

US-UK DEFENCE TRADE CO-OPERATION TREATY – KEY ELEMENTS

ELEMENT

AIM

The purpose of the treaty is to create a framework for closer defence and security co-operation between the UK and US by reducing restrictions to exchanges between the two countries of defence goods, services and information, while ensuring that there are proper safeguards against unauthorised release.

OBJECTIVES

To strengthen and deepen the defence and security relationship between the UK and US

To facilitate closer US-UK defence and security co-operation to gain the benefits of greater interoperability in the conduct of future joint operations through more efficient and effective armaments programmes.

To leverage the respective strengths of the US and UK defence industries.

To enhance the protection afforded to exports made in course of achieving these objectives.

COMMENTARY

- *The Treaty fulfils the desire of the President and the Prime Minister to reduce barriers to defence and security co-operation between the US and UK*
- *Conclusion of the agreement now reflects the importance of our co-operation in this field. British and American forces continue to stand shoulder to shoulder with each other in operations overseas and we must do all we can to enhance our ability to co-operate now and in the future.*
- *Greater interoperability between US and UK armed forces and security agencies has been a long standing policy for both nations.*
- *As well as operating together around the world, there are a number of existing UK/US collaborative efforts aimed at developing future capabilities. The treaty will also help these efforts by making it simpler to transmit sensitive information between the two Governments.*
- *The industry that supports the defence and security efforts of the UK and US is increasingly international, but has a particularly strong bilateral aspect. Many major companies have facilities in both America and Britain, and supply both Governments. We wish to ensure that industry's contribution to the defence and security capability of both nations is as effective and efficient as it can be, and believe that removing governmental barriers will enable co-operation at the industrial level to continue to flourish.*
- *Currently, information and material supplied by the US to the UK is usually passed under individual export licenses issued by the US Government to the exporter. This is protected by the receiving company in the UK as part of its contractual relationship with the US supplier, but this protection is not subject to UK legal constraints. In future, information and material supplied from the US under the treaty will have a UK security classification attached to it, which means that its handling is subject to the UK Official Secrets Act (OSA) and therefore enforcement*

action by HMG in the event of any transgression. This is a major departure for HMG, which has hitherto not offered any UK-based legal protection for the handling of material exported under license from the US. The step is particularly significant as the OSA covers any unauthorised transmission of classified items, irrespective of where it happens geographically or of the nationality of the recipient, whereas UK export controls apply only to the physical transmission of items outside of the UK. The significance of this step by HMG should not be under-estimated, but the British government believes it to be justified as an enabler for an improvement in the flow of sensitive material between the UK and US.

- *The export of equivalent material from the UK to the US is already covered by open licensing arrangements, and has been for some years. The protection of classified material owned by the US and UK and shared with the other has for many years similarly been covered by an overarching security agreement between the two countries.*
- *The US Munitions List (USML) details items and related data and services, etc. that are primarily designed for military purposes. Other items that are subject to export control by the US through other means, such as so-called “dual-use” items are not covered by the treaty.*
- *Items that are listed on the USML but are protected in the UK as dual use will be subject to the same terms of and protection under the treaty.*
- *All USML items, with a small number of exceptions for highly-sensitive technologies that will be agreed between the UK and US, will be included in the coverage of the treaty. Subject to final agreement, the exceptions are likely to relate to low-observable technology and countermeasures, “anti-tamper” technology and communication security technology.*
- *Items covered by the treaty can be transmitted to authorised recipients (which the treaty calls an “approved community”) without individual export licensing by the US or the UK Governments. The same material may be freely re-transmitted within the approved community, to those who have a “need to know”, without prior authorisation.*

SCOPE

The Treaty will cover the transmission of technical data, software, equipment items and services, that are export controlled by the US Munitions List, from US sources to HMG and to authorised UK-based contractors and prospective contractors, and the retransfer of these articles within a “trusted community”.

The Treaty does not cover items that are listed by the US for export control on other than the US Munitions List.

PRINCIPLES

UK and US Government End Use

The Treaty would only cover transfers that are for the end use of HMG and/or USG. Exports destined for other countries would be subject to the existing regimes.

- *Items that are destined for end-use outside of the trusted community are outside of the scope of the treaty and will remain subject to existing export licensing arrangements in place in the US and UK.*
- *Material provided in support of UK/US cooperative co-operative defence and security programmes, for USG-only end-use, and for agreed HMG-only projects will be able to be transmitted under the treaty without export licensing.*
- *US and UK Government end-use includes use outside of the geographical boundaries of the two countries. Thus, articles covered by the treaty may be shipped to operational theatres in support of US and UK operations, or – for example – returned to the US for repair - without further authorisation, provided that the end use continues to remain by the UK or US Governments.*
- *Thus UK companies seeking to acquire US items for incorporation into equipment destined for re-export to a third country would continue to have to seek US export approval for the US items, and UK export approval as required.*

Qualifying Entities

Industrial contractors and sub-contractors that would be eligible to receive items under the agreement would be those that are authorised to do so by mutual agreement between the UK and US.

- *A key criterion will be that any facility should have been deemed to have appropriate ability to handle classified government material, both UK and US, securely, in accordance with existing arrangements.*
- *Access to information and material provided under the treaty will be restricted to HMG or USG personnel that meet appropriate security standards and who have a need to know, and US and UK nationals (including dual nationals) working for companies that similarly meet appropriate security standards and who have a need to know.*
- *Authorised entities will remain entitled to seek individual export authority for items that they wish to transfer should they wish to do so. In this case, the items will be considered to be outside of the scope of the treaty and their handling and control will be in accordance with the requirements of the export licence, if issued.*

Handling of Received Items

HMG would treat, and will require UK contractors and sub-contractors

- *Exports from the US under the treaty would be marked appropriately by the US*

treat, items received under the agreement as classified material. Unauthorised disclosures would be an actionable breach of the UK Official Secrets Act.

UK export controls will continue to remain in force and will further control any proposals to re-export items received under the treaty outside of the UK.

Proprietary Information

The Treaty does disturb any restrictions imposed by the owner of proprietary information on the recipient of that information.

Underpinning Arrangements

The treaty will be supported by an agreed set of implementing arrangements that will provide detailed processes for a range of issues.

Timescales

Entry into force will take place following ratification of the treaty by the legislatures of both countries.

and classified RESTRICTED on receipt in the UK. As classified items they will then be subject to the terms of the UK Official Secrets Act (OSA)

- *Disclosure to an unauthorised individual – irrespective of geography or nationality - will be subject to prosecution under the OSA. Prosecutions for unauthorised disclosure may also be pursued under US or UK export control legislation where appropriate.*
- *Anyone in the UK proposing to provide classified information outside of the UK will be required to state whether US-origin material provided under the treaty is included. If it is, they will be asked to provide evidence of US authority for the proposed re-export. If this is not forthcoming, no approval for the transmission will be given. Anyone applying for a UK export licence application will similarly be asked to provide evidence of US authority to re-export any material provided under the treaty, and the UK will consult with the US on any cases where this is not forthcoming.*
- *Transmitting and receiving entities will be required to retain appropriate records regarding the transmission and receipt of material, and to provide appropriate notifications of such transfers where necessary.*
- *As now, the passage of proprietary information owned by the US or UK governments or a UK or US company to a third party can only be done with the agreement of the owner.*
- *The US and UK governments will work immediately on the detailed implementing arrangements, which will be published when agreed.*
- *Aspects to be covered in the implementing arrangements include the process for accrediting facilities and personnel to receive items, the UK-only projects to which the treaty applies and the arrangements for keeping this list up to date, exceptions to coverage, and review arrangements for the effectiveness of the treaty as a whole.*
- *Current plans are to agree the underpinning implementing agreements within the next few months, to seek ratification of the treaty in the autumn of 2007, with a view*

to entry into force early in 2008.

SUBJECT TO CONFIRMATION