

111TH CONGRESS
2D SESSION

S. 3847

To implement certain defense trade cooperation treaties, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2010

Mr. KERRY (for himself and Mr. LUGAR) introduced the following bill; which was read twice, considered, read the third time, and passed

A BILL

To implement certain defense trade cooperation treaties, and for other purposes.

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 “Security Cooperation
5 Act of 2010”.

6 **TITLE I—DEFENSE TRADE**
7 **COOPERATION TREATIES**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Defense Trade Co-
10 operation Treaties Implementation Act of 2010”.

1 **SEC. 102. EXEMPTIONS FROM REQUIREMENTS.**

2 (a) **RETRANSFER REQUIREMENTS.**—Section 3(b) of
3 the Arms Export Control Act (22 U.S.C. 2753(b)) is
4 amended by inserting “a treaty referred to in section
5 38(j)(1)(C)(i) of this Act permits such transfer without
6 prior consent of the President, or if” after “if”.

7 (b) **BILATERAL AGREEMENT REQUIREMENTS.**—Sec-
8 tion 38(j)(1) of such Act (22 U.S.C. 2778(j)(1)) is amend-
9 ed—

10 (1) in the subparagraph heading for subpara-
11 graph (B), by inserting “FOR CANADA” after “EX-
12 CEPTION”; and

13 (2) by adding at the end the following new sub-
14 paragraph:

15 “(C) **EXCEPTION FOR DEFENSE TRADE**
16 **COOPERATION TREATIES.**—

17 “(i) **IN GENERAL.**—The requirement
18 to conclude a bilateral agreement in ac-
19 cordance with subparagraph (A) shall not
20 apply with respect to an exemption from
21 the licensing requirements of this Act for
22 the export of defense items to give effect to
23 any of the following defense trade coopera-
24 tion treaties, provided that the treaty has
25 entered into force pursuant to article II,

1 section 2, clause 2 of the Constitution of
2 the United States:

3 “(I) The Treaty Between the
4 Government of the United States of
5 America and the Government of the
6 United Kingdom of Great Britain and
7 Northern Ireland Concerning Defense
8 Trade Cooperation, done at Wash-
9 ington and London on June 21 and
10 26, 2007 (and any implementing ar-
11 rangement thereto).

12 “(II) The Treaty Between the
13 Government of the United States of
14 America and the Government of Aus-
15 tralia Concerning Defense Trade Co-
16 operation, done at Sydney September
17 5, 2007 (and any implementing ar-
18 rangement thereto).

19 “(ii) LIMITATION OF SCOPE.—The
20 United States shall exempt from the scope
21 of a treaty referred to in clause (i)—

22 “(I) complete rocket systems (in-
23 cluding ballistic missile systems, space
24 launch vehicles, and sounding rockets)
25 or complete unmanned aerial vehicle

1 systems (including cruise missile sys-
2 tems, target drones, and reconnais-
3 sance drones) capable of delivering at
4 least a 500 kilogram payload to a
5 range of 300 kilometers, and associ-
6 ated production facilities, software, or
7 technology for these systems, as de-
8 fined in the Missile Technology Con-
9 trol Regime Annex Category I, Item
10 1;

11 “(II) individual rocket stages, re-
12 entry vehicles and equipment, solid or
13 liquid propellant motors or engines,
14 guidance sets, thrust vector control
15 systems, and associated production fa-
16 cilities, software, and technology, as
17 defined in the Missile Technology
18 Control Regime Annex Category I,
19 Item 2;

20 “(III) defense articles and de-
21 fense services listed in the Missile
22 Technology Control Regime Annex
23 Category II that are for use in rocket
24 systems, as that term is used in such

1 Annex, including associated produc-
2 tion facilities, software, or technology;

3 “(IV) toxicological agents, bio-
4 logical agents, and associated equip-
5 ment, as listed in the United States
6 Munitions List (part 121.1 of chapter
7 I of title 22, Code of Federal Regula-
8 tions), Category XIV, subcategories
9 (a), (b), (f)(1), (i), (j) as it pertains to
10 (f)(1), (l) as it pertains to (f)(1), and
11 (m) as it pertains to all of the subcat-
12 egories cited in this paragraph;

13 “(V) defense articles and defense
14 services specific to the design and
15 testing of nuclear weapons which are
16 controlled under United States Muni-
17 tions List Category XVI(a) and (b),
18 along with associated defense articles
19 in Category XVI(d) and technology in
20 Category XVI(e);

21 “(VI) with regard to the treaty
22 cited in clause (i)(I), defense articles
23 and defense services that the United
24 States controls under the United
25 States Munitions List that are not

1 controlled by the United Kingdom, as
 2 defined in the United Kingdom Mili-
 3 tary List or Annex 4 to the United
 4 Kingdom Dual Use List, or any suc-
 5 cessor lists thereto; and

6 “(VII) with regard to the treaty
 7 cited in clause (i)(II), defense articles
 8 for which Australian laws, regulations,
 9 or other commitments would prevent
 10 Australia from enforcing the control
 11 measures specified in such treaty.”.

12 **SEC. 103. ENFORCEMENT.**

13 (a) CRIMINAL VIOLATIONS.—Section 38(c) of such
 14 Act (22 U.S.C. 2778(c)) is amended by striking “this sec-
 15 tion or section 39, or any rule or regulation issued under
 16 either section” and inserting “this section, section 39, a
 17 treaty referred to in subsection (j)(1)(C)(i), or any rule
 18 or regulation issued under this section or section 39, in-
 19 cluding any rule or regulation issued to implement or en-
 20 force a treaty referred to in subsection (j)(1)(C)(i) or an
 21 implementing arrangement pursuant to such treaty”.

22 (b) ENFORCEMENT POWERS OF PRESIDENT.—Sec-
 23 tion 38(e) of such Act (22 U.S.C. 2278(e)) is amended
 24 by striking “defense services,” and inserting “defense
 25 services, including defense articles and defense services ex-

1 ported or imported pursuant to a treaty referred to in sub-
2 section (j)(1)(C)(i),”.

3 (c) NOTIFICATION REGARDING EXEMPTIONS FROM
4 LICENSING REQUIREMENTS.—Section 38(f) of such Act
5 (22 U.S.C. 2778(f)) is amended by adding at the end the
6 following new paragraph:

7 “(4) Paragraph (2) shall not apply with respect
8 to an exemption under subsection (j)(1) to give ef-
9 fect to a treaty referred to in subsection (j)(1)(C)(i)
10 (and any implementing arrangements to such trea-
11 ty), provided that the President promulgates regula-
12 tions to implement and enforce such treaty under
13 this section and section 39.”.

14 (d) INCENTIVE PAYMENTS.—Section 39A(a) of such
15 Act (22 U.S.C. 2779a(a)) is amended by inserting “or ex-
16 ported pursuant to a treaty referred to in section
17 38(j)(1)(C)(i) of this Act” after “under this Act”.

18 **SEC. 104. CONGRESSIONAL NOTIFICATION.**

19 (a) RETRANSFERS AND REEXPORTS.—Section
20 3(d)(3)(A) of such Act (22 U.S.C. 2753(d)(3)(A)) is
21 amended by inserting “or has been exempted from the li-
22 censing requirements of this Act pursuant to a treaty re-
23 ferred to in section 38(j)(1)(C)(i) of this Act where such
24 treaty does not authorize the transfer without prior United

1 States Government approval” after “approved under sec-
2 tion 38 of this Act”.

3 (b) DISCRIMINATION.—Section 5(c) of such Act (22
4 U.S.C. 2755(c)) is amended by inserting “or any import
5 or export under a treaty referred to in section
6 38(j)(1)(C)(i) of this Act” after “under this Act”.

7 (c) ANNUAL ESTIMATE OF SALES.—Section 25(a) of
8 such Act (22 U.S.C. 2765(a)) is amended—

9 (1) in paragraph (1), by inserting “, as well as
10 exports pursuant to a treaty referred to in section
11 38(j)(1)(C)(i) of this Act,” after “commercial ex-
12 ports under this Act”; and

13 (2) in paragraph (2), by inserting “, as well as
14 exports pursuant to a treaty referred to in section
15 38(j)(1)(C)(i) of this Act,” after “commercial ex-
16 ports”.

17 (d) PRESIDENTIAL CERTIFICATIONS.—

18 (1) EXPORTS.—Section 36(c) of such Act (22
19 U.S.C. 2776(c)) is amended by adding at the end
20 the following new paragraph:

21 “(6) The President shall notify the Speaker of
22 the House of Representatives and the Chairman of
23 the Committee on Foreign Relations of the Senate
24 at least 15 days prior to an export pursuant to a
25 treaty referred to in section 38(j)(1)(C)(i) of this

1 Act to which the provisions of paragraph (1) of this
2 subsection would apply absent an exemption granted
3 under section 38(j)(1) of this Act, for which purpose
4 such notification shall contain information com-
5 parable to that specified in paragraph (1) of this
6 subsection.”.

7 (2) COMMERCIAL TECHNICAL ASSISTANCE OR
8 MANUFACTURING LICENSING AGREEMENTS.—Sec-
9 tion 36(d) of such Act (22 U.S.C. 2776(d)) is
10 amended by adding at the end the following new
11 paragraph:

12 “(6) The President shall notify the Speaker of
13 the House of Representatives and the Chairman of
14 the Committee on Foreign Relations of the Senate
15 at least 15 days prior to an export pursuant to a
16 treaty referred to in section 38(j)(1)(C)(i) of this
17 Act to which the provisions of paragraph (1) of this
18 subsection would apply absent an exemption granted
19 under section 38(j)(1) of this Act, for which purpose
20 such notification shall contain information com-
21 parable to that specified in paragraph (1) of this
22 subsection.”.

23 (e) FEES AND POLITICAL CONTRIBUTIONS.—Section
24 39(a) of such Act (22 U.S.C. 2779(a)) is amended—

1 (1) in paragraph (1), by striking “; or” and in-
2 serting a semicolon;

3 (2) in paragraph (2), by inserting “or” after
4 the semicolon; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(3) exports of defense articles or defense serv-
8 ices pursuant to a treaty referenced in section
9 38(j)(1)(C)(i) of this Act;”.

10 **SEC. 105. LIMITATION ON IMPLEMENTING ARRANGEMENTS.**

11 (a) **IN GENERAL.**—No amendment to an imple-
12 menting arrangement concluded pursuant to a treaty re-
13 ferred to in section 38(j)(1)(C)(i) of the Arms Export
14 Control Act, as added by this Act, shall enter into effect
15 for the United States unless the Congress adopts, and
16 there is enacted, legislation approving the entry into effect
17 of that amendment for the United States.

18 (b) **COVERED AMENDMENTS.**—

19 (1) **IN GENERAL.**—The requirements specified
20 in subsection (a) shall apply to any amendment
21 other than an amendment that addresses an admin-
22 istrative or technical matter. The requirements in
23 subsection (a) shall not apply to any amendment
24 that solely addresses an administrative or technical
25 matter.

1 (2) U.S.-UK IMPLEMENTING ARRANGEMENT.—
2 In the case of the Implementing Arrangement Pur-
3 suant to the Treaty Between the Government of the
4 United States of America and the Government of
5 the United Kingdom of Great Britain and Northern
6 Ireland Concerning Defense Trade Cooperation,
7 signed at Washington February 14, 2008, amend-
8 ments to which the requirements specified in sub-
9 section (a) apply shall include—

10 (A) any amendment to section 2, para-
11 graphs (1), (2), or (3) that modifies the criteria
12 governing operations, programs, and projects to
13 which the treaty applies;

14 (B) any amendment to section 3, para-
15 graphs (1) or (2) that modifies the criteria gov-
16 erning end-use requirements and the require-
17 ments for approved community members re-
18 sponding to United States Government solicita-
19 tions;

20 (C) any amendment to section 4, para-
21 graph (4) that modifies the criteria for includ-
22 ing items on the list of defense articles exempt
23 from the treaty;

24 (D) any amendment to section 4, para-
25 graph (7) that modifies licensing and other ap-

1 plicable requirements relating to items added to
2 the list of defense articles exempt from the
3 scope of the treaty;

4 (E) any amendment to section 7, para-
5 graph (4) that modifies the criteria for eligi-
6 bility in the approved community under the
7 treaty for nongovernmental United Kingdom
8 entities and facilities;

9 (F) any amendment to section 7, para-
10 graph (9) that modifies the conditions for sus-
11 pending or removing a United Kingdom entity
12 from the approved community under the treaty;

13 (G) any amendment to section 7, para-
14 graphs (11) or (12) that modifies the conditions
15 under which individuals may be granted access
16 to defense articles exported under the treaty;

17 (H) any amendment to section 9, para-
18 graphs (1), (3), (7), (8), (9), (12), or (13) that
19 modifies the circumstances under which United
20 States Government approval is required for the
21 re-transfer or re-export of a defense article, or
22 to exceptions to such requirement; and

23 (I) any amendment to section 11, para-
24 graph (4)(b) that modifies conditions of entry

1 to the United Kingdom community under the
2 treaty.

3 (3) U.S.-AUSTRALIA IMPLEMENTING ARRANGE-
4 MENT.—In the case of the Implementing Arrange-
5 ment Pursuant to the Treaty Between the Govern-
6 ment of the United States of America and the Gov-
7 ernment of the Australia Concerning Defense Trade
8 Cooperation, signed at Washington March 14, 2008,
9 amendments to which the requirements specified in
10 subsection (a) apply shall include—

11 (A) any amendment to section 2, para-
12 graphs (1), (2), or (3) that modifies the criteria
13 governing operations, programs, and projects to
14 which the treaty applies;

15 (B) any amendment to section 3, para-
16 graphs (1) or (2) that modifies the criteria gov-
17 erning end-use requirements and the require-
18 ments for approved community members re-
19 sponding to United States Government solicita-
20 tions;

21 (C) any amendment to section 4, para-
22 graph (4) that modifies criteria for including
23 items on the list of defense articles exempt from
24 the scope of the treaty;

1 (D) any amendment to section 4, para-
2 graph (7) that modifies licensing and other ap-
3 plicable requirements relating to items added to
4 the list of defense articles exempt from the
5 scope of the treaty;

6 (E) any amendment to section 6, para-
7 graph (4) that modifies the criteria for eligi-
8 bility in the approved community under the
9 treaty for nongovernmental Australian entities
10 and facilities;

11 (F) any amendment to section 6, para-
12 graph (9) that modifies the conditions for sus-
13 pending or removing an Australian entity from
14 the Australia community under the treaty;

15 (G) any amendment to section 6, para-
16 graphs (11), (12), (13), or (14) that modifies
17 the conditions under which individuals may be
18 granted access to defense articles exported
19 under the treaty;

20 (H) any amendment to section 9, para-
21 graphs (1), (2), (4), (7), or (8) that modifies
22 the circumstances under which United States
23 Government approval is required for the re-
24 transfer or re-export of a defense article, or to
25 exceptions to such requirement; and

1 (I) any amendment to section 11, para-
2 graph (6) that modifies conditions of entry to
3 the Australian community under the treaty.

4 (c) CONGRESSIONAL NOTIFICATION FOR OTHER
5 AMENDMENTS TO IMPLEMENTING ARRANGEMENTS.—Not
6 later than 15 days before any amendment to an imple-
7 menting arrangement to which subsection (a) does not
8 apply shall take effect, the President shall provide to the
9 Committee on Foreign Relations of the Senate and the
10 Committee on Foreign Affairs of the House of Representa-
11 tives a report containing—

12 (1) the text of the amendment; and

13 (2) an analysis of the amendment’s effect, in-
14 cluding an analysis regarding why subsection (a)
15 does not apply.

16 **SEC. 106. IMPLEMENTING REGULATIONS.**

17 The President is authorized to issue regulations pur-
18 suant to the Arms Export Control Act (22 U.S.C. 2751
19 et seq.) to implement and enforce the Treaty Between the
20 Government of the United States of America and the Gov-
21 ernment of the United Kingdom of Great Britain and
22 Northern Ireland Concerning Defense Trade Cooperation,
23 done at Washington and London on June 21 and 26, 2007
24 (and any implementing arrangement thereto) and the
25 Treaty Between the Government of the United States of

1 America and the Government of Australia Concerning De-
2 fense Trade Cooperation, done at Sydney, September 5,
3 2007 (and any implementing arrangement thereto), con-
4 sistent with other applicable provisions of the Arms Ex-
5 port Control Act, as amended by this Act, and with the
6 terms of any resolution of advice and consent adopted by
7 the Senate with respect to either treaty.

8 **SEC. 107. RULE OF CONSTRUCTION.**

9 Nothing in this title, the Treaty Between the Govern-
10 ment of the United States of America and the Government
11 of the United Kingdom of Great Britain and Northern Ire-
12 land Concerning Defense Trade Cooperation, done at
13 Washington and London on June 21 and 26, 2007 (and
14 any implementing arrangement thereto), the Treaty Be-
15 tween the Government of the United States of America
16 and the Government of Australia Concerning Defense
17 Trade Cooperation, done at Sydney, September 5, 2007
18 (and any implementing arrangement thereto), or in any
19 regulation issued to implement either treaty, shall be con-
20 strued to modify or supersede any provision of law or reg-
21 ulation other than the Arms Export Control Act (22
22 U.S.C. 2751 et seq.), as amended by this Act, and the
23 International Traffic in Arms Regulations (subchapter M
24 of chapter I of title 22, Code of Federal Regulations).

1 **TITLE II—AUTHORITY TO**
2 **TRANSFER NAVAL VESSELS**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Naval Vessel Transfer
5 Act of 2010”.

6 **SEC. 202. TRANSFER OF NAVAL VESSELS TO CERTAIN FOR-**
7 **EIGN RECIPIENTS.**

8 (a) **TRANSFERS BY GRANT.**—The President is au-
9 thorized to transfer vessels to foreign countries on a grant
10 basis under section 516 of the Foreign Assistance Act of
11 1961 (22 U.S.C. 2321j), as follows:

12 (1) **INDIA.**—To the Government of India, the
13 OSPREY class minehunter coastal ships KING-
14 FISHER (MHC-56) and CORMORANT (MHC-
15 57).

16 (2) **GREECE.**—To the Government of Greece,
17 the OSPREY class minehunter coastal ships OS-
18 PREY (MHC-51), BLACKHAWK (MHC-58), and
19 SHRIKE (MHC-62).

20 (3) **CHILE.**—To the Government of Chile, the
21 NEWPORT class amphibious tank landing ship
22 TUSCALOOSA (LST-1187).

23 (4) **MOROCCO.**—To the Government of Mo-
24 rocco, the NEWPORT class amphibious tank land-
25 ing ship BOULDER (LST-1190).

1 (b) TRANSFER BY SALE.—The President is author-
2 ized to transfer the OSPREY class minehunter coastal
3 ship ROBIN (MHC-54) to the Taipei Economic and Cul-
4 tural Representative Office of the United States (which
5 is the Taiwan instrumentality designated pursuant to sec-
6 tion 10(a) of the Taiwan Relations Act (22 U.S.C.
7 3309(a)) on a sale basis under section 21 of the Arms
8 Export Control Act (22 U.S.C. 2761).

9 (c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF
10 TRANSFERRED EXCESS DEFENSE ARTICLES.—The value
11 of a vessel transferred to another country on a grant basis
12 pursuant to authority provided by subsection (a) shall not
13 be counted against the aggregate value of excess defense
14 articles transferred in any fiscal year under section 516
15 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j).

16 (d) COSTS OF TRANSFERS.—Any expense incurred by
17 the United States in connection with a transfer authorized
18 by this section shall be charged to the recipient (notwith-
19 standing section 516(e) of the Foreign Assistance Act of
20 1961 (22 U.S.C. 2321j(e))).

21 (e) REPAIR AND REFURBISHMENT IN UNITED
22 STATES SHIPYARDS.—To the maximum extent prac-
23 ticable, the President shall require, as a condition of the
24 transfer of a vessel under this section, that the recipient
25 to which the vessel is transferred have such repair or re-

1 furbishment of the vessel as is needed, before the vessel
 2 joins the naval forces of the recipient, performed at a ship-
 3 yard located in the United States, including a United
 4 States Navy shipyard.

5 (f) EXPIRATION OF AUTHORITY.—The authority to
 6 transfer a vessel under this section shall expire at the end
 7 of the 2-year period beginning on the date of the enact-
 8 ment of this Act.

9 **TITLE III—OTHER MATTERS**

10 **SEC. 301. EXPEDITED CONGRESSIONAL DEFENSE EXPORT** 11 **REVIEW PERIOD FOR ISRAEL.**

12 The Arms Export Control Act (22 U.S.C. 2751 et
 13 seq.) is amended—

14 (1) in sections 3(d)(2)(B), 3(d)(3)(A)(i),
 15 3(d)(5), 21(e)(2)(A), 36(b), 36(c), 36(d)(2)(A),
 16 62(c)(1), and 63(a)(2), by inserting “Israel,” before
 17 “or New Zealand” each place it appears; and

18 (2) in section 3(b)(2), by inserting “the Govern-
 19 ment of Israel,” before “or the Government of New
 20 Zealand”.

21 **SEC. 302. EXTENSION OF WAR RESERVES STOCKPILE AU-** 22 **THORITY.**

23 (a) DEPARTMENT OF DEFENSE APPROPRIATIONS
 24 ACT, 2005.—Section 12001(d) of the Department of De-
 25 fense Appropriations Act, 2005 (Public Law 108–287;

1 118 Stat. 1011) is amended by striking “more than 4
2 years after” and inserting “more than 8 years after”.

3 (b) FOREIGN ASSISTANCE ACT OF 1961.—Section
4 514(b)(2)(A) of the Foreign Assistance Act of 1961 (22
5 U.S.C. 2321h(b)(2)(A)) is amended by striking “fiscal
6 years 2007 and 2008” and inserting “fiscal years 2011
7 and 2012”.

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