



**Stephen Smith MP
Minister for Defence**



Senator the Hon Ursula Stephens
Chair
Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
CANBERRA ACT 2600

Ursula

Dear ~~Senator~~

Thank you for your letter of 17 September 2012 concerning the report by Mr Peacock and Dr Zelinsky regarding further consultation on the Defence Trade Controls Bill 2011.

I have brought the Report on the Australian Parliamentary Delegation to the UK, Spain, Germany and the United States 14 April – 3 May 2012 (the Report) to the attention of Dr Zelinsky. Defence will also ensure a copy is available to Mr Peacock, who is currently overseas.

I note that the initial report by Mr Peacock and Dr Zelinsky did consider the Bill in light of US export control reforms, and suggested that the Bill not be delayed on these grounds.

While the Report indicated that the majority of US export control reforms were intended to be effected by the end of 2012 (para 3.31), I am aware that the US Ambassador provided updated advice to your committee on 6 September 2012 that this would not be the case, and that US export reforms would be ongoing. Regardless of when the various US export control reform initiatives do occur, the Treaty will continue to mean:

- reduced delivery time for new defence projects;
- improved sustainment, by permitting transfers within the Approved Community without further Australian or US approvals;
- improved business opportunities, by permitting Australian and US companies to share technical data without licences; and
- greater opportunities for Australian companies to participate in US contracts.

A key element of current US reforms, noted in the Report, is the movement of less-sensitive items from the International Traffic in Arms Regulations (ITAR) United States Munitions List (USML) to the Department of Commerce administered Commerce Control List (CCL). While the Department of Commerce arrangements may be more flexible than ITAR, unlike transfers under the Treaty in many cases a licence will still be required.

The Report noted that in some cases a licence exception may apply (para 3.29), however Defence has been advised by the Department of Commerce that in such cases there would still be underlying compliance requirements expected of industry.

Overall, these Commerce Control List related arrangements may provide some benefit to elements of industry that only require access to less-sensitive technology, however it should be noted that the ITAR regime will remain in place and will continue to protect sensitive US technology.

The Treaty will be administered by the Department of State as an exemption within the ITAR regime. The key benefit of the Treaty is the licence-free access to sensitive controlled articles for Australian industry. The current US ITAR reform process will not create an equivalent level of access or benefit. Not only does the Treaty remove the delays sometimes caused by the US licensing process, it also opens the US defence market to Australian defence industry by allowing members to bid on qualifying US government proposals; without the Treaty Australian industry would need a US industry partner to obtain the necessary export authorisations (for example, a Technical Assistance Agreement) before the Australian company could participate in such bids.

Treaty membership is a one-off process that is valid over the long term with stable conditions, meaning that compliance procedures will remain predictable for Approved Community members.

Australia and the US are committed to ensuring that joining the Approved Community and operating within the Treaty framework will continue to provide benefit to Community members and remain attractive over existing export control authorisations, including in the context of the reforms underway. Defence is working closely with the US Department of State Treaty Management Board to ensure the Treaty incorporates the benefits of US export control reform. Defence has received a commitment from the Department of State that the Treaty will always remain beneficial over the ITAR licence regime.

I trust this information will be of assistance to you.

Yours sincerely

Best Wishes

/ Stephen Smith