

108TH CONGRESS
1ST SESSION

S. 1842

To provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2003

Mr. LUGAR introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense Trade Co-
5 operation Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Close defense cooperation between the
2 United States and each of the United Kingdom and
3 Australia requires interoperability among the armed
4 forces.

5 (2) The need for interoperability must be bal-
6 anced with the need for the appropriate and effective
7 regulation of trade in defense articles and defense
8 services.

9 (3) The Arms Export Control Act (22 U.S.C.
10 2751 et seq.) represents a delegation to the execu-
11 tive branch of the constitutional power of Congress
12 to regulate commerce with foreign nations.

13 (4) Agreements to gain exemption from the
14 International Traffic in Arms Regulations must be
15 submitted to Congress for review.

16 **SEC. 3. DEFINITIONS.**

17 In this Act—

18 (1) the term “appropriate congressional com-
19 mittees” means the Committee on International Re-
20 lations of the House of Representatives and the
21 Committee on Foreign Relations of the Senate;

22 (2) the term “defense articles” has the meaning
23 given the term in section 47 of the Arms Export
24 Control Act;

1 (3) the term “defense services” has the mean-
2 ing given the term in section 47 of the Arms Export
3 Control Act; and

4 (4) the term “International Traffic in Arms
5 Regulations” means the regulations maintained
6 under sections 120 through 130 of title 22, Code of
7 Federal Regulations, or any successor regulations.

8 **SEC. 4. EXCEPTION TO BILATERAL AGREEMENT REQUIRE-**
9 **MENTS FOR TRANSFERS OF DEFENSE ITEMS**
10 **WITHIN AUSTRALIA AND THE UNITED KING-**
11 **DOM.**

12 (a) EXCEPTIONS.—Subsection (j) of section 38 of the
13 Arms Export Control Act (22 U.S.C. 2778) is amended—

14 (1) by redesignating paragraph (4) as para-
15 graph (5); and

16 (2) by inserting after paragraph (3) the fol-
17 lowing new paragraph (4):

18 “(4) EXCEPTIONS FROM BILATERAL AGREE-
19 MENT REQUIREMENTS.—

20 “(A) AUSTRALIA.—Subject to the provi-
21 sions of the Defense Trade Cooperation Act of
22 2003, the requirements for a bilateral agree-
23 ment described in paragraph (2)(A) shall not
24 apply to such a bilateral agreement between the
25 United States Government and the Government

1 of Australia with respect to transfers or
2 changes in end use within Australia of defense
3 items that will remain subject to the licensing
4 requirements of this Act after such agreement
5 enters into force.

6 “(B) UNITED KINGDOM.—Subject to the
7 provisions of the Defense Trade Cooperation
8 Act of 2003, the requirements for a bilateral
9 agreement described in paragraphs (1)(A)(ii),
10 (2)(A)(i), and (2)(A)(ii) shall not apply to such
11 a bilateral agreement between the United
12 States Government and the Government of the
13 United Kingdom for an exemption from the li-
14 censing requirements of this Act.”.

15 (b) CONFORMING AMENDMENT.—Paragraph (2) of
16 such subsection is amended in the matter preceding sub-
17 paragraph (A) by striking “A bilateral agreement” and
18 inserting “Except as provided in paragraph (4), a bilateral
19 agreement”.

20 **SEC. 5. CERTIFICATIONS FOR THE UNITED KINGDOM AND**
21 **AUSTRALIA.**

22 Not later than 30 days before authorizing an exemp-
23 tion from the licensing requirements of the International
24 Traffic in Arms Regulations in accordance with any bilat-
25 eral agreement entered into with the United Kingdom or

1 Australia under section 38(j) of the Arms Export Control
2 Act (22 U.S.C. 2778(j)), as amended by section 4 of this
3 Act, the President shall certify to the appropriate congres-
4 sional committees that such agreement—

5 (1) is in the national interest of the United
6 States and will not in any way affect the goals and
7 policy of the United States as outlined in section 1
8 of the Arms Export Control Act (22 U.S.C. 2751);

9 (2) does not adversely affect the ability of the
10 International Traffic in Arms Regulations to provide
11 consistent and adequate controls for licensed exports
12 of United States defense items; and

13 (3) will not adversely affect the duties or re-
14 quirements of the Secretary of State under such Act.

15 **SEC. 6. NOTIFICATION OF REGULATIONS PERMITTING BI-**
16 **LATERAL LICENSING EXEMPTIONS.**

17 Not later than 30 days before authorizing an exemp-
18 tion from the licensing requirements of the International
19 Traffic in Arms Regulations in accordance with any bilat-
20 eral agreement entered into with the United Kingdom or
21 Australia under section 38(j) of the Arms Export Control
22 Act (22 U.S.C. 2778(j)), as amended by section 4 of this
23 Act, the President shall submit to the appropriate congres-
24 sional committees the text of the regulations that author-
25 ize such a licensing exemption.

1 **SEC. 7. REPORT ON ISSUES RAISED IN CONSULTATIONS**
2 **PURSUANT TO BILATERAL AGREEMENTS**
3 **WITH AUSTRALIA AND THE UNITED KING-**
4 **DOM.**

5 Not later than one year after the date of the enact-
6 ment of this Act and annually thereafter for each of the
7 following 5 years, the President shall submit to the appro-
8 priate congressional committees a report on issues raised
9 during the previous year in consultations conducted under
10 the terms of any bilateral agreement with Australia, or
11 under the terms of any bilateral agreement with the
12 United Kingdom, for exemption from the licensing re-
13 quirements of the Arms Export Control Act (22 U.S.C.
14 2751 et seq.). Each report shall contain detailed informa-
15 tion—

16 (1) on any notifications or consultations be-
17 tween the United States and the United Kingdom
18 under the terms of any agreement with the United
19 Kingdom, or between the United States and Aus-
20 tralia under the terms of any agreement with Aus-
21 tralia, concerning the modification, deletion, or addi-
22 tion of defense items on the United States Munitions
23 List, the United Kingdom Military List, or the Aus-
24 tralian Defense and Strategic Goods List;

25 (2) listing all United Kingdom or Australia per-
26 sons and entities that have been designated as quali-

1 fied persons eligible to receive United States origin
2 defense items exempt from the licensing require-
3 ments of the Arms Export Control Act under the
4 terms of such agreements, and listing any modifica-
5 tion, deletion, or addition to such lists, pursuant to
6 the requirements of any agreement with the United
7 Kingdom or any agreement with Australia;

8 (3) on consultations or steps taken pursuant to
9 any agreement with the United Kingdom or any
10 agreement with Australia concerning cooperation
11 and consultation with either government on the ef-
12 fectiveness of the defense trade control systems of
13 such government;

14 (4) on provisions and procedures undertaken
15 pursuant to—

16 (A) any agreement with the United King-
17 dom with respect to the handling of United
18 States origin defense items exempt from the li-
19 censing requirements of the Arms Export Con-
20 trol Act by persons and entities qualified to re-
21 ceive such items in the United Kingdom; and

22 (B) any agreement with Australia with re-
23 spect to the handling of United States origin
24 defense items exempt from the licensing re-
25 quirements of the Arms Export Control Act by

1 persons and entities qualified to receive such
2 items in Australia;

3 (5) on any new understandings, including the
4 text of such understandings, between the United
5 States and the United Kingdom concerning re-
6 transfer of United States origin defense items made
7 pursuant to any agreement with the United King-
8 dom to gain exemption from the licensing require-
9 ments of the Arms Export Control Act;

10 (6) on consultations with the Government of the
11 United Kingdom or the Government of Australia
12 concerning the legal enforcement of any such agree-
13 ments;

14 (7) on United States origin defense items with
15 respect to which the United States has provided an
16 exception under the Memorandum of Understanding
17 between the United States and the United Kingdom
18 and any agreement between the United States and
19 Australia from the requirement for United States
20 Government re-export consent that was not provided
21 for under United States laws and regulations in ef-
22 fect on the date of the enactment of this Act; and

23 (8) on any significant concerns that have arisen
24 between the Government of Australia or the Govern-
25 ment of the United Kingdom and the United States

1 Government concerning any aspect of any bilateral
2 agreement between such country and the United
3 States to gain exemption from the licensing require-
4 ments of the Arms Export Control Act.

5 **SEC. 8. SPECIAL REPORTS ON UNAUTHORIZED END-USE OR**
6 **DIVERSION.**

7 The Secretary of State shall notify the appropriate
8 congressional committees, in a manner consistent with on-
9 going efforts to investigate and bring civil or criminal
10 charges regarding such matters, not later than 90 days
11 after receiving any credible information regarding the un-
12 authorized end-use or diversion of United States exports
13 made pursuant to any agreement with a country to gain
14 exemption from the licensing requirements of the Arms
15 Export Control Act. Such notification may be made in
16 classified or unclassified form and shall include—

- 17 (1) a description of the good or service;
- 18 (2) the United States origin of the good or
19 service;
- 20 (3) the authorized recipient of the good or serv-
21 ice;
- 22 (4) a detailed description of the unauthorized
23 end-use or diversion of the good or service, including
24 any knowledge by the United States exporter of such
25 unauthorized end-use or diversion;

1 (5) any enforcement action taken by the Gov-
2 ernment of the United States; and

3 (6) any enforcement action taken by the gov-
4 ernment of the recipient nation.

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