

**Statement of
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“Executing AUKUS Pillar II: ITAR Exemptions for the UK and Australia”
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Introduction

Chairman McCaul, Ranking Member Meeks, and Members of the Committee, it is my pleasure to appear before you today. My name is Dak Hardwick, and I serve as the Vice President for International Affairs at the Aerospace Industries Association (AIA). For over 100 years, AIA has advocated for America’s aerospace and defense (A&D) sector, and the more than two million men and women who are the backbone of our industry. AIA serves as a bipartisan convener, bringing people together to find consensus on critical topics impacting the U.S. and international A&D industrial base, including issues like the Australia-United Kingdom-United States (AUKUS) partnership, global trade, foreign military sales, technology security, and other matters impacting American foreign policy.

AIA and our members deeply appreciate the Committee’s leadership in soliciting U.S. industry’s perspective on pressing foreign policy issues. As a key enabler of U.S. foreign policy, the U.S. A&D industry is a vital link between U.S. government objectives overseas and its ability to achieve them. Our industry is a crucial partner with the U.S. government, and we are called on daily to deliver the capabilities necessary to achieve the goals articulated in both the U.S. National Security and National Defense Strategies.

I would like to also acknowledge the strong and positive working relationship AIA and our members have with our U.S. government colleagues at the Departments of State, Defense, and Commerce. The U.S. A&D industry is one of the most highly regulated industries in the world, and global defense trade policy is an essential element of U.S. foreign policy. The enduring relationship between U.S. industry and the U.S. government in defense trade is critical, especially when major global events require deep and immediate collaboration. AIA and our members acknowledge that many of the officials engaged in AUKUS-related matters are also engaged in other global events, and we deeply value their work and service to our nation.

U.S. A&D, comprising commercial, defense, and dual-use technologies, is and will continue to be tightly connected to the industrial bases of our ally and partner countries. It is impossible to separate the U.S. industrial sector from the shared, global industrial bases. The U.S. defense industrial base (DIB) shares a common supply chain with nations across the world. Items produced in the United States, the United Kingdom (UK), Australia, the European Union (EU), and major allied partners are therefore integrated together and naturally form a global DIB.

Recognizing the intricate web of interdependencies that form this global DIB, the strength of the U.S. A&D sector comes not only from its domestic capabilities, but also its international partnerships. This interconnectedness is a strategic asset, one that requires forward-thinking policies to harness its potential.

With this in mind, U.S. policymakers must implement clear legislative and regulatory systems with flexible policies that both incentivize and enhance cooperation while building collective capacity with trusted partners. These systems and policies should be integrated across partner nations, enabling resiliency in our overall supply chains and drawing partners and allies closer together. Establishing long-term industrial and economic relationships that allow like-minded nations to deter and respond to shared global threats should be the ultimate objective of U.S. legislative and regulatory structures governing industrial base interactions with U.S. partners and allies. The United States must also pursue an integrated industrial policy to address and prepare for potential conflicts in other parts of the world. That is the ultimate promise of the Australia-United Kingdom-United States (AUKUS) partnership.

The U.S. Aerospace and Defense Industry

AIA represents more than 300 A&D companies ranging from family-run businesses to multinational corporations, operating up and down the supply chain. Our membership includes aircraft and engine manufacturers, shipbuilders, materials providers, and companies that design and build cutting-edge military, commercial, and dual-use technology second to none. Our members have a worldwide reputation of global technological leadership, and the A&D industry represents a dynamic, diverse workforce.

Our industry is not only integral to national security but is also a significant driver of the American economy. Despite inflationary headwinds and unpredictable funding timelines, the industry's workforce generated \$952 billion in sales in 2022, a 6.7 percent increase from the prior year. Additionally, the U.S. A&D industry remains America's largest net exporting manufacturing sector. In the same year, our industry maintained a positive trade balance of \$77.3 billion, an increase of 50 percent from 2021. Overall, U.S. A&D industry exports rose by 4.4 percent between 2021 and 2022 to a total value of \$104.8 billion. Allies and partners are at the bedrock of this growth, with the industry's largest export destination and import origin countries being Canada, the United Kingdom, France, and Germany – a clear demonstration that friendshoring, allied-shoring, and global supply chain integration and resilience are top of mind in our sector.

Building and strengthening the resiliency of the global supply chain is a strategic imperative for the A&D industry. We are a long-lead industry. Our companies order materials, parts, and components months or years in advance and are generally able to manage short- and medium-term disruptions. They also work on mitigation strategies in the event of long-term disruptions. Expanding the DIB with partners and allies around the world and breaking down regulatory barriers are vital to improving this resiliency, while also spurring innovation and competition. We must continue to pursue integration of our industrial base with trusted allies and partners, which makes AUKUS one of the most exciting – and challenging – opportunities in decades.

Principles of Success for AUKUS Pillar II

In 2021, recognizing the changing nature of the threat environment in the Indo-Pacific, the governments of Australia, the UK, and the United States formed the AUKUS trilateral security partnership as a mechanism to ensure regional security and stability. Each of the three allies acknowledged the strategies, processes, and connections formed through the Cold War would be insufficient to meet these growing, evolving threats and sought instead to deepen diplomatic, security, and defense cooperation in new and meaningful ways. If successful, AUKUS will respond

to shared challenges by building collective industrial capacity and accelerating the technological delivery of next-generation capabilities. To achieve this objective, the three nations identified two lines of effort: 1) Australia acquiring nuclear-powered submarines (Pillar I), and 2) collaborating on the joint delivery of advanced military capabilities (Pillar II). An effective AUKUS will leverage the industrial base of each nation to build a modern force capable of deterring conflict and responding to challenges to the international rules-based order.

For AUKUS Pillar II, operational success hinges on reducing barriers to cooperation and creating opportunities to produce and deliver high-end capabilities quickly. This requires a modern, integrated, and consistent legislative and regulatory system. Establishing a defense trade-friendly regulatory landscape that is demonstrably better than the existing system across all three governments is integral to its success. As the AUKUS partner governments work together to develop a comprehensive regulatory and legislative framework, our industry has identified four principles to drive toward success:

Trade, cooperation, and technology transfer should be seamless among AUKUS partners

As Australia, the UK, and the U.S. strive to enhance cooperation, their regulatory systems must be compatible to facilitate fluid trade, cooperative programs, and advanced technology transfers. While regulations are vital to upholding national security interests, they sometimes impose burdensome requirements that stifle innovation and delay and complicate cooperation. Military and civilian leaders should therefore consider the impact of current regulations on defense exports, technology release requirements, and acquisition timelines to ensure the proper balance between protecting national interests, regional security, and mission objectives. This process must involve engagement with the defense industry across all three countries' industrial bases to identify and advocate for targeted and effective systemic reforms.

Advancement requires forward-leaning approaches

Accelerating delivery, aligning resources, and promoting innovative and cost-effective capabilities require agile policy and regulatory processes, rather than traditional government-to-government dialogues or agreements that often result in case-by-case approaches. The objective of rapid capability delivery is where authorization of activities does not take the time equivalent to obtaining export licenses. This will encourage AUKUS industrial bases to innovate together, enhance interoperability, and collaborate on future capabilities that are at the heart of the trilateral security partnership.

Building shared, robust, and resilient systems will ensure regional security and stability

AUKUS was formed on the foundation of shared values and security goals. These objectives are also pillars of the U.S. technology transfer and release process, which rewards robust and resilient security practices. Agreeing to operate under equivalent security requirements and assigning clear country and industry roles at the onset of cooperation is imperative and welcomed.

Industry will make AUKUS a reality

The capabilities that will be delivered because of the AUKUS partnership are dependent on the Australian, British and American workforce. A regulatory framework that inhibits the free movement of human resources threatens to erode or negate the benefits of cooperation. Only by sharing

technical expertise from across our respective industrial bases can industry leverage competitive advantages to build the capacity necessary to operationalize AUKUS quickly. Thus, the regulatory environment must be enhanced to support cross-border collaboration, development, and eventual capability delivery.

The AUKUS ITAR Exemption

For AUKUS and overall U.S. defense trade cooperation, the *FY24 National Defense Authorization Act* (NDAA) ushered in a landmark shift in policy. The authorization for an exemption to the International Traffic in Arms Regulations (ITAR) for Australia and the UK provided for by the U.S. Congress, with leadership from the House Foreign Affairs Committee, is arguably the most significant change to the *Arms Export Control Act* (AECA) since its initial passage in 1976. This legislative change represents Congress' recognition that a modern defense trade system emphasizes cooperation over control and flexibility over rigidity. Congress' intent is clear: The AUKUS model is the future of defense trade cooperation with close allies.

For the advanced capabilities detailed in Pillar II, the AUKUS partnership has the potential to supercharge defense innovation across all three countries, harnessing the best research and development capabilities each nation has to offer. The AUKUS partnership recognizes that the U.S. does not have the leading edge on advanced technologies and the export control and technology security regulations governing the sale and transfer of those technologies are a barrier to increased collaboration. The U.S. should not loosen export controls or technology security that put warfighters at risk, but for our closest allies where our answer to closer technology cooperation is almost always "yes," a more collaborative and expansive environment just makes sense.

While the AUKUS partnership is widely supported by the American A&D industry, operational success depends almost entirely on effective implementation of the ITAR exemption provided by Congress. If implemented correctly, the ITAR exemption for Australia and the UK will unlock the full potential of AUKUS. However, if the legislation is not implemented correctly and the scope of Congress' intent is unnecessarily narrowed, the new system will mirror the old, thus returning all three nations to the status quo, nullifying all other efforts dedicated to AUKUS' success, and leaving us less capable of jointly responding to shared threats.

The Value of Industry Engagement in AUKUS ITAR Exemption Implementation

Our industry has learned from and is informed by the negotiation and execution of the Defense Trade Cooperation Treaties for Australia and the UK. Ratified by the Senate in 2010, the implementation of the Treaties largely failed because the regulatory implementation that followed the ratification made little to no difference for the existing processes for both countries. Companies opted to use the existing and familiar system versus completely overhauling their trade compliance programs. To U.S. industry, there was little regulatory benefit to the Treaties.

This is a cautionary tale for AUKUS. Implementation of the Defense Trade Cooperation Treaties was largely done without regular and consistent feedback from industry trade control and compliance officials. Company officials had little ability to comment on the effectiveness or efficacy of the regulations. Without that feedback, and without the ability to test out new regulatory processes or requirements against use cases in advance of new rules being published, government regulators did not have the benefits of insight from industry to ensure Treaty success.

As those responsible for delivering the capabilities envisioned under the AUKUS partnership, AIA and our members strongly believe regular, consistent industry feedback is essential to its successful implementation. We do understand that U.S. government officials share similar views. The manufacturers, exporters, and importers of our shared industrial bases will play an integral role as the three nations take this historic partnership from concept to reality. Our industry remains steadfast in providing feedback and supporting policies that promote and advance U.S. national security objectives by maximizing speed, innovation, and technological advancement — all of which are essential for the success of AUKUS.

A correctly implemented ITAR exemption is fundamental to AUKUS success. After the passage of the FY24 NDAA, company trade compliance officials began to assess the impact of the law on their export compliance programs. What they found was the potential for a tremendous increase in the export licenses needed to execute AUKUS, not a reduction, thereby potentially triggering an increased need in resources (and associated costs) to manage said licenses. The sale of U.S. *Virginia*-class submarines to Australia serves as a perfect case study for how the U.S. export control system operates and how it may stymie the ultimate success of the AUKUS partnership.

The *Virginia*-class submarines were originally envisioned, funded, developed, and built to have only one customer – the U.S. Navy. The sale of *Virginia*-class submarines to Australia adds an entirely new compliance requirement that U.S. officials never originally envisioned: the addition of a new country to a U.S.-only program that contains some of the most guarded technology available to the U.S. warfighter. Under the existing ITAR regulations, nearly every single non-nuclear component of the *Virginia*-class submarine program for Australia, from components to services, and any personnel involved in any part of the program, needs an export license.

Without an appropriately implemented ITAR exemption, the *Virginia*-class submarine program has the potential to generate not hundreds, but thousands of new license requirements for U.S. manufacturers – which must be adjudicated by U.S. licensing officials on a case-by-case basis. It's an unsustainable situation, especially when the U.S. export licensing system is stressed by other global security cooperation requirements. Under the existing regulatory structure, it's easier to transfer nuclear propulsion technology to Australia and the UK than the conventional systems that make up the rest of the program, only because the regulatory infrastructure underpinning the transfer of nuclear propulsion, which is government-to-government, is simpler and more efficient.

The potential benefits under Pillar II are tremendous. AUKUS can be used to kickstart collaboration and investment in the industrial bases of all three countries by leveraging innovation that is already occurring. The recent trilateral Electronic Warfare (EW) challenge announced by the three governments will serve as a test case to determine best practices and establish a demand signal to facilitate rapid technology development across the U.S., Australia, and the UK. The challenge will help the three governments identify challenges in their respective acquisition structures and increase process alignment that promotes engagement from prime contractors and startups alike. AIA is already receiving feedback from U.S. companies as they respond, noting that each country sets the rules differently and largely precluded the major companies that provide electronic warfare capabilities from collaborating on innovative solutions. This first innovation challenge illustrates how involving industry early in AUKUS implementation is crucial to effective implementation.

Considerations for Effective Implementation

With the FY24 NDAA legislation in place, the U.S. A&D industry is turning its attention to effective implementation. With congressionally mandated deadlines approaching, AIA and our members are focused on providing critical feedback that will decide the future success of AUKUS. The following are recommendations AIA has identified to enable and enhance this partnership:

Creating an Excluded Technologies List

AUKUS regulatory implementation includes the development of an Excluded Technologies List (ETL). The ETL is a list of technologies within U.S. Munitions List (USML) categories that would require a license under the ITAR, regardless of the exemption. Any technology that is listed on an ETL would be subject to pre-licensing technology release as well as licensing processes to which all countries in the world, not just Australia or the UK, are subject.

AIA and our member companies strongly believe that technology security is a fundamental and critical element to maintaining our technological edge, and that of our closest partners and allies. However, an expansive ETL runs counter to the congressional intent of the AUKUS ITAR exemption, which is to promote closer technological collaboration where sometimes years-long release and licensing processes almost always result in a “yes” for the UK and Australia. The ETL must only contain the most sensitive technologies or risk maintaining the status quo, counter to AUKUS objectives. U.S. industry steadfastly understands its requirements to document AUKUS exemptions.

As the regulatory process plays out over the next few months, our combined goal should be to protect the most sensitive U.S. technologies we have through documented exemptions, while ensuring an expansive, license-free, collaborative environment that allows industry to deliver capabilities demanded by the partner governments.

Rationalizing Export Control Systems

Over the past few years, the global export control environment has fundamentally changed. Russia’s invasion of Ukraine and the resulting controls placed on Russia, as well as continued U.S. export restrictions on China, have brought export controls to the forefront of foreign policy. Governments around the world have made changes to export control policies, thus requiring companies to adhere to those regulations and adjust their trade control programs to ensure compliance.

For Australia in specific, the recent passage of its *Defence Trade Controls Amendment Act* represents a fundamental shift in its export control posture, one that will be felt by both Australians and partner industries for years to come. We must acknowledge the comprehensive change that Australia has made in its export control laws to be a full partner in AUKUS.

As an industry, U.S. and partner companies have entered new territory. The U.S., Australia, and the UK are all simultaneously updating their legislative and regulatory export control systems with each other. In an industry where regulatory compliance is sacrosanct, these major export control policy and regulatory shifts have the potential to slow AUKUS implementation as companies adjust to new, integrated regulatory structures. For those companies that have a presence in all three nations, they will be subject to three different export control regimes. Industry will need time to

adjust to the new systems among and between each country and to understand how the new systems interact with each other.

Understanding the existing and new export control regulatory systems in three different countries will be a long, complicated process. Should the U.S. find the Australian and UK export control systems “comparable,” as called for the FY23 NDAA, the job of compliance in each nation will still fall to industry. To speed up that process, it is incumbent upon the regulators in the U.S., UK, and Australia to rationalize and standardize the three systems as best as possible and be open to continuous feedback from industry.

Assessing Technology Security and Foreign Disclosure (TSFD) Modernization on AUKUS

Technology Security and Foreign Disclosure (TSFD) is a U.S. interagency export control process used to evaluate U.S.-origin technology for export to partners and allies. Primarily used by the Department of Defense (DOD) to evaluate military technology exports, TSFD involves a varying number of DOD offices to review and approve the release of technologies for export. This process has never been comprehensively examined and is one of the key drivers for delays in the defense trade system. Section 918 of the FY24 NDAA instructed the Secretary of Defense to undertake a review of the TSFD process and propose changes to improve the system. Industry welcomes this review to provide clarity and identify challenges in the TSFD process.

Regardless of the AUKUS-related licensing changes in the ITAR called for in the FY24 NDAA, the TSFD process remains an element of evaluating cooperation with and exports to allies and partners prior to the licensing process. With the forthcoming publication of the AUKUS ITAR rule, AIA and our members are also assessing the impacts of TSFD modernization on AUKUS. Ensuring that TSFD modernization and ITAR changes are aligned and holistically addressed will further ensure AUKUS Pillar II success.

Creating the “Enabling Environment” and Rapidly Delivering Capability

The success of AUKUS Pillar II comes down to one thing: can the three nations rapidly deliver advanced capabilities to the warfighter? The legislative and regulatory work to create the “enabling environment” for rapid capability delivery between the three partners is proceeding at pace. While AIA and our members remain committed to ensuring the regulatory environment is conducive to this objective, we are also focused on developing systems for the future and expanding additional partnerships needed to deliver accelerated capabilities in an AUKUS environment.

In the United States, technology security processes and delivery of capability to warfighting allies and partners is inherently bifurcated and largely uncoordinated. The ITAR licensing process is regulated by the Department of State with policy and technology inputs by various offices in the DOD, including the Defense Technology Security Administration and the international cooperation offices in the Departments of the Army, Navy, and Air Force, as well as other bodies as the Tri-Service Committee, the Anti-Tamper Executive Agent, and the National Security Agency. However, none of these regulatory offices are responsible for capability delivery to warfighters. With some notable exceptions, capability delivery falls to the acquisition executives of the military departments, none of whom have technology security and ITAR license reviews in their authorities. By and large, they exclusively are focused on delivering capabilities to U.S. warfighters under each service’s Title 10 authorities.

To rapidly deliver AUKUS advanced capabilities, the U.S. government must establish clear coordination between those responsible for export controls and ITAR licensing and those responsible for delivering warfighter capability, regardless of partner country. Embedding AUKUS Pillar II leads who are charged with trilateral capability integration in each of the military department service acquisition executive organizations could accelerate capability delivery. Additionally, defining technical and architecture standards for development and integration of AUKUS advanced capabilities that can be used for future acquisitions should be prioritized by the service acquisition officials and will make collaboration easier for both Pillars.

Giving Attention to the Regulatory Information Technology Backbone

As the three governments and industry work toward a successful AUKUS outcome for both Pillars I and II, the administrative and information technology (IT) backbone that underpins the entire defense trade system in the U.S. needs immediate attention. The IT systems that facilitate cooperation across the agencies on export license applications have regular outages, delaying license applications for U.S. industry and extending delivery timelines for allies and partners. The modernization of our export control regulatory environment must also extend to the operational improvements of the IT systems that handle the regulatory processes. Industry acknowledges the work the Department of State and the Defense Security Technology Administration are doing to ensure the systems remain operational, but time has come for a comprehensive refresh to ensure future partner and ally collaboration is not subject to IT outages.

Conclusion

The AUKUS partnership is a landmark agreement that will increase cooperation between the U.S. and its two closest partners. The sale of conventionally armed, nuclear powered submarines to Australia along with closer, integrated cooperation on advanced capabilities with both countries represents a major evolution in U.S. defense trade policy.

The AUKUS partnership can't happen without the technology innovation and production capability of American industry. Whether it's the *Virginia*-class submarines in Pillar I or the advanced capabilities and technology cooperation in Pillar II, the U.S. defense industrial base, along with the industrial bases in Australia and the UK, will continue to be called on to deliver the capabilities that will take the AUKUS partnership from policy concept to manufacturing reality.

The AUKUS moment is before us. The U.S. defense industrial base – and the communities it serves – will benefit from AUKUS. The aerospace and defense industry is poised to collectively innovate and deliver capability to make AUKUS a reality.