

## THE DEVIL IN THE DETAIL - AUSFTA in the wind for defence exporters?

The posting in late-September of the text of a proposed Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America concerning Defence Trade Cooperation on a UK Foreign & Commonwealth Affairs website, has provided an intriguing insight into the sort of agreement likely to have been similarly signed between Australia and the United States, but not yet tabled in Australia.

■ Trevor J Thomas/CANBERRA

Following the 5 September signing - on the periphery of the APEC meetings in Sydney - by Prime Minister Howard and President George W Bush of a new 'Treaty on Defence Trade Cooperation', Australian Department of Defence officials have been hard at work coming to grips with an estimated twenty 'Implementing Arrangements' required to be drafted and finalised in support of the Treaty text, and the extent to which they might relieve the nightmare which currently governs military materiel and related intellectual property exchanges under the US Arms Export Control Act and associated International Traffic in Arms Regulations (ITARs).

Upon announcing his signing of the subject Treaty - believed to be practically identical to that signed by former UK Prime Minister, Tony Blair, during a visit to Washington in June - Prime Minister Howard described the initiative as designed "to permit the licence-free export of defence goods and services meeting security and regulatory requirements between the Australian and US Governments, and between Australian and US companies."

Howard added that the new 'Treaty on Defence Trade Cooperation' (once ratified by the US Senate, and reviewed by the Australian Parliament's Joint Standing Committee on Treaties), "will significantly cut red tape and simplify processes for sharing equipment, information and tech-

### Key Points

- **A new Defence Trade Cooperation Treaty** between Australia and the United States promises 'operational benefits' for the Australian Defence Force from greater access to US capability for sustainment and support purposes.
- **The new Treaty also offers improvements** to the knowledge base available for capability development considerations due to earlier access to US data and technology through 'first pass' and up to 'second pass' acquisition consideration.
- **The creation of an 'approved community'** of Treaty participants similarly promises cost and time savings from reductions in the number of licences required for frequent exporters of Defence and related (including counter-terrorism) equipment.
- **Improved access is also anticipated for Australian** companies involved in bidding on US defence requirements (as they are progressively regarded as part of the global supply chain), or in supporting US equipment in the ADF inventory.

nology between Australian and US defence companies."

According to the Prime Minister, the Treaty would also deliver "significant new opportunities for Australia's defence industry to work cooperatively on sensitive defence technology projects, and to compete for major defence-related global supply chain contracts. It will boost Australian defence exports, supporting jobs and providing greater long-term stability for the Australian defence industry."

Howard further added the new Treaty, "will speed up delivery of the next-generation of defence technology through improved military industrial collaboration, further enhance interoperability between Australian and US forces, and ensure the Australian Defence Force (ADF) continues to enjoy cutting-edge capabilities into the future." The Department of Defence subse-

quently advised 10 September that the eventual conclusion of a new Australia-US Treaty on Defence Trade Cooperation and its 'Implementing Arrangements' (IAs) would "ultimately improve access for Australian industry to sensitive US technology, (while)

the removal of bureaucratic barriers will simplify the process for sharing equipment, information, spare parts, services and technical data."

State Department information provided to Defence is said to have indicated that, in 2006, 2361 export licences and 312 technical data agreements were approved for Australia. On this basis, Defence conservatively estimated that "at least half of these approvals, which can take 90 days or more, will no longer be required under the Treaty. This will save hundreds of person-years of processing time and, through certainty, reduce delays to project schedules by months each year."

Logically assuming the text of the basic treaties for both the UK and Australian arrangements would be the same (ie: any major variations would no doubt be accommodated in the IAs), reference to the 'Scope' section of the pro-

posed UK/USA Treaty has put some grey clouds on Howard's optimism, given the UK version is only proposed to apply to defence articles required for:

- "US and UK combined military or counter-terrorism operations as described in the IAs;
- US and UK cooperative security and defence research, development, production, and support programmes that are identified pursuant to the IAs;
- Mutually agreed specific security and defence projects where Her Majesty's Government (HMG) is the end-user identified pursuant to the IAs; and
- US Government end-use."

According to Article 3(3) of the proposed Treaty - which is linked to the April 1961 General Security Agreement (GSA) between the UK and the USA - its provisions will not apply "to the process for acquisition of Defence Articles by HMG pursuant to the United States Foreign Military Sales (FMS) programme," but it will apply to such defense articles once acquired. For the purposes of the Treaty's conduct, the 'UK Community' (ie: those considered eligible to partake of the Treaty's benefits) include:

- "HMG Facilities accredited to HMG pursuant to the GSA, and that are related to the Scope of this Treaty, which shall be identified pursuant to the IAs;
- HMG Personnel, meeting mutually agreed criteria, including a minimum, appropriate UK security accreditation and a need-to-know, as set out in the IAs;
- Specifically identified non-governmental UK entities and facilities that meet mutually agreed eligibility requirements, are accredited by HMG in accordance with the IAs, and are mutually agreed to by the Parties for inclusion on a 'List';
- Employees of those entities and facilities (included on the 'List') who meet criteria set out in the IAs including, at a minimum appropriate UK security accreditation and a need-to-know."

As can be seen from the UK-US draft Treaty, in almost every case where a potential benefit is identified under the Treaty, details of exactly what administrative

arrangements will apply to access such benefits is deferred to the yet to be negotiated 'Implementing Arrangements'.

This might not be a worry if administrative exchanges under the new Treaty were to be through each nation's respective national defence organisation, however, for the UK/US Treaty, whilst the UK Government's designated agency is the Ministry of Defence, the US Government's designated agency is the Department of State – the source of much angst within the Australian defence community courtesy of its administration of the existing ITAR arrangements.

Further, whilst initial exports of 'defence articles' within the Treaty's 'scope' are to be conducted "without prior defence export licences or other authorisations" (or via blanket or open authorisations on the UK side), "all re-transfers or re-exports of defence articles shall require authorisation by HMG ... (with) procedures for obtaining US Government approval and HMG authorisation (to) be identified in the IAs."

Clearly, and despite the initial attraction of the Treaty, its inclusions leave open substantial potential for there to be a major rewriting (or simple transcription) of current provisions of the US Arms Export Control Act and associated ITARs, all to be included within the IAs supporting the initial Treaty. The creation of new concepts, such as an 'approved community' also raise prospects for an additional regulatory and compliance burden on participants.

This view is supported via reference to Article 12 of the UK-US Treaty, which commits each

Party to require that "entities within its 'community' that are exporting, transferring, re-transferring, re-exporting or receiving defence articles ... maintain records of all such movements." Further, each Party is to "ensure that such records maintained by entities within its 'community' are made available upon request, or otherwise in accordance with procedures established in the IAs" - thus virtually ensuring a regulatory, inspection and compliance regime constituted in sympathy with the extant US Arms Export Control Act and supporting regulations.

In Australian terms, the creation of an approved 'community' between Australia and the US to be qualified to receive licence-free exports under the Treaty, will be expected to sign-up to the required accreditation and compliance standards (including likely additional employee national security clearances) to be established between the two governments via the IAs.

Defence expects these to span those currently the subject of existing arrangements - such as facility clearance, business history, export licensing and compliance record, and relationships to countries of concern - however there is no firm commitment to do so, nor push for any reasonable reduction of the aggregate regulatory burden within the context of the ever-closing alliance.

Rather than simply responding to US law from an Australian administrative perspective (as is currently done with ITARs), the new Treaty's need to create an approved 'community' (whose activities are to be encribed on a 'List'), will similarly require

changes in Australian legislation to ensure that export control and security are sufficiently robust to ensure the subject sensitive technologies and data do not circulate outside of the approved 'community'.

To ensure this occurs to the satisfaction of the US State Department, Defence authorities in Australia have flagged that additional amendments will need to be made to: the Customs Act 1901; the Customs (Prohibited Exports) Regulations 1958; and the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995.

Entities, of course, do not have to subject themselves to the strictures of whatever oversight arrangements are eventually promulgated under the IAs (and perhaps will set a benchmark for assessing the benefits of the new Treaty), given they can continue to apply for approvals to export or transfer defence articles under the current ITARs on the basis it's better to deal with the devil you know, rather than one that you don't.

Examination of the draft UK-US Treaty also raises a couple of extra questions. First, nothing in the Treaty can be taken to construe the granting, implying, diminishing, or otherwise affecting of rights to, or interest in, intellectual property or other proprietary information of the Parties or of persons or entities within the approved respective national communities. So close allies (and collaborating firms) will still need to deal with their IP separately.

Second, there is plenty to be concerned about if you are a non-US or UK defence supplier. For example, Defence states it is in-

tended that the Treaty will, "allow early access to United States technical data and technology for consideration during the defence capability development process."

Potentially, this could frustrate competition (ie: in terms of marginalising any proposal that could not be delivered inside the time-frame of a proposal developed under the umbrella of the Treaty), if the end capability option was one of either a US or European (ie: non UK) firm. Such risk becomes especially more likely given Defence's view the Treaty's provisions could "speed up the delivery of new defence projects and improve the whole-of-life sustainment of military equipment."

The Treaty also has potential to significantly change the competitive environment for defence suppliers in Australia, given anticipation that it will facilitate greater access to US capability (ie: read US-based firms) for sustainment and support of ADF operational capabilities. Further, by reducing the export control burden on US companies, the Treaty is likely to encourage smaller US companies (ie: growth in the number of US-based competitors) to enter the Australian military product and service/support market.

Third country nationals who do not hold Australian nationality (this includes New Zealanders) will not be permitted access to activities being conducted under Treaty provisions without prior authorisation by both the United States and Australian governments.

Finally, the Treaty only applies to bilateral defence trade between >>> page 34



**TREATY TO DE-REGULATE DEFENCE TRADE?:** A new Australia-United States Treaty on Defence Trade Cooperation signed in Sydney during the APEC Leaders week by Prime Minister Howard and President George W Bush (L) will not apply to the acquisition phase of the Joint Strike Fighter (JSF) program (R), as that is a multi-national program, not a bilateral Australia/US initiative. Further, the project Air 5349 acquisition of 24 F/A-18F 'Super Hornet' fighters (far R) - being conducted under FMS arrangements - will also not be included in the Treaty's coverage. The ability to more freely transfer technology under the scope of the new Treaty, however, is expected to increase the ADF's ability to support both of the new aircraft in-country, as well as facilitate Australian-based company access to such work.

ADBIR, CoA/PM&C AND VENDOR PHOTOS

erating outside the howitzer's armour protection. The detailed requirement states only that manual 'firing', not training, needs to be conducted under armour.

The direct fire capability is also problematic for the 'Archer', with a requirement for fires to 45° either side of the centre. The 'gun on a truck' layout of the 'Archer' means that while it has large direct fire arcs to either side (larger than 90°), it cannot fire directly forward at low angles of elevation (as in direct fire), as the cab chassis gets in the way.

Clarification of the definition of centre for direct fire will thus be of crucial importance for the Tenix/BAES Bofors team.

Both the gunner and commander will be equipped with independent day/night sights with laser range finders for firing the gun with the commander's sight 'panoramic' or rotating independently of the turret or cab chassis.

This dual sighting system, called 'hunter-killer' - which enables rapid acquisition and engagement of multiple targets - was judged to be unnecessary for the M1A1 main battle tank.

Direct fire of the main gun will be integrated with a Remote Control Weapon Station (RCWS) able to fire either 7.62mm and 12.7mm machine guns and 40mm automatic grenade launchers (AGL). Both the PSPH commander and driver are to be fitted with controls to operate the RCWS in self-defence.

The protection requirements for the howitzer are significant, with ballistic protection against at least 7.62 x 51mm armour piercing (AP) bullets, although protection against 14.5 x 114mm AP is preferred.

The crew will also need to be protected from top attack 'bomblets' that are used in most counter-battery systems fired at artillery by tracking the trajectory of their own shells.

This protection is to be the equivalent of 100mm of rolled homogenous steel (RHA), or about 10 times that of the standard armour thickness of a Thales Australia 'Bushmaster' protected vehicle. This is likely to be achieved by adding a layer of ex-

plosive reactive armour (ERA) fitted along the roof of the PSPH's crew compartment. The crew will also require protection against at least 6kg anti-tank land mines, with protection against 8kg mines preferred.

The PSPH is further required to be proofed against Chemical, Biological, Nuclear and Radiological (CBNR) threats, and without the crew being required to wear their own protection. Such a high level of CBRN defence capability is indicative of the increasing importance filtering down from strategic planning documents on the ADF having the means to counter Weapons of Mass Destruction (WMD) and asymmetric threats.

Unlike the recent M1A1 'Abrams' tank acquisition, Defence will require the PSPH to be delivered in the ADF standard 'AUSCAM' tan, green and black camouflage pattern.

Traditionally, when Defence has acquired combat vehicles from overseas, they have been supplied in factory standard colourings and are only repainted to the ADF standard at the time of their first major overhaul. The Land 907 M1A1s were provided in factory standard desert yellow, driving speculation they had been acquired solely for combat in the Middle East.

The maximum weight requirement of the PSPH is 60 tonnes (combat laden), and thus falls to a third level of Mobility Class (MC), although MC 2 (high) preferred. MC 3 is a comparatively low mobility standard, and lower than that required for the project Land 121 Phase 3A/3B field vehicles.

Land 121 requires sufficient capability to reach support echelons, distribution points, worksites and circumvent road

damage or blockages. MC 2 (low) and MC 2 (high) enable the use of terrain for deployment to firing positions, with the low category providing off road navigation speeds of up to 25kph and high over 25kph.

Not detailed within the RFT is a requirement for an armoured ammunition resupply vehicle (AARV), in the order of the Samsung Techwin K-10, which is based on the vehicle system of the K-9 howitzer.

This appears to be a deficiency considering that each of the two-four PSPH batteries conceived under Land 17 will require at least three ammunition vehicles, with one co-located in each artillery troop of two howitzers.

The Land 17 operational and support concept document outlines a significant boost to the joint forward observer (JFO) capability of the ADF, and the scope of the subsequent BMS-F FO ITR set to close 4 February 2008. Notification of evaluation outcomes is to be given to registrants by 9 June 2008.

The demands of the current operating environment, the Army's future land operating concept 'Complex Warfighting' and the proliferation of precision weapons, has seen a major increase in the need for precise target location and offensive support coordination. The 'Joint Fires' concept will possibly see Air Force terminal attack controllers (TAC) being allocated to Army artillery units, thus significantly boosting the number of JFOs.

Subsequently, 107 sets of FO/TAC equipment will be acquired to outfit the expanded numbers of JFOs to 12 per gun battery (two-to-three per regiment) to provide direct support to the manoeuvre forces of the Battle Group, and up to 18 per regimen-

tal headquarters battery (now called the Operational Support Battery), and operating in a deep targeting role supporting the Brigade commander's battlefield 'shaping' (ie: destruction of enemy forces before they engage friendly troops).

This represents an increase from the legacy battery with five forward observer officers (FOO), one of which was the Battery Commander, who would be each supported by a fire mission qualified enlisted forward observer's assistant (FOACK).

With two gun batteries, the new regimental structure would require as many as 36 BMS-F FO nodes that when combined with Special Operations Command - Australia (SOCOMD-A), Army Reserve and Air Force needs could push the basis of provisioning higher.

The BMS-F FO equipment will include appropriate artillery fire mission, offensive air support and naval surface fire support software operating on a Military Rugged Tablet computer. Supporting the management system will be a video capture device (Rover 4), tripod and angulation head, digital combat radio (with VMF), laser rangefinder (LRF), laser target designator, batteries and a backpack.

The LRF will incorporate thermal night vision and optical magnification to enable targets to be detected at least 5km (day) and 800m (night) and range determined to at least 10km. **ADBR**

## New Treaty - from p36

the US and Australia, and thus has no impact on Australia's other international obligations (including its allies).

Given the close national security relationship already established between the United States-United Kingdom, the US-Australia and Australia-UK (all key allies in the 'War on Terror'), it appears remissive that neither treaties contain any provisions to collective build defence 'community' within all three key western allies' governmental and industrial structures. **ADBR**

