



31 January 2012

Dr. Kathleen Dermody  
Committee Secretary  
Senate Foreign Affairs, Defence and Trade Legislation Committee  
PO Box 1600  
Parliament House  
Canberra ACT 2600

By email: [fadt.sen@aph.gov.au](mailto:fadt.sen@aph.gov.au)

Dear Dr. Dermody,

**Re: AMWU submission to the Senate Committee Inquiry into provisions of the Defence Trade Bill 2011**

Please find attached the Australian Manufacturing Workers' Union's (AMWU) submission to the Senate Committee Inquiry.

The AMWU represents workers across Australia's manufacturing industry and, specifically for this Inquiry, has members within various private contractors to Defence including: BAE Systems, Boeing, ASC, Thales and Raytheon, and within related sub-contracting firms.

The AMWU is broadly supportive of the Bill in as much as it will provide greater access for Australian Defence manufacturers to the US Defence Procurement market.

We do, however, recommend that the Australian Government maintain its important policy settings on maximizing our procurement spend with Australian manufacturers.

Further, we also recommend that the Government and the Department act pro-actively to assist the Australian Defence industry realise the opportunities that the Treaty has the potential to provide.

Thank you for the opportunity to make a submission.

Yours sincerely

~~DAVE OLIVER~~  
NATIONAL SECRETARY

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# AUSTRALIAN MANUFACTURING WORKERS' UNION

Inquiry into the provisions of the Defence Trade Control Bill 2011

31 January 2012

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## **Introduction**

The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission in response to the Senate Committee inquiry into the provisions of the Defence Trade Control Bill 2011.

The AMWU represents approximately 105,000 members working across major sectors of the Australian economy. AMWU members are based in the manufacturing industry in the subdivisions of metal manufacturing, printing and graphic arts, food and confectionery processing and vehicle building, repair and service. The AMWU also has significant membership in mining, building and construction, aircraft and airline operations, engineering, laboratory, technical, supervisory and public sector employment. The AMWU has civilian members within the Department of Defence, including each of the Armed Services and the Defence Materiel Organisation and Defence Science and Technology Organisation (collectively the APS). We also have members within various private contractors to Defence including: BAE Systems, Boeing, ASC, Thales and Raytheon, and within related sub-contracting firms.

## **Overview**

The AMWU does not seek to make detailed submission on two aspects of the Bill, namely those pertaining to the introduction of controls on the supply of Defence and Strategic Goods List (DSGL) listed technology and services related to DSGL technology and goods; nor the brokerage of DSGL listed items.

The AMWU is satisfied with the logic for the need to capture emerging technologies and evolving supply methods to ensure the integrity of Australia's international obligations regarding the export and provision of military equipment and technologies.

Suffice to say that it will be critical that the Department undertake education and outreach services explaining the changes to industry to a) raise awareness and minimize unwitting transgression of the new laws and assist business with compliance; and, more importantly b) explain the benefits to Australian businesses, both primes and SMEs, in becoming part of the Approved Community to ensure they derive the potential, future benefits that may flow from the Australian/US Defence Trade Cooperation Treaty (the Treaty) arrangements.

We note and welcome the Defence Department's commitment to implement procedures to streamline the administrative burden these two new provisions may accord to business and the undertaking to conduct periodic reviews to determine whether any changes are required to lighten the administrative load.

It is the AMWU's experience that Treaties and Trade Agreements have promised much with regards to providing Australian industry with greater and 'freer' access to export markets, but have often overlooked a range of pre-existing or emerging barriers that have disadvantaged Australian industry's competitiveness. For example, Australia has been very quick to bring down tariff barriers in the name of 'free trade' while our 'free trade' partners have maintained many of theirs as well as establishing 'behind the border' measures to enhance the international competitiveness of their local industries.

The AMWU welcomes the intended benefits of the Treaty as outlined in the Bill's Explanatory Memorandum, specifically that "The Treaty will improve the opportunities for Australian companies to participate in US Defence projects eligible under the Treaty, and expedite the exchange of controlled technology between US companies and their Australian subsidiaries."<sup>1</sup>

We seek to ensure that the perceived opportunities for Australian manufacturers are realised as part of the implementation of the Treaty by providing fair access to the US Defence Procurement market, while not disadvantaging local industry in Australia's Defence Procurement.

### **Implementation of the Defence Trade Cooperation Treaty**

AMWU welcomes the stated intention of the Treaty and the Bill to give effect to the Treaty of removing cumbersome and time consuming licensing provisions around the export and import of Treaty covered items between the nations - this should have benefits both for Australian exports to the US and for Australian based companies reliant on the supply of such goods from US for their manufactures here.

The regulatory impact statement makes many predictions in this respect including:

- Anticipating concomitant increases in Treaty transactions as the number of companies participating in the Approved Community increases;
- Expected diminishment of exclusions of Treaty articles as the US gains confidence in Australia's Defence industry's ability to protect US Defence technology;
- Eliminating delays in obtaining relevant export approvals, effectively meaning Australian companies will be able to compete more effectively for US Defence procurement tenders; and
- "It is anticipated that US Government and industry will consider participation by Australian companies in the Australian [Approved] Community as reflecting positively on the Australian company's internal processes and procedures and making them better able to tender for US Defence industry work."<sup>2</sup>

These anticipated benefits have an inherent and compelling, albeit perhaps naïve, logic. It would be reasonable to assume that the US is similarly anticipating the Treaty's benefits for its industry.

The anticipated benefits are tempered by the fact that the Treaty has a built-in 'review' process to be undertaken 12-24 months after it comes into force. Correctly, the impact statement is qualified by the following statement:

"At this stage, it is difficult to quantify the Treaty's impact and the Post Implementation Review will be the opportune time to assess it."<sup>3</sup>

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<sup>1</sup> 2010 – 2011 The Parliament of the Commonwealth of Australia, House of Representatives, Defence Trade Control Bill 2011, Explanatory Memorandum. Pg.31

<sup>2</sup> Ibid pg.35

<sup>3</sup> Ibid. pg.35

Indeed, the Post Implementation Review will be important in assessing the impact. AMWU would seek that the review closely examines the impact on Australia's Defence industry through comparative data on import/export balances of Treaty goods; changes of suppliers of goods in both markets, participation rates of Australian SMEs; US tenders won by Australian manufacturers and vice-versa; and employment trends in the industry. Should the review find that the anticipated benefits have not been realised then appropriate and immediate remedial action should be undertaken.

In the intervening period, the AMWU recommends that the Australian Government maintain its stated policy objectives of "growing capacity and competitiveness of the local Defence industry"<sup>4</sup> and "ensure that as much of the Defence budget is spent in Australia as is reasonably practicable".<sup>5</sup>

In order to meet the first objective, the AMWU would urge the Government and the Department to be pro-active with Australian industry in giving effect to the Treaty. It will be critical that industry is made aware of the changes and is able to participate at the earliest opportunity. It is likely that US multi-national primes will move promptly to take advantage of the arrangements and equally as likely that they will encourage their US suppliers to do likewise. Australian industry should not be left behind or excluded as a consequence of ignorance, inability to comply or missing out on first-mover advantages.

We note and support initial industry feedback for the need for Defence to provide support and outreach to small and medium enterprises that want to become Approved Community members and suggest that such a program be as far reaching as possible.

We support and are encouraged by the recognition of the need for the Australian Government to meet the costs that arise from the implementation of the Treaty and the Bill, including training and education provided free to industry.

We would also recommend that industry shoulder some of the responsibility. In giving effect to the second policy objective and as part of the Australian Government's Australian Industry Participation Plans for large Commonwealth Government procurements and grants, Defence primes and other Defence contract or grant winners should include education references for potential Australian suppliers about the Approved Community Membership process and benefits.

The AMWU would also encourage the Government and the Department to consider how the current review of the 14 Defence industry programs, designed to strengthen the capacity of the Australian based Defence manufacturers, can encapsulate recommendations on how the programs can be used to assist Australian manufacturers take advantage of the Treaty's opportunities.

Beyond pro-actively supporting Australian industry to take advantage of the Treaty, AMWU would point out that other forms of legislative barriers remain as obstacles for Australian manufacturers seeking to supply the US Defence market.

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<sup>4</sup> Defence White Paper at 16.18

<sup>5</sup> Defence Capability Plan, 2009 (December 2010 update) Public Version

An example of such legislation is the Merchant Marine Act 1920, section 27 known as the Jones Act. The Act requires that all goods transported by water between US ports be carried in US flag ships, constructed in the United States, owned by US citizens and crewed by US citizens. The Act itself has much merit in terms of securing the US ship building industry and providing rights and protections for seamen. But it also acts as a barrier to entry into the US marine industry and in turn to US naval Defence materiel.

In the case of Austal, a successful Australian based builder of aluminum hulled boats, the Jones Act required them to establish their operations in the US in order to sell their product to US consumers. Austal USA now employs some 1,100 people and has landed a number of US Defence contracts. Unfortunately for Australia's industry and economy, the 1,100 jobs cannot be located here.

AMWU notes that the US Congress must pass enabling legislation for the Treaty to come into force and would strongly encourage the Government and the Department to raise the need to exempt Australian Approved Community Members from US legislation that acts to block Australian manufacturers from being able to produce goods here, with Australian employees, and sell them to the US Defence market.

We also note that the Treaty will allow licence-free movement of eligible Defence articles within the Approved Community. It is our understanding that Defence articles and services controlled under the Treaty will be promulgated in the Defence Trade Cooperation Munitions List (DTCML). According to briefings provided, the DTCML is likely to be formulated from the Australian DSGI part 1 minus the ML900 series, plus those parts of DSGI part 2 that coincide with the USML that are not covered in part 1, minus exclusions. We assume that 'exclusions' are to be agreed between the signatories to the Treaty and not determined unilaterally for the purposes of creating artificial barriers depending on certain circumstances.

Again, we are aware that the initial consultation with industry raised concerns "...about feasibility and costs of security measures driven by the classifying of all US Defence Articles under the Treaty at the RESTRICTED level."<sup>6</sup>

Further, we note that the explanatory memorandum makes clear that "The Minister (or delegate) will make a decision as to whether a company may be eligible for Australian Community membership. However, the Minister must not approve membership until the US Government has agreed to the company becoming a member."<sup>7</sup> However, the memorandum does not mention whether Australia has reciprocal rights of veto over US Community members, which in the interest of national security we should have.

AMWU would seek assurance that barriers to Australian industry participation and access to the benefits of the Treaty are maximized by fair and equitable processes in addressing these matters.

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<sup>6</sup> Explanatory Memorandum. Pg.15

<sup>7</sup> Ibid pg.32

**Conclusion**

The AMWU is broadly supportive of the Bill in as much as it will provide greater access for Australian Defence manufacturers to the US Defence Procurement market. We do, however, recommend that the Australian Government maintain its important policy settings on maximizing our procurement spend with Australian manufacturers. Further, that the Government and the Department act pro-actively to assist the Australian Defence industry realise the opportunities that the Treaty has the potential to provide.