Saab Systems Pty Ltd
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Our Ref. 000ZIM046

Senate Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
Parliament House
Canberra ACT 2600

Inquiry into Defence Trade Controls Bill 2011 – responses to questions on notice

Dear Sir/Madam

Saab Systems Pty Ltd (**Saab**), on behalf of all Australian Saab Technologies operations, appeared at the public hearing into the Defence Trade Controls Bill 2011 (**Bill**) conducted by the Senate Standing Committee on Foreign Affairs, Defence and Trade on 2 March 2012. At the hearing, Saab took a number of questions on notice.

Saab would once again like to thank the Committee for the opportunity to make an initial submission regarding the Bill, and to appear at the hearing in support of that submission. Further, Saab thanks the Committee members for their questions and the continued interest shown by the nature of those questions in Saab's view of the implications for industry of passage of the Bill.

Saab's responses to the questions on notice are set out in Attachment A. As for our earlier input to the Committee's deliberations, our responses seek to help to ensure that the resulting export control regime meets the intent of the Treaty and, separately, of Australia's obligations to enhance its own export control regime, and is as efficient as possible within the Treaty framework and in light of those obligations.

Yours sincerely,

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In response to Senator Bishop's question on notice to Saab: **Has Saab been alerted to any concerns that might affect the development of its civil side, deriving from the application of the provisions related to the defence Bill?**

Implications of proposed Enhanced Australian Export Controls

Due to the nature of the goods and services involved, it is unlikely (but possible, particularly in relation to 'dual use' technologies) that Saab's civil business will be subject to the proposed enhanced Australian controls over intangible exports and brokering.

If Saab's civil business is caught by the proposed enhanced Australian export controls, the business will incur the costs of increased administration as it will need to obtain licences from the Department and fulfil the administrative requirements of those licences, for example, of detailed record-keeping and reporting. These will be in addition to the costs to the business of developing and implementing training, policies, procedures and tools to cater for the new rules.

Mitigating this is the fact that Saab already works in the Defence space, is therefore already subject to existing Australian export controls, and will therefore need to have training, policies, procedures and tools in place for its Defence business to cater for the proposed enhanced Australian export controls. In Saab's current business model, Saab's business areas are co-located, share staff as needed, and are integrated (or able to be integrated) in terms of policies, procedures and tools.

Future changes to that business model, eg upon acquisition of another company, may mean extra costs to Saab from either forced integration with the existing Saab business or from implementing similar training, policies, procedures and tools in the new/expanded business. These costs will be a disincentive for expansion, to be weighed against the benefits of any proposed expansion.

Implications of Implementation of the Defense Trade Cooperation Treaty

The Treaty is, in effect, a relaxation of the requirement for US export control (ITAR) authorisation so the Treaty should, on its face, benefit the expansion of Saab's civil business.

Any benefit from the Treaty is unlikely to apply to Saab's civil business however, because:

- it is unlikely (particularly as ITAR does not control 'dual use' technologies) - but possible - that Saab's civil business will handle ITAR-controlled goods;
- it is unlikely that Saab's civil projects will be listed by the US Government as one of the military/counter-terrorism/Defence/national security end uses to which the Treaty applies; and
- it is unlikely that co-involvees in a civil programme (customers, primes, partners and sub-contractors) will have facilities sufficient to meet the requirements for membership of the 'Australian Community' and the individual security clearances required under the Treaty.

If the Treaty does apply to Saab's civil business, the business will benefit as it will not need to get the US authorisations required under existing ITAR rules, but will be subject to additional administrative requirements, eg in record-keeping and reporting. While Saab's Defence business will need to have in place training, policies, procedures and tools to operate under the Treaty, and while Saab's businesses are effectively integrated at present to allow these to be shared, this may not be the most efficient arrangement in future, thus reducing Saab's flexibility for future expansion.

In response to Senator Bishop's question on notice to Saab: **Has the consultation process shown sufficient awareness of the internal structures of multi-national non-US companies like Saab, eg where the companies have huge technology centres in one or two countries, locate an aspect of work in Australia and then send, ie export, the result of the work to elsewhere in the world?**

Implications of proposed Enhanced Australian Export Controls

In relation to the proposed 'enhanced Australian export controls' dealing with the export of intangibles and with brokering, Saab will be in the same situation as all other companies because these rules will apply to all, regardless of parentage; there is no advantage from being US-owned.

That said, the fact that all of industry will be subject to the same rules does not in itself allay concerns about the costs of compliance with the proposed rules. These costs arise through the need for additional training, policies, procedures and tools, and from the increased administration involved in obtaining and complying (eg record keeping and reporting) with the new licences.

Costs to industry will ultimately be reflected in the price the Australian Government pays for goods and services. It is clearly therefore in the interests of both Government and industry that these additional costs are minimised, through keeping additional administration requirements to the minimum necessary (for example, in the amount of record keeping required) and through the Department providing efficient, transparent, responsive and easy-to-use services. A key point for Parliament is therefore that the new Act must either enshrine (or at least not limit the ability of the Minister to achieve through Regulation, policy and implementation) these aims.

Implications of Implementation of the Defense Trade Cooperation Treaty

There is one way in which Saab's business will be adversely affected compared with companies with US parents. Currently, if Saab Sweden is to be involved in projects involving ITAR-controlled technology, the US Government considers both Australian and Swedish involvement from the start.

On the other hand, technology that comes to Saab in Australia under the Treaty will not be able to be transferred to Saab in Sweden without additional "re-transfer" approval from the US Government. This represents a competitive disadvantage for Saab because US-owned Australian companies will be able to interact with their US affiliates regarding Treaty technologies without needing further approval. Saab will need to factor in the costs, complications and delays in getting re-transfer approval in order to apply Saab's full global capabilities in providing solutions for Australian and US Government programmes.

The problem is exacerbated by Saab's experience to date; that, compared with standard approvals under ITAR (in the form of TAAs), the US Government's "re-transfer" approval process is slow.

Saab is therefore concerned that these complications and delays may provide a disincentive for Swedish involvement. If Saab cannot be involved without Swedish participation, this will reduce the solutions available for consideration by Defence, and reduce competition (which may have the effect of increasing the price at which the Australian Government can add or enhance Defence capability). While not directly related to the Bill, Saab urges continued engagement on this issue with the US Department of State, with the goal of achieving more efficient handling of Australian re-transfer approval requests generally, but in the current context, particularly those involving Treaty technologies and trusted countries like Sweden.

In response to Senator Bishop's question on notice to Saab: **Are there any implications in this bill for technology transfers, expansion of your units in this country and consequent jobs growth, from some of the apparent bureaucratic impositions on units operation out of this country? Senator Bishop referred in particular to PICs, or Priority Industry Capabilities.**

Implications of proposed Enhanced Australian Export Controls

If Saab's expansion is related to a PIC or other military capability, it will almost certainly involve technologies controlled under Australian export controls and will therefore be subject to the proposed enhanced Australian export controls over intangible exports. Such exports will almost certainly arise in relation to technology transfers, as these necessarily involve international interactions, eg by telephone or email, to ensure complete and accurate transfer of the technology.

The expanded business will therefore incur the costs of increased administration (as it will need to obtain licences from the Department and fulfil the administrative requirements of those licences, for example, of detailed record-keeping and reporting). There will be additional costs to the business of developing and implementing training, policies, procedures and tools.

Mitigating this is the fact that Saab already works in the Defence space, is therefore already subject to existing Australian export controls, and its existing business will therefore already need to have training, policies, procedures and tools in place for its Defence business to cater for the proposed enhanced Australian export controls. In Saab's current business model, Saab's business areas are co-located, share staff as needed, and are integrated (or able to be integrated) in terms of policies, procedures and tools, and that is likely to continue with respect to any expansion of the business.

Future changes to that business model, eg upon acquisition of another company, may mean extra costs to Saab (from either forced integration with the existing Saab business to take advantage of existing internal arrangements, or from implementing the same in the new/expanded business).

Implications of Implementation of the Defense Trade Cooperation Treaty

Under current US export controls, where Saab's expanded activities involve US military technology, those activities will be subject to US export controls and therefore incur the costs of compliance with US export control. Where the Treaty applies to the activities, some existing costs of compliance (arising from the need to get US approval for the project) may be removed, but they will be replaced by new and separate costs (setting up and complying with Treaty obligations, eg for record-keeping).

In the event of expansion through acquisition, Saab will likely choose to integrate the new business with Saab's current US export control policies, procedures and tools. Even without the Treaty, there would be costs involved in doing so (an accepted part of the acquisition process). With the advent of the Treaty however, Saab would need to integrate any acquired business with an additional Treaty regime, including bringing the acquired business within the 'Australian Community'. Going forward, an acquired business will then incur the additional administrative and cost burden of operating under the Treaty, eg in relation to record-keeping.

In summary As described above, passage of the Bill as it stands means there are likely to be additional costs to Saab in expanding in the Defence space. Those additional costs will be a disincentive for expansion, to be weighed against the benefits of any proposed expansion.

In response to Senator Fawcett's question on notice to Saab: **In addition to the PathFinder Program, given the potential for lots of unintended consequences flowing as we explore and regulations get developed, is there a case to have some very clear grandfathering principles in the transition period with this Act, such that whatever you and your staff are doing today that is legal will not be deemed illegal during a transition period whilst things like PathFinder Programs and others are underway and the regulations are refined?**

Implications of proposed Enhanced Australian Export Controls over intangible exports

As Saab understands it, the PathFinder program will be focussed on testing out implementation of the Treaty, both within Government (on both sides of the Pacific) and within industry.

As a result, there may have been little practical exposure to the reality of export controls in relation to intangible exports by the time the law comes into force. While some preparations can be made in advance, they can only be tentative until the final form of the Act, Regulations and Department policies, procedures and systems are known. Given the Department's stated goal of starting the new arrangements by September or October, there may be little time for businesses to finalise preparations before they risk sanction.

This will be a concern in particular for existing projects and activities, which may or may not need current export licences in place under the Customs Act. These projects will have existing practices, arrangements and relationships in place, which may involve intangible exports. Continuing business as usual may therefore require licences under the proposed rules governing intangible exports however it may take some time to identify those projects or activities, gather the necessary information and apply (and receive) a licence under the proposed rules.

It would be therefore useful to Saab to have a period of not less than about 12 months, during which it can apply for licences for the export of intangibles where required for existing projects, without risking sanction for exporting without a licence. The Department is likely to get a substantial number of such applications from across industry, so this grace period will also help the Department to cope with that influx and allow time for industry to move to a new footing.

That period can also be used by Saab to educate its staff in, and to finalise policies, procedures and tools that match, the final form of the Act, Regulations and Departmental implementation.

Implications of proposed Enhanced Australian Export Controls over brokering

Controls over brokering are new to Australian industry. As for intangible exports, continuing existing practices may require licences and the final form of the regulatory environment might not be clear until not long before the new rules take effect. Again therefore, it would be useful for both Saab and, we argue, the Department to have a grace period during which existing practices could be amended and/or licences obtained.

Implications of Implementation of the Defense Trade Cooperation Treaty

From one perspective, the Treaty represents a relaxation of the existing US export control rules, with the removal – only in certain situations – of the administration and delay involved in obtaining US approval for the export and subsequent use and transfer of US-controlled technology.

On the other hand, the Treaty adds additional administrative burdens, for example the need for separate re-transfer approval to involve Saab Sweden, the need to obtain (and maintain) membership of the Australian Community and burdensome record-keeping obligations. Time will therefore be needed to prepare for meeting these obligations in relation to items in Australian under the Treaty.

In Saab's view however, grandfathering is not required to ensure no unlawful movement of military technology, as Saab can continue to operate under existing ITAR rules (unless forced by the US exporter to work under the Treaty, a situation that Saab considers unlikely in the short term).

The issue is whether Saab will have time to prepare to operate under the Treaty. Particularly if Saab is involved in the PathFinder program as is currently hoped, Saab is of the view that there will be sufficient time to do so.

Aside from the early understanding gained from involvement in PathFinder:

- The Treaty and the Bill contemplate transition arrangements for items already in Australia under the existing ITAR regime. Participants will need to make a deliberate choice to move to operating under the Treaty, so can therefore control the timing of any transition.
- Further, new projects in the short term are likely to have sufficient lead time to allow for licences to be obtained under current ITAR rules, so there is likely to be time available for Saab to prepare to operate under the Treaty just for that project, even if there is not time to prepare more generally.

In summary

Saab does not see any issues regarding timing under the Treaty implementation that would require any form of transition period to be included in the Act, but would welcome a grace period during which licences could be put in place under the proposed enhanced Australian export controls without sanction for unlicensed for intangible exports and brokering.