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TREATY WITH AUSTRALIA CONCERNING DEFENSE TRADE COOPERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA CONCERNING DEFENSE TRADE COOPERATION, DONE AT SYDNEY, SEPTEMBER 5, 2007

DECEMBER 03, 2007.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 3, 2007.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. I transmit also, for the information of the Senate, the report of the Department of State that includes an overview of this Treaty.

My Administration is prepared to provide to the Senate for its information other relevant documents, including proposed implementing arrangements to be concluded pursuant to the Treaty, relevant correspondence with the Government of Australia, and proposed amendments to the International Traffic in Arms Regulations.

This Treaty will allow for greater cooperation between the United States and Australia, enhancing the operational capabilities and interoperability of the armed forces of both countries. I recommend that the Senate give early and favorable consideration to this Treaty.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 29, 2007.

The President,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney on September 5, 2007, accompanied by an overview of the Treaty. I recommend that it be transmitted to the Senate for its advice and consent to ratification. The Treaty establishes a comprehensive framework for the export of defense articles and defense services from the United States to certain Australian facilities and entities.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosures: As stated.

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

OVERVIEW

Section I of the Arms Export Control Act (22 U.S.C. 2751 et seq.) (AECA) recognizes that "[t]he need for international defense cooperation among the United States and those friendly countries to which it is allied by mutual defense treaties is especially important . . ." and asserts that "it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern" (22 U.S.C. 2751). Section 38(a)(1) of the AECA authorizes the President "to control the import and the export of defense articles and defense services," to "designate those items which shall be considered as defense articles and defense services." and to "promulgate regulations for the import and export of such articles and services" (22 U.S.C. 2778(a)(1)). The AECA further provides that the President may regulate the import and export of defense articles and services pursuant to licenses (22 U.S.C. 2778(b)).

In the proposed Treaty between the Government of the United States of America and the Government of Australia Concerning De-

fense Trade Cooperation. done at Sydney September 5, 2007 (the Treaty), the Government of Australia would be bound to a regime that would provide appropriate protections for U.S. defense articles and defense services exported under the Treaty through the application of Australian criminal law and export control law rather than through revisions to its export control regime. For this reason, the Treaty will not be entered into pursuant to the authority contained in Section 38(j) of the AECA (22 U.S.C. 2778(j)).

The Treaty establishes a comprehensive framework for the export of certain defense articles and defense services from the United States to certain Australian facilities and entities. Where the Treaty applies, such export may occur without a license or other written authorization from the Department of State's Directorate of Defense Trade Controls, which is the office responsible for developing and implementing the International Traffic in Arms Regulations (ITAR). Once exported, these Defense Articles may be transferred within what is referred to as an "Approved Community" without case-by-case review and the issuance of export licenses by the U.S. government. Transfers out of such Approved Community would, however. be subject to Directorate of Defense Trade Controls authorization requirements, and any unauthorized transfers would constitute violations of the AECA.

As noted in the Treaty's Preamble, this Treaty is self-executing in the United States. The purposes for which exports may occur pursuant to this Treaty and the defense articles that may not be exported pursuant to the Treaty will be identified in separate Implementing Arrangements, as well as in regulations intended to clarify this matter. The list of facilities and entities in Australia that may receive defense articles and defense services through exports pursuant to this Treaty will be identified through processes established in separate Implementing Arrangements.

This Treaty establishes an exemption from the operation of the licensing and notification requirements contained in the AECA and the ITAR. As stated below, compliance with the procedures established in accordance with this Treaty shall constitute an exception to these requirements. Conduct outside of the procedures established in accordance with this Treaty must comply with the normal requirements. Although the Treaty is self-executing, it will be necessary to promulgate a number of regulatory changes to the ITAR to effectuate the licensing exemption. Once the Implementing Arrangements have entered into force, they will be made available to the public, and changes to the ITAR will be published in the *Federal Register*.

Definitions

Article 1 of the Treaty provides definitions for many of the terms used in the Treaty. When the capitalized form of any defined term, or its variants, is used in the Treaty, the intent is to employ the definition provided in Article 1. When a lower case form of any defined term, or its variants, is used in the Treaty, the intent is to refer to the ordinary meaning of the term. This procedure is also being followed for purposes of the discussion in this "Overview."

The Treaty defines "Defense Articles" as those articles, services, and related technical data, including software, in tangible or intan-

gible form, listed on the United States Munitions List ("USML") of the ITAR. As origin (i.e., where the product is manufactured) is not an element of this definition, the term "Defense Articles" may extend to items of Australian origin, or to items with Australian content, that are listed or described on the USML, even if such items are not of U.S. origin or are without U.S. content.

Several of the definitions (i.e., those for Government of Australia Facilities, Goverment of Australia Personnel, Implementing Arrangements, Australian Community, and U.S. Community) incorporate by reference the substantive provision of the Treaty that gives meaning to each term. Such definitions are intended to provide clarity in that the term appears in the substantive text prior to the relevant provision that provides its meaning.

Four definitions apply to the movement of Defense Articles. An "Export" involves the initial movement of Defense Articles from the U.S. Community to the Australian Community. Once a Defense Article has been Exported pursuant to the Treaty, covered movements of such Defense Articles include "Transfers," "Re-transfers." and "Re-exports." A "Transfer" involves the movement of previously Exported Defense Articles (1) within the Australian Commiunity, (2) from the Australian Community to the U.S. Community, or (3) from the U.S. Community back to the Australian Community. A "Re-transfer" involves the movement of previously Exported Defense Articles by a member of the Australian Community from a location in the Approved Community to a location that is outside of the Approved Community but in the Territory of Australia. A "Re-export" involves the movement of Defense Articles by a member of the Australian Community from a location in the Approved Community to a location outside the Territory of Australia.

Purpose of the Treaty

Article 2 contains a simple recital of the Treaty's purpose: to provide a comprehensive framework for Exports and Transfers of Defense Articles without a license or other written authorization, to the extent that such Exports and Transfers support certain types of activities. This Article stands for the proposition that it is in the mutual security and defense interests of the United States and Australia to improve the interoperability of their armed forces by facilitating the movement of Defense Articles in support of certain mutually agreed activities, while maintaining and ensuring proper safeguards against unauthorized release of the defense technology involved.

Scope of the Treaty

Article 3 identifies the activities in support of which Defense Articles may be Exported or Transferred without a license or other written authorization. The Treaty applies to the movement of Defense Articles that are required for agreed combined military or counterterrorism operations; cooperative security and defense research, development, production, and support programs; security and defense projects where the Government of Australia is the end-user; and for U.S. government end-use. Either government may exclude certain Defense Articles from the application of the Treaty.

Existing processes for the acquisition of defense articles and defense services under the U.S. Foreign Military Sales (FMS) program shall continue in effect. However, defense articles and defense services that fall within the scope of the Treaty, once acquired by and delivered to the Government of Australia pursuant to an FMS Letter of Offer and Acceptance, may be transferred within the Approved Community as if they had been exported pursuant to the Treaty.

An exporter may request a license or other authorization from the Directorate of Defense Trade Controls in which case the terms of such license or authorization will apply instead of the procedures that will be established to implement the Treaty.

Approved Community

Articles 4 and 5 identify the persons and entities that may Export or Transfer Defense Articles without a license or other written authorization. Specifically, Article 4 identifies the Australian persons, entities, and facilities that may send or receive such Defense Articles, and Article 5 identifies the persons, entities, and facilities of the United States that may send or receive such Defense Articles.

The Australian entities and facilities that may send or receive Defense Articles pursuant to this Treaty are: (1) those facilities of the Government of Australia that are accredited pursuant to the General Security Agreement between the Government of Australia and the Government of the United States of America of June 25, 2002, and its implementing arrangements that are relevant to the scope of the Treaty; and (2) nongovernmental Australian entities and facilities that meet agreed eligibility requirements, are accredited pursuant to a process agreed to by both Parties in an Implementing Arrangement, and that are agreed to by both Parties for inclusion on a List. Once on the List, a nongovernmental Australian entity or facility will be removed from the List if either the United States or Australia considers such removal to be in its national interests.

Personnel of the Government of Australia who meet agreed criteria, which at a minimum will require appropriate Australian security accreditation and a need-to-know, may be provided access to Defense Articles Exported or Transferred pursuant to the Treaty. Employees of the agreed nongovernmental entities and facilities who meet agreed criteria, which at a minimum will require appropriate Australian security accreditation and a need-to-know, may be provided access to Defense Articles Exported or Transferred pursuant to the Treaty.

The departments and agencies of the U.S. government may send and receive Defense Articles pursuant to this Treaty. In addition, nongovernmental U.S. entities that are registered with the State Department's Directorate of Defense Trade Controls and that are eligible to export defense articles and defense services in accordance with U.S. law and regulation, including the AECA and the ITAR, may send or receive Defense Articles pursuant to this Treaty.

U.S. government personnel with appropriate security clearance and a need-to-know may be provided access to Defense Articles Ex-

ported or Transferred pursuant to this Treaty. Employees of the nongovernmental U.S. entities referred to above who have appropriate security clearance and a need-to-know may be provided access to Defense Articles Exported or Transferred pursuant to this Treaty.

The facilities, entities, and personnel described in Article 4 comprise the Australian Community. The facilities, entities, and personnel described in Article 5 comprise the U.S. Community. The Australian and U.S. Communities comprise the Approved Community.

Exports of Defense Articles from the United States

Article 6(1) of the Treaty provides that departments and agencies of the U.S. government and eligible nongovernmental U.S. entities may Export Defense Articles within the scope of this Treaty to a member of the Australian Community without licenses or other authorization. Article 6(2) requires that the U.S. government establish procedures to ensure proper identification of Defense Articles Exported pursuant to the Treaty. Article 6(3) requires that the Government of Australia establish procedures to ensure these Defense Articles are appropriately identified once they enter the Australian Community.

The Directorate of Defense Trade Controls and other departments and agencies of the U.S. government will promulgate regulations and policies to effectuate Article 6. In particular, it will be necessary to establish procedures to ensure potential exporters know whether a proposed recipient is a member of the Australian Community, and whether the proposed operation, program or project falls within the scope of Article 3.

Transfers of Defense Articles

Article 7 provides that the Transfer of previously Exported Defense Articles to members of the Australian Community, as identified in Article 4, or the U.S. Community, as identified in Article 5, will not require authorization by the U.S. government. Pursuant to Article 9, however, if a member of the Australian community were to retransfer previously Exported Defense Articles outside of the Approved Community, approval of the Government of Australia would be required. (Such retransfers would include "Re-transfers" and "Re-exports" as defined in the Treaty). Prior to granting approval for Re-transfers and Re-exports, the Government of Australia will require the exporter to provide supporting documentation that includes U.S. government approval. Any Re-transfer or Re-export without the approval of the Governments of Australia and the United States will be a violation of, at a minimum, the AECA and Australian criminal laws, and will be punishable as such.

Exports of Defense Articles from a member of the U.S. Community to an entity, facility, or person outside of the Australian Community would continue to require a license or other written authorization by the Directorate of Defense Trade Controls of the Department of State.

Exports and Transfers from Australia

Article 8 obligates the Government of Australia to ensure that Defense Articles exported from the Australian Community to the U.S. Community do not require additional export licenses or other authorizations. Specifically, Article 8(l) recognizes that the Government of Australia may satisfy this obligation through its blanket authorizations.

The remainder of Article 8 deals with Defense Articles, the initial movement of which is from the Territory of Australia to the United States (identified as "Australian Defence Articles" in Article 8(7)). The Treaty provides that Australia shall ensure that these Australian Defence Articles are clearly marked or identified as such, and the U.S. government shall ensure that they will be treated as USML items upon entry to the United States. Australian Defence Articles exported from the United States shall be handled pursuant to the U.S. government's existing export control procedures. The U.S. government is obligated to consult with the Government of Australia concerning exports to countries the Australian Government views to be of national security or foreign policy concern.

Pursuant to Article 8(6), if the Government of Australia becomes concerned about the ability of a particular nongovernmental U.S. entity to protect Australian Defence Articles, the Government of Australia may provide direction to the Australian Community concerning the access of that entity to Australian Defense Articles, after consulting with the U.S. government.

Proprietary rights and intellectual property

Article 10(1) provides that nothing in the Treaty shall affect any rights to, or interests in, intellectual property or other proprietary information of the Parties or of any person or entity within the Approved Community. Article 10(2) provides that nothing in this Treaty shall affect any provisions for the protection of intellectual property and other proprietary information that may be agreed between the persons or entities Exporting or Transferring Defense Articles pursuant to the Treaty. Accordingly, such persons or entities may agree between themselves on procedures to provide protections to intellectual property or other proprietary information, additional to the protections afforded to classified information.

Protection of Defense Articles Exported from the United States

Article 11 provides that Defense Articles Exported or Transferred pursuant to the Treaty will be marked, identified, transmitted, stored, and handled in accordance with the General Security Agreement between the Government of Australia and the Government of the United States of America of June 25, 2002, and implementing arrangements thereto. At a minimum, the Defense Articles Exported will be treated as Australian "restricted" information. Such treatment will result in the application of Australian criminal law with respect to Defense Articles Exported pursuant to the Treaty. If the Defense Articles are classified at a higher level, they will be so marked and identified, and treated according to the requirements for that classification level in the aforementioned General Security Agreement.

Recordkeeping and notification

Article 12 requires both Parties to require that entities within their respective Community Exporting, Transferring, or receiving Defense Articles pursuant to the Treaty maintain detailed records of such movements. Either Party may request that the other Party obtain, and provide it with copies of, such records. Article 12 further allows for either Party to establish procedures, which may include advance notification of certain Exports, to accomplish appropriate legislative notifications.

Enforcement

Article 13 provides that if persons or entities Exporting or Transferring Defense Articles pursuant to the Treaty comply with the procedures established pursuant to this Treaty, including its Implementing Arrangements, and any regulations promulgated to implement the Treaty's effect on existing law, they shall be exempt from the generally applicable licensing requirements established pursuant to the AECA with respect to exports and transfers of Defense Articles. If, however, persons or entities Exporting or Transferring Defense Articles engage in conduct that is outside the scope of the Treaty, including certain of its Implementing Arrangements, and any regulations promulgated to implement the Treaty's effect on existing law, that conduct remains subject to the applicable licensing requirements and implementing regulations of the AECA.

Because the Treaty is self-executing, this exemption will be created through ratification of the Treaty; no additional legislation will be required to implement the exemption in U.S. law. Those Implementing Arrangements constituting terms of the exemption are authorized by this self-executing Treaty. They will not be submitted for Senate advice and consent to ratification and also require no further legislative action to become a fully effective part of the exemption.

Both governments will investigate potential violations of the procedures established pursuant to the Treaty. Where appropriate, both governments will cooperate in the conduct of such investigations as well as in prosecutions and administrative actions resulting from such investigations.

As with exports that are regulated pursuant to Section 38 of the AECA, as amended, it is important to ensure that Defense Articles exported or transferred pursuant to the Treaty are properly handled and controlled. In this regard, the governments will review the procedures utilized with respect to post-shipment verification and end-use or end-user monitoring for current exports to ensure that they are appropriate for exports or transfers pursuant to this Treaty. Such procedures will be modified as required.

Implementing arrangement

Article 14(1) of the Treaty provides that the Parties shall conclude, on an expedited basis, Implementing Arrangements for this Treaty, which may be amended or supplemented by the Parties from time to time. For example, the Implementing Arrangements will establish eligibility requirements for persons to be considered part of the Australian Community.

Article 14(2) further provides that the Parties will include in such Implementing Arrangements a process by which entities in the Approved Community may transition from the requirements of U.S. government defense export licenses or other authorizations issued under the ITAR to the regime established under the Treaty.

The Administration does not intend to submit any of the Implementing Arrangements to the Senate for advice and consent, but it is prepared to provide these implementing Arrangements to the Senate for its information.

Implementing agencies

Article 15 of the Treaty requires that each Party designate an authorized agency to implement its obligations under the Treaty. The authorized agency for the Government of the United States is the Department of State. The authorized agency for the Government of Australia is the Department of Defence. Either Party may change the designation of its authorized agency by providing written notice to the other Party.

Relationship to other international agreements

Article 16 provides that the Treaty does not affect the rights and obligations of either Party under other international agreements to which it is a Party.

Consultations

Article 17 of the Treaty requires that the Parties consult at least annually on cooperative aspects of their export control relationship and to review the operation of the Treaty. It further clarifies that the consultations are intended to provide a mechanism to review and address all relevant export control issues. Such issues therefore are not limited to issues specifically arising under the Treaty.

Dispute resolution

Article 18 provides that any disputes between the Parties arising out of, or in connection with, the Treaty shall he resolved through consultations between the Parties and shall not be referred to any court, tribunal, or third party.

Amendments

Article 19 provides that the Treaty may be amended upon written agreement of the Parties.

Entry into force

In accordance with Article 20, the Treaty shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic requirements to bring the Treaty into force. The United States will not provide such notice until the Senate provides its advice and consent to ratification of the Treaty and the President ratifies the Treaty.

Duration and withdrawal

Article 21(1) provides that the Treaty shall be of unlimited duration. Article 21(2) further provides that either Party may withdraw from the Treaty if it decides that extraordinary events related to

the subject matter of the Treaty have jeopardized its national interests. Should a Party decide to withdraw from the Treaty, it shall notify the other Party of its intent to withdraw and shall include a statement of the extraordinary events that it regards as having jeopardized its national interests. The Parties shall commence consultations within 30 days of the provision of such notification, with a view to allowing the continuation of the Treaty. If the notifying Party does not agree to the continuation of the Treaty, the withdrawal of the notifying Party will take effect six months after the provision of such notification.

Article 21(3) provides that should either Party withdraw from the Treaty, the procedures for the protection of Defense Articles that were exported pursuant to the Treaty and for handling Australian Defence Articles as referred to in Article 8 shall continue in effect until appropriate export licenses or other authorizations are in place.

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

The Government of the United States of America (hereinafter "the United States Government") and the Government of Australia, 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 June 25, 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.

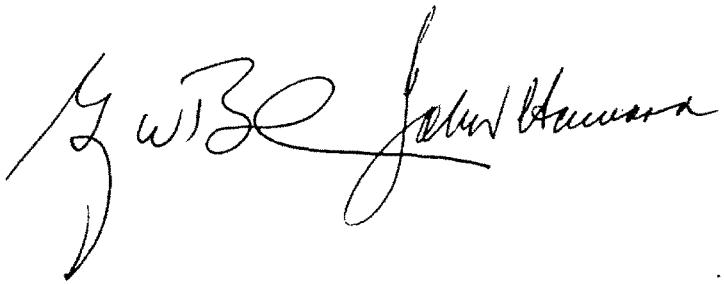
(3) Notwithstanding withdrawal from this Treaty by either Party, the procedures for protection of Defense Articles Exported under this Treaty and for handling Australian Defence Articles as referred to in Article 8 shall continue in effect until such time as appropriate defense export licenses or other authorizations are in place. The Parties shall endeavor 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 at Sydney September 5, 2007.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF AUSTRALIA:



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