated that the Treaties, if ratified, could facilitate U.S., UK, or Australian research and development that is needed to meet this urgent need. The Department of Defense has already awarded a number of contracts in this area, and the Treaties would enhance U.S. industry's ability to engage in technical discussions on this subject with UK and Australian companies. Such companies could provide solutions to technological challenges, reduce costs, and accelerate delivery of expeditionary forensic capabilities to Coalition forces. Without the Treaties, the ability of engineers and other scientists to just discuss the export controlled technology associated with expeditionary forensic capabilities could be subject to many more bureaucratic processes and proceed much less seamlessly than with the Treaty exemption regime in place. In this case, the Treaties could be used to help meet this urgent need more effectively and even more quickly.

Another urgent requirement is the need to field non-lethal capabilities for counter-piracy and maritime counter-terrorism. The Department of Defense is actively pursuing development and acquisition of a range of non-lethal technologies and equipment in this area. The Department of Defense would like to work with UK and Australian naval authorities and acquisition organizations through cooperative programs and international contractor teaming. As with cooperation on forensics discussed above, the Treaties' streamlined export control arrangements would

allow UK and Australian companies to work more seamlessly with U.S. firms to meet this urgent requirement. Furthermore, the United States and its key allies would gain more timely and flexible access to Australian and UK firms, which could develop more time-responsive, affordable solutions.

Real world technologies that are needed urgently today to save lives could be developed more quickly using the system that the Treaties, if ratified, would create.

The Treaties also recognize and support the long-standing special relationship that the United States, the United Kingdom, and Australia share. Since World War I, the United States and the United Kingdom have worked together to develop advanced strategic technologies; technologies that provided the advantage to help us win two World Wars, protect lives, and advance our countries' interests in numerous conflicts. The alliance between the United States and Australia was also forged on the battlefields of World War II, and as Australia's industrial base began to flourish, our economic and strategic relationship grew.

We have a long history of scientific and technological cooperation from which our nations have benefited. The combination of the British Merlin engine with the American-developed P-51 airframe resulted in the best fighter aircraft of World War II. U.S.-UK and U.S.-Australian cooperation in radar – initially developed and employed by the UK in the 1930s – continues to this day. UK-developed

counter-improvised explosive device (IED) technology has been used by all three nations to improve systems that protect against this deadly threat in Iraq and Afghanistan.

These examples of cooperation in defense development, production, and support among the United States, Australia, and the UK illustrate the breadth and depth of the industrial dimension of our alliances. The Treaties, if ratified, will help the United States and these key allies develop and field the next generation technology that is needed to save lives and protect our countries' security and foreign policy interests. The Treaties would accomplish this by streamlining the processes by which certain controlled items are transferred between the United States and the United Kingdom or Australia. Specifically, the Treaties will provide the President with the authority to promulgate regulations that will allow, without prior written authorization, the export or transfer of certain defense articles and defense services controlled pursuant to the International Traffic in Arms Regulations (ITAR) between the United States and the United Kingdom or between the United States and Australia, when in support of:

1. Combined military and counter-terrorism operations;
2. Cooperative security and defense research, development, production, and support programs;

3. Mutually agreed security and defense projects where the end-user is the Government of the United Kingdom or the Government of Australia; or
4. U.S. Government end-use.

The U.S. Government will maintain its authority over which foreign end-users may have access to ITAR-controlled items under the Treaties by mutually agreeing with Government of the United Kingdom, and with the Government of Australia, on an “Approved Community” of private sector entities that may receive defense articles and defense services under the Treaties. Further, not all ITAR-controlled items will be eligible for export under the Treaties. We have identified such ineligible items in a proposed “Exemption List,” which was carefully developed with the Department of Defense, and provided to the Committee.

Both the United Kingdom and Australia have agreed to protect defense items exported from the United States under the Treaties using their national laws and regulations. These laws and regulations govern exports of controlled goods and technologies and safeguard classified information and material. This is an extremely important Treaty benefit; that is, the United Kingdom and Australia have agreed to classify as “Restricted” otherwise unclassified ITAR-controlled defense articles exported from the United States pursuant to the Treaty. This subjects all handling, exports and reexports to the respective classified information laws and regulations. Under these legal authorities, the United Kingdom and

Australia will require prior United States approval, in addition to their own governments' approval, for the re-export or re-transfer of such items outside the Approved Community. In addition, we have agreed with the United Kingdom and Australia on detailed compliance and enforcement measures, to be imposed on members of each Community. These measures were negotiated by United States Government representatives from the Departments of State, Justice, Homeland Security, and Defense. These details, and others related to the implementation of the Treaties, are contained in the "Implementing Arrangements" called for in both Treaties.

Both the United States and its treaty partners will be able to prosecute cases involving exports, re-exports and transfers that do not satisfy the specific requirements and obligations that the parties will establish to implement the Treaties.

We have determined that, if ratified, the Treaties would be implemented in the United States through federal regulations. First, the Department would promulgate regulations that would create an exemption from the requirement of a license under the Arms Export Control Act for particular, specified exports to the United Kingdom and Australia. Such regulations would require an exporter to meet certain conditions in order to take advantage of the exemptions contemplated by the treaties. New regulations would also independently prohibit certain exports

that do not satisfy the conditions that must be met in order to come within the Treaty-based safe harbor. The latter regulations would be enforceable criminally pursuant to section 38(c) of the Act and administratively pursuant to section 38(e) of the Act. With this approach, we are confident that the Treaties and the United States's underlying export-control framework can be robustly enforced. We very much appreciate the discussions that we had with the Committee on this matter.

Beyond the specifics of how the regime established by the Treaties will function, it is important to understand how they would significantly advance many aspects of our bilateral relationships with the United Kingdom and Australia and support United States' foreign policy and national security interests.

The United States, United Kingdom and Australia have strong economic ties. Perhaps reflective of our shared cultures, customs, and language, the United States is the largest supplier of foreign direct investment in the United Kingdom and Australia. Likewise, the United Kingdom is the largest investor in the United States, while Australia is the 8th largest. In the defense sector, there are several large joint ventures between the firms of our nations, and many of these firms own subsidiaries in the United States, United Kingdom and Australia. United States, Australian and United Kingdom companies often work together on joint development projects. These partnerships help to leverage financial and technological resources between our nations. They have resulted in the

development of technologies that are used to enhance the security of our nations and protect life.

The institutionalized reforms in these Treaties will create opportunities for more efficient exchanges between our defense firms and those of the United Kingdom and Australia, many of which specialize in development, production, and support of critical equipment needed to fight and win current and future conflicts.

The Treaties will create an even more competitive defense marketplace with these allies. In order to successfully confront future conflicts and security challenges, it is important to maintain critical industrial and engineering capabilities in the United States. In order to accomplish this, United States companies must have opportunities to compete and the ability to compete effectively. United States industry depends upon exports to maintain its proficiency and financial health. These Treaties would create an environment that would support the U.S. defense industrial base and the jobs that it provides to Americans.

These Treaties come at a time when United States, United Kingdom, and Australian forces are once again working together on the battlefield to protect our collective security. Ensuring that our forces can get the best technology possible in the most expeditious manner possible and that they possess the critical capability of interoperability is essential to our success, not only in today's campaigns, but

also in future conflicts. Our nations will continue to rely upon each other in the future as we continue to fight violent extremism and address other shared security challenges.

United States, Australian, and United Kingdom forces deployed in current and future operations must continue to be able to rely upon the equipment produced by our three nations' defense establishments to fight and win against our collective adversaries. Past experience tells us that the United States, the United Kingdom and Australia will continue to train and operate together as partners. A streamlined export control environment under the Treaties with these key allies would enhance opportunities for future development of defense technology. Greater agility in development, and economies of scale in production and support, will result in more timely delivery of much needed capabilities to our forces while reducing costs. This in turn will yield increased battlefield effectiveness, as all three nations' forces will be outfitted with common, interoperable, and supportable force protection, weapons, intelligence, surveillance, and reconnaissance, logistics, and command, control, and communications systems.

We must recognize the economic and strategic importance of facilitating legitimate and secure trade between our nations. The Treaties help to accomplish this objective.

I assure you that these benefits are not gained at the expense of our responsibility to protect U.S. defense technologies. As I noted before, we have excluded the most sensitive defense articles from Treaty eligibility. In both countries, only security-cleared entities and staff with a need to know may have access to items exported under the Treaties. Furthermore, Approved Community members will continue to have detailed record-keeping requirements and would be subject to auditing, monitoring, and verification measures to ensure compliance and to aid in the investigation of potential violations.

The Defense Trade Cooperation Treaties with the United Kingdom and Australia support U.S. foreign policy and national security interests. They fortify our bilateral relations with important partners; they support our joint operations overseas, and they will foster the expeditious development of technologies that are critical to current and future military, counter-terrorism, and security efforts. They accomplish this while allowing us to continue to protect critical U.S. defense technologies. On behalf of the Administration, I encourage the Senate to provide its advice and consent to ratification of these Treaties.