



**Aerospace Industries Association Comments
On**

**The Proposed Rule Entitled
“International Traffic in Arms Regulations: Exemption for Defense Trade and
Cooperation Among Australia, the United Kingdom, and the United States”**

89 Fed. Reg. 35028 (May 01, 2024)
RIN 1400-AF84
Docket No. 12377

Submitted May 31, 2024

The Aerospace Industries Association (“AIA”) submits these comments in response to the request from the Directorate of Defense Trade Controls (“DDTC”) in the above-captioned rule. The Proposed Rule entitled “International Traffic in Arms Regulations: Exemption for Defense Trade and Cooperation Among Australia, the United Kingdom, and the United States” (“AUKUS Exemption”) proposes to amend the International Traffic in Arms Regulations (“ITAR”) to reduce restrictions on defense-related trade by including a new exemption to the requirement to obtain a license or other approval from DDTC for many exports, reexports and transfers to or within Australia and the United Kingdom (“UK”).

The policy objective of the AUKUS Exemption is to enhance technological innovation among the three countries and support the goals of the AUKUS Trilateral Security Partnership. AIA and its members believe the FY24 National Defense Authorization Act (“NDAA”) ushered in a landmark shift in policy, and this legislative change represents Congress’ recognition that a modern defense trade system emphasizes flexibility over rigidity in order to foster necessary cooperation while maintaining appropriate controls.

While the AUKUS partnership is widely supported by AIA members, operational success depends almost entirely on effective implementation of the AUKUS Exemption. If implemented correctly, it will exponentially increase cooperation between the U.S. and its two closest partners. However, if it is not implemented effectively and the scope of Congress’ intent is unnecessarily narrowed, the new system will merely extend the old. The current ITAR exemptions associated with the UK and Australia (“Treaty Exemptions”) are not widely used within industry due to their stringent requirements and disproportionate administrative burdens and the new, proposed AUKUS Exemption will only be effective and usable for industry if it removes such impediments. In general, AIA members believe the Proposed Rule reflects real intent to liberalize defense trade among the countries. With some changes, we believe the AUKUS Exemption could quickly change the speed and value of defense trade for these close allies.

Part I of these comments contains introductory and background information about AIA and its members. Part II addresses the AUKUS Exemption, including the Proposed

Rule's territorial restrictions and authorized user requirements, and highlights the importance of modifying ITAR requirements relating to derivative products and the see-through rule in order for AUKUS to succeed. Part III addresses the Excluded Technology List ("ETL") and specific use cases related to the ETL. Part IV addresses the proposed Expedited Licensing provisions in § 126.15(c) and (d) as well as the need for an efficient system to license items moving outside the AUKUS countries. Part V addresses the Exemption for Classified Transfers to Dual Nationals and Third Country Nationals at ITAR § 126.18(e).

The most important theme of AIA's comments is that the Department must give full faith and credit to the fact that the Australian and UK export control systems will have been deemed "comparable" to the ITAR. One of Congress's guiding principles for AUKUS was the importance of the President's determination of "comparability" - meaning that Australia and the UK the three governments have each implemented an export control regime designed to appropriately safeguard critical technologies. This is demonstrated by the NDAA's requirement that if Australia or the UK have implemented a comparable system of export controls, then the President shall immediately exempt exports, reexports, and transfers of defense articles and defense services between the United States and that country. See NDAA Section 1343. Congress's concept of comparable systems offers a once in a generation opportunity to streamline regulatory barriers, and accordingly, warrants full collaboration between the U.S Government and industry to ensure it reaches its maximum potential for benefit.

The Commerce Department's Bureau of Industry and Security's interim final rule,¹ which eliminates almost all controls over exports, reexports, and transfers to and within the UK and Australia of items subject to the Export Administration Regulations ("EAR"), made transformative changes to the EAR and clearly aligns with Congress's intent in the NDAA to facilitate and promote cooperation and collaboration with the UK and Australia.

As discussed below, the Proposed Rule, as written, imposes various restrictions which suggest the Department may be hesitant to accept that the systems are, in fact, truly comparable. For instance, the Proposed Rule continues to require non-transfer and use assurances for all significant military equipment and requires ITAR licensing for all reexports of ITAR items outside of Australia and the UK. If the UK and Australia are to become central to the U.S. defense industrial base, the U.S. Government must strive to keep to a minimum such limitations on the AUKUS Exemption. Each limitation will make it less attractive for industry to use the AUKUS procedures and will risk this innovative agreement succumbing to the same moribund fate as the predecessor Treaty Exemptions.

¹ See 89 Fed. Reg. 28594 (April 19, 2024).

Part I – Introduction and Background

For over 100 years, AIA has advocated for America’s aerospace and defense (“A&D”) sector. 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 AUKUS partnership, global trade, foreign military sales, technology security, and other matters impacting American foreign policy. More information about AIA and the U.S. A&D sector is available at <https://www.aia-aerospace.org/>.

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. The U.S. A&D industry is a crucial partner with the U.S. government, and it is called on daily to deliver the capabilities necessary to achieve the goals articulated in both the U.S. National Security and National Defense Strategies.

AIA represents more than 300 A&D companies ranging from family-run businesses to multinational corporations, operating up and down the supply chain. AIA’s membership includes aircraft and engine manufacturers, shipbuilders, materials providers, and companies that design and build cutting-edge military, commercial, and dual-use technology.

Part II – Proposed Exemption § 126.7

Comment II.A. Scope of proposed exemption § 126.7

Comment II.A.1. Inclusion of classified defense articles (§ 126.7(a))

AIA recommends § 126.7(a), the authorizing paragraph, be revised to include the words "classified and unclassified" preceding the words "defense articles" to clearly authorize the type of export for which the instructions in § 126.7(b)(8) were written.

Comment II.A.2. Territorial restrictions (§ 126.7(b)(1))

The draft AUKUS Exemption limits its scope to transfers within and between the physical territories of the United States, Australia, and the United Kingdom. This limitation precludes use of the exemption to support the AUKUS armed forces when deployed outside their physical territories and will restrict the availability of maintenance, repair, and overhaul (“MRO”) and other service providers. AECA Section 38(l)(2) requires exemption from license requirements of transfers “between the United States and that country or among the United States, the United Kingdom, and Australia”. However, there appears to be no statutory barrier to implementing the AUKUS Exemption to include deployed locations outside the physical territories of the three countries. Here, as on other issues, DDTC should not be limited by the mandate of the FY 2024 NDAA but should act to ensure the effectiveness of AUKUS to the full extent of its statutory authorities.

AIA submits that DDTC should modify § 126.7(b)(1) to expand the authorized transfer territory to (1) include transfers to members of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity, and (2) expand to include §126.7 registered entities deployed in support of such armed forces. The addition of the armed forces aligns with language provided in § 126.18(e)(4)(ii) for dual nationals of Australia and the UK and aligns with existing policy of allowing agreements to authorize additional transfer territories supporting deployment of foreign armed forces supporting U.S. and United Nations (“UN”) missions. The addition of transfers to AUKUS registered entities is an essential addition in that most military deployments require contractor support. Excluding contractor support while deployed will require separate license authorizations which will perpetuate current limitations and directly impact military readiness.

AIA recommends amending proposed § 126.7(b)(1) as follows:

- (b) The exemption described in paragraph (a) of this section is subject to the following requirements and limitations:
 - (1) The transfer must be: (i) to or within the physical territory of Australia, the United Kingdom, or the United States; (ii) to a member of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity; (iii) to §126.7 registered entities deployed in support of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity, to include maintenance, repair, and overhaul (“MRO”) providers, or (iv) to international waters in support of AUKUS testing or operations.

In addition, AIA recommends that the AUKUS Exemption allow transfers of technical data to employees of AUKUS Authorized Users when traveling outside of the AUKUS countries, subject to appropriate conditions. Specifically, DDTC should add to §126.7 a provision similar to current § 125.4(b)(9), allowing transfers to employees of AUKUS Authorized Users. Proposed language as follows:

Technical data, including classified information, regardless of media or format, exported, reexported, or retransferred by or to an employee of an AUKUS Authorized User travelling or on temporary assignment abroad, subject to the following restrictions:

- (i) The employee of the Authorized User may only export, reexport, retransfer, or receive such technical data as they are authorized to receive through a separate license or other approval.
- (ii) The technical data exported, reexported, or retransferred under this authorization may only be possessed or used by an employee of an Authorized User. Sufficient security precautions must be taken to prevent the unauthorized release of the technical data. Such security precautions may include encryption of

the technical data; the use of secure network connections, such as virtual private networks; the use of passwords or other access restrictions on the electronic device or media on which the technical data is stored; and the use of firewalls and other network security measures to prevent unauthorized access.

(iii) Technical data authorized under this exception may not be used for foreign production purposes or for defense services unless authorized through a license or other separate approval.

(iv) Classified information may only be sent or taken outside the United States, United Kingdom or Australia in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (or the UK and AU equivalents).

Comment II.A.2.1 “United Kingdom” and “Australia” should be defined in § 120.59 or § 126.18.

The United States is defined in § 120.60 as “when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.”

AIA recommends DDTC add similar definitions for the UK and Australia to help clarify the Proposed Rule’s territorial restrictions.

Comment II.A.3. Authorized Users (§ 126.7(b)(2))

The proposed AUKUS Exemption does not specify the criteria needed to become an Authorized User for UK or Australian companies. AIA requests that DDTC and the Australian and UK governments not make the criteria for enrollment burdensome as it could cause UK and Australian companies to choose not to enroll. Registration should be similar and as simple as within the U.S where entities simply need to register with the appropriate government entity. The current criteria under the Treaty Exemptions (§126.16 and §126.17) have resulted in limited enrollments, and AIA is concerned the same result will occur here if onerous enrollment requirements are included. Limited enrollments will translate to U.S. companies not using the AUKUS Exemption.

AIA understands the three governments will create an Authorized User list, but these lists will need to be quickly established to support the rapid pace of AUKUS. DDTC, per the Preamble to the AUKUS Exemption, must coordinate the vetting of every UK and Australian company identified for inclusion. Although it is not mentioned in the Federal Register Notice, AIA requests that DDTC address whether inclusion on the Authorized User List will periodically expire and whether a re-vetting process will be necessary. If

the re-vetting will take place annually, much like a company's annual registration with DDTC, this will put additional pressure on DDTC resources. Delays associated with adding new entities to the Authorized User list, or with re-vetting, will jeopardize Industry's ability to move at the necessary pace to support the AUKUS mission.

The proposed exemption is unclear on *where* the Authorized User list will be published. AIA requests that DDTC (and the UK and Australian governments) make the lists available as part of a publicly facing website, versus contained within a user-restricted web-site such as DECCS, which is the current state for the Treaties TRS Approved Consignee Lists. Entities that are not registered with DDTC and do not have DECCS user accounts should be able to search the list as part of their support to industry, for example export control consultants and outside counsel.

Similarly, AIA also understands the three governments will be responsible for updating the Authorized User list for name changes and company mergers. It will be critical that the Authorized User list be kept current to ensure that industry may rely on the data to ensure eligibility of new UK and Australian Authorized Users and avoid interruptions or delays to on-going export activity. AIA asks DDTC to consider whether it has the resources necessary to support creating and maintaining the Authorized User list while also adjudicating expedited approvals as discussed in Part IV (Expedited Licensing). AIA is also concerned that it may be difficult for industry to use the DECCS system to verify quickly the status of a partner as an Authorized User and recommends that DDTC dedicate staff resources as a point-of-contact in such situations, at least for an interim period.

AIA also respectfully requests DDTC consider that for the list to be effective, there will need to be a clear, easy-to-use common list of all Authorized Users across the three countries via one readily accessible link. As noted above, not all persons who need to access the list of Authorized Users will be registered on DECCS and able to access a list available only through DECCS. Also, DDTC should clearly articulate, e.g., by FAQ, that a transferor should require no additional due diligence steps beyond checking the list, because DDTC has stated that sanctions and denied party screening would already be accomplished by DDTC through its Watch List review prior to placing a company on the list. Thus, absent some "red flag" to the contrary, reference to a listed company should be sufficient to ship a non-excluded defense article to a listed Authorized User in one of the three countries.

Further, the mechanics of Authorized User registration, maintenance, and termination are unclear in the Proposed Rule. Although recent government outreach has been helpful in this regard, DDTC should address the following questions in the Final Rule or in contemporaneous FAQ guidance:

- What is the mechanism for registering to become an Authorized User and how long will the process take?
- Will there be a cost associated with Authorized User registration or a required annual fee?

- If a U.S. company has UK and/or Australia subsidiaries on its DDTC registration, will these subsidiaries automatically be Authorized Users? Or will they need to opt in to become an Authorized User?
- Can DDTC confirm that for UK and Australian entities that are Authorized Users, the entity's subsidiaries in the UK or Australia will likewise be considered as Authorized Users, so as to avoid each subsidiary entity having to apply as an Authorized User?
- Will a single registration for entities with multiple locations within a country be permissible?
- How will name and address changes will be dealt with in Authorized User registrations? Would such an event prevent utilization of § 126.7 while processing of the change occurs?
- What measures does DDTC expect industry to take with respect to monitoring changes to the Authorized User list? Will there be a notification mechanism when an Authorized User is removed from the list? For example, if an Authorized User were to be removed due to a pending or closed investigation into their insufficient controls, would the rest of the Authorized User list be notified?
- How often will the Authorized User list be updated?
- Can one entity request the addition of another entity, or must each entity make the request on their own behalf?
- Will additional approvals be required for dual and third country nationals?
- What procedural recourse will be available should any UK or Australian applicant be rejected?
- How will mergers and acquisitions affect the participation of a company as an Authorized User? For instance, will an Authorized User be able to get an advance approval that a particular merger or acquisition will not affect its status as an Authorized User, to avoid any lapse in coverage?
- How will Australian and UK parties be able to confirm under their national systems that a U.S. company is an Authorized User, i.e., is an ITAR registrant? Will DDTC share information regarding ITAR registration with the Governments of the UK and Australia?
- Can the AUKUS Exemption be used to authorize an individual who is (1) a UK or Australian person and (2) an employee of an Authorized User?

AIA also suggests DDTC expand the scope of the AUKUS Exemption to include UK and Australian persons employed by an Authorized User in the United States. Such persons should not require a Foreign Person Employment ("FPE") license, so long as the technology they will access in the course of their job duties is not excluded under § 126.7. The AUKUS Exemption should authorize these individuals irrespective of whether they hold a security clearance (as is required by § 126.18).

AIA would like to highlight the potential effect of employing burdensome requirements to qualify as an Authorized User on subcontractors and vendors within the UK and Australia. Many sub-tier companies are small businesses who may not be able to

comply with stringent criteria to become Authorized Users. If UK or Australian suppliers must obtain licenses or authorizations to share data with their own in-country supply chains due to onerous Authorized User requirements, the AUKUS Exemption will have little to no effect in making transfers efficient. AIA strongly recommends creating Authorized User criteria that take into account the varying sophistication and size of companies within the entirety of a supply chain. At a minimum, prime contractors must be able to apply on behalf of their sub-tier partners.

Lastly, AIA recommends there should be a process through which a U.S Person Abroad can rely on the exemption to provide defense services to their employer. In particular, DDTC should confirm that a U.S Person Abroad may provide defense services to their employing entity under the AUKUS Exemption if their employing entity is an Authorized User.

Comment II.A.4. Recordkeeping requirement (§ 126.7(b)(4))

AIA recommends that the recordkeeping requirements found in § 126.7(b)(4) be removed and replaced with a reference to the generally applicable recordkeeping requirements found in § 120.15(e). Discrepancies exist between the two paragraphs regarding recording of recipients and Internal Transaction Numbers. Introducing alternate recordkeeping requirements will require duplication or deviations in IT system logic and variations in compliance training programs, both of which will be burdensome for industry. Best recordkeeping results come from consistent requirements.

Comment II.A.5. Remove requirement for Non-Transfer and Use Assurances (“DSP-83”) for transfers of Significant Military Equipment (“SME”) (§ 126.7(b)(6))

A core element of AUKUS is that each country has comparable systems of controls, and the respective governments and Authorized Users are trusted to not reexport or retransfer without further approval. Therefore, satisfaction of non-transfer and use assurances requirements for all SME should be removed. If the UK and Australian governments have comparable export control systems to the U.S., then the reexport/retransfer of U.S. origin items should naturally fall under their respective laws and controls. If the U.S. continues to levy extraterritorial restrictions such as the DSP-83 as part of the AUKUS exemption, that may be construed by some as meaning that the systems are not comparable, and the UK and Australia may retain or impose the same requirement (to be comparable) on U.S. companies and the U.S. Government for items they deem ‘significant’. AIA submits that similar non-transfer and use assurance requirements should also be removed from the UK rule (e.g., the UK’s End-user undertaking (“EUU”) form).

Comment II.A.6. Atomic Energy Act (§ 126.7(b)(8))

This section states that transfers of Restricted Data (an undefined term in the Proposed Rule) under the AUKUS Exemption must meet the requirements of the Atomic Energy Act of 1954. However, such Restricted Data is not subject to the ITAR (see §120.5) and therefore AIA recommends that DDTC revise this language as it may suggest that such Restricted Data could be exported under the AUKUS Exemption. AIA suggests that DDTC instead add the following at the end of this subsection: “NOTE: Refer to the Atomic Energy Act of 1954 for any transfers of Restricted Data as defined in that Act.”

Comment II.A.7. Clarification on brokering activities

As a result of the proposed language in § 126.7 which exempts the engagement of brokering activities AIA recommends DDTC modify Part 129 as follows:

- Modify §129.4 to state “Except as provided in §129.5 and §126.7...”
- Modify §129.10(b) to state: “The report shall include brokering activities that received or were exempt *pursuant to §129.5 and §126.7* from approval as follows:”

As written, § 126.7 indicates no “license or other approval” is required for “engagement in brokering activities[.]” However, without parallel modifications to Part 129, it is unclear if entities that only engage in brokering in AUKUS countries do or do not need to register as brokers.

Comment II.B. Need to address ITAR jurisdiction / see-through rule

AIA submits that it is vital for the success of AUKUS to address longstanding concerns regarding the extraterritorial application of ITAR jurisdiction to defense articles that are developed abroad, on the basis that such defense articles either (1) were produced using U.S. technical data or defense services, or (2) incorporate ITAR components.

ITAR Section 124.8(5) requires that all Technical Assistance Agreements (“TAAs”) and Manufacturing License Agreements (“MLAs”) must include a clause stating that “The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to § 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.” This language applies ITAR jurisdiction to non-U.S. origin defense articles that are “produced or manufactured from” U.S. technical data or defense services.

In addition, the ITAR contains a “see-through” rule, whereby absent a specific provision otherwise, ITAR components continue to be subject to ITAR jurisdiction after they have been incorporated into a non-U.S. origin defense article or other item, regardless of the

circumstances (e.g., where the component may have small value relative to the non-U.S. origin item, or where the component has been “substantially transformed” under international Customs principles).²

Thus, defense articles produced in the UK or Australia using U.S. technical data or defense services exported under the AUKUS exemption, or that incorporate any U.S. origin components exported under the AUKUS exemption, would be subject to the ITAR and would require ITAR licenses if exported from the UK or Australia. Indeed, such items would require ITAR licenses even if transferred solely within the UK or Australia if the AUKUS exemption did not apply, e.g., because the transfer was to a person that was not an Authorized User.

This issue has not been addressed in the AUKUS Exemption proposed rule, but failure to do so will make it much more difficult for companies to justify using the AUKUS Exemption. This is because the UK or AU products that they or their partners produce will continue to require ITAR licensing. For example, UK companies frequently partner with companies in Western Europe. Absent action, UK companies will need to get ITAR licensing in order to collaborate with such companies, reducing the appeal of using the AUKUS Exemption.

DDTC should clarify in the ITAR that defense articles produced in the UK or Australia are not subject to the ITAR merely because they are produced from U.S. origin technical data or defense services exported under the AUKUS Exemption, or because they incorporate U.S. origin defense articles exported under the AUKUS Exemption. Such action would appropriately defer to UK and Australian export control laws and regulations regarding UK and Australian origin defense articles, which is a fundamental principle of AUKUS once the countries are certified as having comparable export control systems. Such action would also enable co-development of defense products by industrial partners in AUKUS nations for customers in non-AUKUS nations, fostering strong technical partnerships between the AUKUS companies. Defense customers from the AUKUS nations will benefit from these partnerships when the companies are more capable of delivering better end-products that are more interoperable and plug-and-play between AUKUS nations. Finally, there is precedent for such action, as DDTC has confirmed that the fact that defense articles were produced as a result of defense services provided by a U.S. Person Abroad “does not subject the resultant foreign-origin

² See ITAR Section 120.11(c) (“**Integration of Controlled Items.** Defense articles described on the USML are controlled and remain subject to this subchapter following incorporation or integration into any item not described on the USML, unless specifically provided otherwise in this subchapter.”) See *also* DDTC FAQ: https://www.pmdc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_faq_detail&sys_id=e79535e31be7dc90d1f1ea02f54bcbf4 (citing ITAR Sections 120.31, 123.1, and 123.9).

defense article to the ITAR or its reexport/retransfer requirements”³ so long as the defense services were not provided pursuant to a TAA or MLA.

AIA recommends that DDTC revise Section 120.11(c) to read as follows:

“Integration of Controlled Items. Defense articles described on the USML are controlled and remain subject to this subchapter following incorporation or integration into any item not described on the USML, unless specifically provided otherwise in this subchapter. *Notwithstanding the foregoing or any other provision of the ITAR, defense articles described on the USML are not controlled and are not subject to this subchapter if they have been (1) exported, reexported or retransferred to Australia or the United Kingdom under the exemption provided in §126.7 or under an AUKUS expedited license provided for in §126.15, and (2) they have been incorporated or integrated in such countries into a foreign defense article as defined in §120.39.”*

If DDTC considers that it lacks authority under the AECA to make the above revision to the ITAR in some respect, e.g. with regard to defense articles that are incorporated abroad into a foreign defense article, AIA requests that DDTC make the above revision to the full extent of its statutory authority, and otherwise expand the AUKUS exemption to cover the above scenarios, e.g. to exempt from the ITAR reexports or retransfers of defense articles incorporated abroad into a foreign defense article.

AIA further recommends that DDTC issue an FAQ in conjunction with the issuance of the Final Rule, stating as follows:

“Question: Are defense articles produced in the UK or Australia using U.S. technical data or defense services exported under the AUKUS Exemption or under an AUKUS expedited license provided for in §126.15 thereby subject to the ITAR such that they would require ITAR licenses if exported from the UK or Australia?

Answer: No. The use of U.S. technical data or defense services provided under the AUKUS Exemption or under an AUKUS expedited license provided for in §126.15 to manufacture or produce a defense article in the UK or Australia does not render the defense article subject to the ITAR if it is not otherwise subject to the ITAR.”

³ See

https://www.pmdtcc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_faq_detail&sys_id=8cbf9d77db0ec0d05564ff1e0f9619ad .

Part III – Excluded Technology List (“ETL”)

AIA members applaud the efforts of DDTC to outline the items eligible and not eligible under the AUKUS Exemption; however, several areas require additional attention and clarification. The method of identifying excluded technologies relies on specific narratives about individual USML sub-categories that could be better aligned to the USML. In some cases, it appears subsets of excluded items are not described the same way in the USML (example: the USML Category XX(d) exclusion refers to parameters not explicit in the USML).

Comment III.A. Each ETL exclusion should be clearly justified based either on legal requirements or specific critical national security concerns.

The ETL should be limited to defense articles that are expressly justified for exclusion by legal requirements or critical national security concerns. As to legal requirements, the NDAA states that the AUKUS Exemption shall not apply to activities that are excluded by Section 38(j)(1)(C)(ii) of the Arms Export Control Act (“AECA”) or otherwise by the AUKUS Members. Section 38(j)(1)(C)(ii) of the AECA excludes the following activities:

(I) complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram payload to a range of 300 kilometers, and associated production facilities, software, or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1;

(II) individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, software, and technology, as defined in the Missile Technology Control Regime Annex Category I, Item 2;

(III) defense articles and defense services listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, including associated production facilities, software, or technology;

(IV) toxicological agents, biological agents, and associated equipment, in the United States Munitions List (part 121.1 of chapter I of title 22, Code of Federal Regulations), Category XIV, subcategories (a), (b), (f)(1), (i), (j) as it pertains to (f)(1), (l) as it pertains to (f)(1), and (m) as it pertains to all of the subcategories cited in this paragraph;

(V) defense articles and defense services specific to the design and testing of nuclear weapons which are controlled under United States Munitions List Category XVI(a) and (b), along with associated defense articles in Category XVI(d) and technology in Category XVI(e);

(VI) with regard to the treaty cited in clause (i)(I), defense articles and defense services that the United States controls under the United States Munitions List that are not controlled by the United Kingdom, as defined in the United Kingdom Military List or Annex 4 to the United Kingdom Dual Use List, or any successor lists thereto; and

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

The current ETL likely includes technology that is not restricted based on the above AECA limitations. For example, exchange of information necessary to support AUKUS Pillar I objectives to build an infrastructure and submarine industrial base capable of supporting nuclear-powered submarine capability in Australia will include manufacturing know-how related to USML Category XX(a) and (c). AIA members believe the exclusions associated with USML Category XX manufacturing know-how is more inclusive than required by U.S. law and other legal obligations. Excluding items that are not otherwise subject or restricted by law or other international obligations is contrary to the premise that Australia and UK have comparable systems with the U.S. With respect to USML Category XX, parts, components, and associated equipment that comprise submarine design, manufacture, sustainment, and training (to include systems, specialized tools, equipment, and facilities) are predominantly controlled on the USML. AIA notes that those parts and components that did transition as part of Export Control Reform are still used in or with a USML defense article (e.g., a USML XX(a) submarine) and it is difficult to separate the two, especially when defense services are involved. Therefore, efforts to support the development of Australia's capability for even minor systems, components, support equipment, maintenance facilities, or parts specialized for submarines will require certain defense services that remain subject to the ITAR.

As another example, the Canadian Exemption provides for Category XIII(b) cryptographic devices, software and components to go to Canada. Yet, the §126.7 ETL excludes these items for the UK and Australia without a clear legal basis for doing so.

See also Comment III.E.4, below, explaining a similar concern in the context of UAS.

AIA recommends that DDTC amend Supplement 2, the ETL, to cite the specific reason for control associated with each exclusion, by USML subcategory. This will provide transparency as to the ETL exclusions and enable the public to address any exclusions that are not legally required and/or to recommend changes to applicable legal

requirements where needed. For purposes of these comments, as DDTC has not provided such a “crosswalk”, AIA has provided its comments regarding the exclusions without regard to what may or may not be required to be excluded as a matter of law. We look forward to further dialogue with DDTC on this topic following the comment period.

Comment III.B. Require periodic review of ETL.

Given the potential impact of the ETL on AUKUS, AIA recommends DDTC ensure that the ETL will be reviewed, in its entirety, at least every two years, with an opportunity for public comment. In addition, the ETL should be reviewed when the Department of Defense announces and funds new AUKUS Pillar II projects, to ensure that the ETL does not impede the new Pillar II projects any more than absolutely necessary.

Comment III.C. The ETL should clarify the term “classified” in this context.

The ETL is unclear if the term “classified” includes any system that has a Security Class/Declass Guide, or if it pertains to a system that is classified when fully assembled and operational. For example, countermeasures are often sold and delivered as unclassified components and line replaceable units that only become classified when fully assembled on an aircraft with the jam codes. The only classified element added to the system are the jam codes typically supplied government to government. Since all components are currently exported as unclassified, AIA seeks to confirm that they would remain unclassified under the proposed rule and therefor eligible for the AUKUS Exemption.

Comment III.D. DDTC should create an efficient process to provide guidance on whether particular technologies are covered on the ETL or not.

Certain ETL entries contain broad and vague language such that it will be quite challenging for industry to determine if particular technology is excluded or not (for example, Category XI “articles directly related to naval acoustic spectrum control and awareness”). It is doubtful that DDTC will be able to answer questions as to whether specific items are included or excluded from the ETL without consultation with the Department of Defense’s Defense Technology Security Administration (“DTSA”) and the DoD services.

Further, it may be especially difficult for non-OEM parties to analyze whether particular technology is included or not.

Especially given potential compliance implications, DDTC should establish an expedited process for adjudicating such questions, *i.e.*, creating a template for industry requests and a defined process (including timeframes) for U.S. government adjudication. The

process should be transparent and time-limited so that industry has a reliable mechanism to determine if specific technology is or is not excluded by the ETL.

Comment III.E. ETL review determinations should be made public.

AIA recommends that ETL determinations from the proposed process described in Comment III.B be made public in summary form, consistent with the protection of business proprietary information. ETL determinations should be published in a manner similar to the CJ Final Determination Listing published on DDTC's website.

Comment III.F. Specific ETL Entries

Comment III.F.1. The exclusion entries for USML Categories XI(a) through (d); and XIII(b) and (l) should be amended.

As written, directly related technical data and defense services are only excluded if related to articles directly related to naval acoustic spectrum control and awareness described in USML Category XI(a)(1)(i) and (ii) and (c). If technical data and defense services exclusions are intended for the entire entry, the ETL should be revised. If not, recommend establishing as a separate stand-alone entry as follows:

“Articles directly related to naval acoustic spectrum control and awareness described in USML Category XI(a)(1)(i) and (ii) and (c) and directly related technical data and defense services.”

Comment III.F.2. ETL should be revised to have greater consistency with Export Control Reform (“ECR”) determinations in USML Categories VIII(a)(2), VIII (h)(1), and VIII(i).

As written, this USML Entry only captures articles identified in Category VIII(a)(2), (h)(1), and (i). It does not exclude the F-22 mission computer enumerated in VIII(h)(17); the F-22 engine and its components in Category XIX, or the F-22 Radar, and other specially designed electronic components classified in Category XI. If these items are to be excluded, their categories should be added to the USML Entry listing now, rather than leaving the scope subject to the interpretation of individual licensing officers, which is what occurred for several years following ECR.

Comment III.F.3. The entry for USML Category II(j)(9) through (11) and (k) should be removed from the ETL.

Inclusion of this entry is inconsistent given that other items classified in USML Category II are not excluded. Additionally, no USML Category II items are excluded from the UK's Open General License exclusion table.

If this entry is not removed, it requires clarification. For example, Paragraphs (j)(9) through (11) control independent ammunition handling systems, components for such systems and ammunition containers and feeder systems. It would be helpful to industry for DDTC to clarify whether the entry is intended to include ammunition-related systems that may be commonly included on military aircraft.

Comment III.F.4. Revise exclusion relating to Unmanned Aerial Systems.

The first ETL entry lists Missile Technology Control Regime (“MTCR”) articles in USML Categories I-XV and XX, as annotated on the USML by an “MT” designation, and directly related technical data and defense services. As proposed, this entry encapsulates nearly all MT items (including items related to Unmanned Aerial Systems (UAS)) on the USML. There is neither a statutory requirement, nor a policy rationale in the AUKUS context, for such a broad exclusion of UAS-related MT items from exemption eligibility.

This broad exclusion backslides from the recent evolution of U.S. national UAS policy toward treating UAS aircraft as aircraft rather than missiles. In implementing the AUKUS partnership, the proposal also diverges from the collaboration-friendly approaches adopted by both the U.S. Commerce Department in the Export Administration Regulations (“EAR”) and by the UK in their draft AUKUS Open General License (“OGL”).

The AECA provisions that govern establishment of the AUKUS ITAR exemption require (in subsection (j)(1)(C)(ii)) the following MTCR-related exclusions:

(I) complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram payload to a range of 300 kilometers, and associated production facilities, software, or technology for these systems, as defined in the Missile Technology Control Regime Annex Category I, Item 1;

(II) individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, software, and technology, as defined in the Missile Technology Control Regime Annex Category I, Item 2;

(III) defense articles and defense services listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, including associated production facilities, software, or technology;

While the statute requires a broad exclusion of defense articles, technical data and defense services “for use in rocket systems,” only complete UAS and related technology are required to be excluded. The broad exclusion of MT items in the ETL effectively treats UAS the same as rockets/missiles, and unnecessarily sweeps in UAS-related items on the USML below the level of complete UAS. Such a broad exclusion of UAS-related MT items would hamper AUKUS collaboration by retaining burdensome and time-wasting license requirements, including for sustainment activities and cooperative development efforts.

By contrast, the UK’s corresponding draft OGL for “Exports, Transfers, and Supply and Delivery, under the AUKUS” narrowly tailors the exclusion of MTCR items related to UAS. Under the relevant control entry ML 10.c, the draft OGL excludes only “Unmanned aerial vehicles (UAVs) having a range equal to or greater than 300 km” – the complete aircraft. Other items related to UAS are not excluded.

Further, in the AUKUS-related revisions to the EAR effective in April 2024, the U.S Commerce Department simply removed license requirements for transfers to the UK and Australia of all MTCR-related items subject to the EAR. This removal had no exclusions; the AECA statutory exclusion requirements did not apply, and apparently there were no policy reasons for such exclusions.

To help maximize advancement of AUKUS partnership objectives related to collaboration on UAS, the first ETL entry should be revised to more closely implement the relevant statutory requirements, as follows:

USML Entry	Exclusion
I through XV, and XX	<p>Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) or complete unmanned aerial vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram payload to a range of 300 kilometers, and associated production facilities, as defined in the Missile Technology Control Regime Annex Category I, Item 1 and controlled and annotated on the USML by an “MT” designation; and directly related technical data and defense services.</p> <p>Individual rocket stages, re-entry vehicles and equipment, solid or liquid propellant motors or engines, guidance sets, thrust vector control systems, and associated production facilities, as defined in the Missile Technology Control Regime Annex Category I, Item 2 and controlled and annotated on the USML by an “MT”</p>

	<p>designation; and directly related technical data and defense services.</p> <p>Defense articles listed in the Missile Technology Control Regime Annex Category II that are for use in rocket systems, as that term is used in such Annex, and associated production facilities, as controlled and annotated on the USML by an “MT” designation; and directly related technical data and defense services.</p>
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Comment III.F.5. The ETL is Inconsistent in Regard to Certain MT-Controlled Technology and Should be Clarified.

AIA recommends that the MT-controlled propulsion items and components specified in Category IV be permitted for export under the AUKUS exemption and removed from Supplement 2 to Part 126, Row 1.

The ETL omits MT items controlled in classifications in Category XIX. This is welcomed since these technologies are required for development of products and technologies currently described in AUKUS Pillar 2.

However, High Mach propulsion items specified in Category IV(d)(4) and components specified in Category IV(h)(13)-(15) are included in the ETL, Row 1. Gas turbine propulsion and components excluded from one section but not from the other will introduce conflicts, which will be difficult for industry to adhere to and operationalize. Many High Mach designs have common baselines which may be inseparable.

Comment III.F.6. Space-based power systems should be removed from ETL to support AUKUS Pillar 2

AIA recommends that both classified and unclassified defense articles described in USML Category XV(e)(11)(i) and related XV(f) technical data be allowed for transfer under Section 126.7 in order to fully support AUKUS Pillar 2 work. Unclassified Category XV(e) and XV(f) defense articles and technical data are allowed to be transferred under the proposed § 126.7. This will allow for initial unclassified discussions relating to the bid phase for novel space-based power generation. Notably, work on AUKUS Pillar 2 space-based nuclear power generation with the relevant regulating governmental bodies will quickly become classified. At this point, the current exclusion of classified XV(e) and XV(f) would require parties to obtain separate approval from DDTC for continued work on these programs. The recommendation avoids this problem.

Comment III.F.7. The term "Anti-tamper Articles" should be defined in the ITAR.

AIA recommends that definition(s) of Anti-Tamper Articles be added to either Part 120 (Definitions) or as a locally defined term in the ETL. In Supplement 2 to Part 126, Row 2, the term "readily identifiable anti-tamper articles" is used. However, this term is previously only identified in § 126.15 and § 126.16, and not defined elsewhere in the ITAR.

AIA notes Row 2 in Supplement 2 to Part 126 specifies that it excludes readily identifiable anti-tamper articles "not already installed in the commodity they are intended to protect." Although this clarification is helpful, AIA recommends that the term "anti-tamper articles" be defined to exclude only articles that on their own, are specially designed or specific to be used solely for anti-tamper purposes, and not to apply to commodities that incorporate anti-tamper articles but are not otherwise listed on the ETL.

Comment III.F.8. Clarify scope of exclusions for Category XIII

The proposed rule does not exclude unclassified products described in Category XI(a) or Category XIII(b) from export under the AUKUS exemption. However, the proposed rule does exclude "Articles specially designed for commodities or software described in USML Category XIII(b)."

If a company manufactures items described in Category XI(a), these items would incorporate components that are described in Category XIII(b), which in turn incorporate "articles specially designed for commodities or software described in USML Category XIII(b)".

In such a case, this inconsistency would have substantial implications for industry's ability to use the AUKUS Exemption for export operations to serve customers effectively and support the goals of the trilateral security partnership among Australia, the United Kingdom, and the United States. Given the importance of this matter, AIA respectfully requests guidance on this point and for DDTC to consider the following:

- Is the proposed exclusion language intended to apply exclusively to "classified" articles specially designed for the commodities or software described in USML Category XIII(b), or does it encompass both classified and unclassified articles? In other words, was the word "classified" inadvertently omitted from this language?
- If the language is intended to include unclassified articles in XIII(b), AIA requests that DDTC:
 - Provide further insight into the rationale behind this approach, and/or
 - Comment as to whether the application of this exclusion may impact the eligibility for use of the AUKUS exemption to export Category XI(a) or Category XIII(b) unclassified articles which contain components which

meet the definition of “articles specially designed for commodities or software described in USML Category XIII(b).”

If the word “Classified” was mistakenly omitted, AIA respectfully requests that DDTC make a correction to the final rule.

Comment III.F.9. Narrow exclusion for Category XIX(f)(1)

An AIA member receives classified items made by a UK partner, and several UK suppliers, for use on the F-35. None of the items are SME. The program is worth around \$500 million per year.

The ETL excludes from the ITAR §126.7 exemption all “Classified articles described in USML Category XIX(e), (f)(1), or (f)(2), not already integrated into a complete engine; and directly related technical data and defense services.”

Although the above items are classified, the Category XIX(f)(1) items are not similarly sensitive to other items caught under Category XIX(f)(1), e.g., parts exclusive to the F119. Without more narrow tailoring of the ETL, the manufacturer will not be able to take advantage of the new exemption for such parts.

Comment III.F.10. Narrow exclusions associated with Category XX.

Please note that comments III.F.10, 11, and 12 were provided by separate AIA members and have been included in their entirety due to the complexity of USML Category XX and its importance in achieving Pillar I objectives.

The information intended for exchange to support the AUKUS effort and build an infrastructure ready to support nuclear-powered submarines in Australia will consist of USML Category XX technical data. AIA members believe the exclusions associated with USML Category XX may be more inclusive than intended. It should be noted that almost all components of a submarine, systems, specialized tools, equipment, and facilities necessary to build/maintain submarines remain on the ITAR and did not transition to the EAR under Export Control Reform. Therefore, even minor systems, components, support equipment, maintenance facilities, or parts specialized for submarines are subject to the ITAR and captured in USML Category XX(c).

Australia currently does not have the infrastructure to support nuclear-powered submarines and will require significant assistance in this area. As such, it is anticipated that U.S. companies will be required to share technical information defined as manufacturing know-how (§120.43(e)). This includes sharing detailed manufacturing processes and techniques necessary to translate detailed design information throughout the supply chain. For example, U.S. companies procuring submarine valves from Australian vendors—who have experience with valves but not specially designed valves for nuclear-powered submarines— would need to provide manufacturing know-how to

produce the valve. This type of exchange would not be eligible under the proposed exemption.

However, possible participants in the UK and Australia with existing knowledge of submarines and submarine parts may not require such extensive detailed manufacturing techniques to produce the defense article and be more likely to only need build-to-print technical data or limited production assistance. These instances would be eligible under the exemption.

The outcome of these two situations is identical: a transfer of submarine valve technology to that country and an Australian company producing the valve. AIA members wish to point out the potential for inequitable treatment dependent solely on the sophistication level and prior experience of the UK or Australian vendor.

Due to the burgeoning nuclear-powered state of Australia, it is anticipated that manufacturing know-how transfers are inevitable. AIA requests further analysis of the exclusions for Category XX(c) manufacturing know-how exports and asks for specific systems and parts captured in Category XX(c) be excluded rather than capturing the entire subcategory. AIA proposes that the goal of the Category XX(c) exclusion is to focus on specially designed components for Category XX(b)(1) and requests the exclusion language be updated to reflect this specific technology. Otherwise, lower-level components (e.g., water pumps, welding equipment, valves, hatches, and forgings) will be subjected to licensing requirements.

Comment III.F.11. Recommend Category XX(d) (manufacturing know-how relating to Category XX(c) defense articles for AUKUS Pillar 1 submarines (i.e., crewed vessels)) not be excluded from use of the §126.7 exemption.

As written, the Category XX(d) exclusion will delay progress on knowledge transfer that is required for Australia to build its indigenous submarine manufacturing capabilities as outlined for AUKUS Pillar 1. In order to develop indigenous manufacturing capability, Australia will require manufacturing know-how and technical assistance in the form of instructional technical data process materials in ways which meet material specifications. Australia will also require instruction on the use of test and commissioning software for validation of finished quality. Therefore, AIA recommends that Category XX(d) (manufacturing know-how relating to Category XX(c) defense articles for AUKUS Pillar 1 submarines (i.e., crewed vessels)) not be excluded from use of the 126.7 exemption.

Comment III.F.12. Impediment of Pillar I objectives, Category XX

AIA recommends DDTC provide for the release of manufacturing know-how directly related to crewed vessels and articles described in USML Category XX(b) or (c). The manufacturing know-how release will only be for the *direct purpose* of supporting the

establishment of Australia's in-country capability to support a nuclear-powered submarine capability. Such *direct purpose* will include the following activities:

- Support qualification of Australian vendors to U.S. Virginia Class submarine requirements;
- Support development of Australian workforce to be capable of building and maintaining nuclear powered submarines;
- Assist Australia and the UK with the design and maintenance of a facility that is optimized for construction of the SSN-AUKUS submarine to include design/development/assembly, and maintenance/use training of tooling and fixtures for submarine construction facilities;
- Assist in design development of SSN-AUKUS; and
- Support Australia establishment of Planning Yard support for U.S. submarines, to include Virginia Class, operating in APAC region.

The above activities will require the exchange of manufacturing know-how directly related to USML XX (a) and (c) which is not restricted by any provision of the AECA. AIA points out that modern manufacturing involves design disclosures (electronic models) that are commonly linked to metadata that represents manufacturing know-how. Furthermore, design disclosures will not be of use to an inexperienced construction yard with immature infrastructure, without the manufacturing know-how of how to adequately plan, sequence and accomplish the work. Without this relief, it is estimated that upwards of 200 complex manufacturing licensing agreements could be required to accomplish AUKUS Pillar I objectives. It is AIA's position this appears to unintentionally run counter to the declared purposes of AUKUS and would be overly burdensome to both State Department and the submarine industrial base. The addition of complex licensing requirement will put additional strain on the U.S. submarine industrial base which to date has not experienced that volume, or level of complexity, of export activity.

Comment III.F.13. Technologies listed as Priorities under AUKUS Pillar 2 should be removed from the ETL barring a specific legal requirement or national security rationale.

AUKUS Pillar 2 priorities cover six advanced capability areas: Autonomy/AI, Advanced Cyber, Electronic Warfare, Hypersonics / Counter-Hypersonics, Quantum Technologies, Undersea Capabilities, plus the two cross-cutting areas of Innovation and Information Sharing.

Removing these capabilities from the ETL will increase collaboration between the US and its closest allies for specific technologies prioritized by AUKUS. The ETL categories that will impact specific AUKUS Pillar 2 Priorities include the following:

- USML Category XI(a) through (d); and XIII(b) and (I): Undersea Pillar 2 initiatives

- USML Category I through XV, and XX: MT designations in Cat IV – Hypersonics Pillar 2 initiatives
- USML Category II(k), III(e), IV(i), X(e), and XIX(g): Manufacturing know how associated with Cat IV Hypersonics Pillar 2 initiatives
- USML Category XI(d) and XII(f): classified manufacturing knowhow related to XI(a) – AUKUS Pillar 2 EW initiatives.

Part IV – Licensing

IV.A. Expedited Licensing

Comment IV.A.1. Ensure that additional AUKUS-related activities are handled via expedited licensing.

Section 126.15 only provides an expedited timeframe for “[a]ny application submitted for authorization of the export of defense articles or defense services to Australia, the United Kingdom, or Canada...” Thus, for example, it does not require the expedited timeframes for license applications for retransfers and reexports among and within the AUKUS nations or Canada. Such retransfers and re-exports should be similarly expedited. The same is true for temporary imports of defense articles and engagement in brokering activities. While such expediting is not required by the 2024 NDAA, DDTTC has authority, as noted above, to go beyond what the NDAA requires, and should do so here in furtherance of the purposes of AUKUS.

Accordingly, AIA recommends that Section 126.15(c) refer to “[a]ny application submitted for authorization of the export, *reexport, retransfer, or temporary import of defense articles, the performance of defense services, or engagement in brokering activities as described in part 129 of this subchapter, to, among or within* Australia, the United Kingdom, Canada or the United States...”

Comment IV.A.2. Revise restrictions on eligibility for expedited license processing based on physical territory and entity type.

Expedited license processing should apply to Members of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity outside the physical territory of the countries, and to entities deployed in support of the armed forces of Australia, the United Kingdom or the United States acting in their official capacity such as MRO and other service providers that may be located outside the physical territory of the countries. While such broader scope of licenses for expediting is not required by the 2024 NDAA, DDTTC has authority, as noted above, to go beyond what the NDAA requires, and should do so here in furtherance of the purposes of AUKUS.

Further, AIA members believe inclusion of the term “corporate entities” in the proposed § 126.15(c) will add confusion to the process because this term is not defined in the ITAR and appears to exclude expedited license processing for individual U.S. Persons as well as academia. As such, the term “corporate entities” should be replaced with “person” as defined in §120.61.

AIA members recommend amending proposed § 126.15(c) as follows (taking into account Comment IV.A.1 above):

Any application submitted for authorization of the export, reexport, retransfer, or temporary import of defense articles or defense services, or engagement in brokering activities as described in part 129 of this subchapter, to, among or within Australia, the United Kingdom, or Canada, describing an activity that cannot be undertaken under an exemption provided in this subchapter, will be expeditiously processed by the Department of State. *The prospective activity must occur wholly within, or between the physical territories of Australia, the United Kingdom, Canada, or the United States; to a member of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity; or to persons as defined in §120.61 from such countries when deployed in support of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity.*

Comment IV.A.3. Revise rules relating to government-to-government agreements.

AIA recommends the Final Rule clarify if and how Government-to-Government (“G-to-G”) agreements such as Memorandums of Understanding and Foreign Military Sales benefit from the expedited processing for export licenses described in 126.15(d).

Expedited processing is reserved, per the statutory provision, for license applications “that are not covered” by an ITAR exemption. The draft regulatory process defines eligible license applications somewhat differently, as “describing an export that cannot be undertaken under an exemption.” Several key ITAR exemptions that may apply to AUKUS-related transfers, including 125.4(b)(1) and 126.4(b), require USG support/action for use. In scenarios where such USG support/action was not requested or was refused, and a license application was submitted, that license application would seem to meet the statutory parameter (“are not covered”), but perhaps not the draft regulatory parameter (“cannot be undertaken”). The potential availability of these exemptions for the contemplated activity, dependent on USG support/action, should not disqualify a license application for the activity from expedited licensing treatment. The draft regulation should be modified to more closely follow the statutory requirement, by replacing “cannot be undertaken” with “is not covered”.

AIA respectfully submits that DDTC should seek to minimize the application of license requirements to G-to-G contexts, given that such programs have already been approved by the U.S. government.

Comment IV.A.4. Revise rules for expediting non G-to-G applications.

AIA members believe a defined and statutorily-required expedited licensing process for AUKUS transfers not eligible for the new exemption could be helpful if thoughtfully implemented. On the other hand, if it is implemented simply as a requirement for some decision within the prescribed time parameters, the new process may worsen the current state. Cases exceeding the time limits (for whatever reason) could simply be returned without action (“RWA”), forcing serial resubmissions and increasing delays and resource waste for AUKUS licenses that should instead have been streamlined or eliminated. For example, if MT-controlled, UAS-related items remain overbroadly excluded from eligibility for the new exemption, licenses for these items to UK and Australia could suffer this worsened treatment.

Industry’s experience with the existing §126.15 is that submissions are not always expeditiously processed. Generally, AIA members see turnarounds within this time period for applications that are for well-established programs; however, other submissions generally take longer than the 45 days mandated in this proposed section.

AIA has the following recommendations. First, AIA recommends the phrase “any review shall be completed no later than 45 calendar days after the date of the application” in the last sentence of 126.15(d) be qualified by the words “to the extent practicable”, in order to better track the statutory requirement in the NDAA.⁴ AIA members appreciate the need to ensure final adjudications of license applications are achieved in an expeditious manner. However, the NDAA does not mandate a 45-day cut-off and includes the same qualifier as suggested above. AIA members are concerned that adhering to a strict deadline will lead to unnecessary and burdensome RWAs. If a license application is not able to be fully adjudicated in 45 days, AIA members believe it would be preferable to extend the review period rather than mandating an RWA.

Second, industry would benefit from further clarification from DDTC as to how the agency intends to facilitate the expedited licensing process. For example, AIA recommends that DDTC update its Agreement Guidelines and various applicable License Guidelines to include standard language that would enable streamlined identification of applications meeting expedited licensing criteria. In addition, AIA recommends that DDTC establish an expedited process for licensing, including defined timeframes for U.S. government adjudication, and make this process public.

⁴ See NDAA Section 1344(c) (“the process must satisfy the following criteria [e.g., the 45-day period] to the extent practicable”).

Third, DDTC should provide guidance on parties that may be included in such applications. AIA notes that expedited licensing apparently does not apply to applications which include participants from non-AUKUS countries on the license or agreement application but are in support of an AUKUS end-user, such as the Commonwealth of Australia (as Section 126.15 states that such exports must occur “between governments or corporate entities from such countries”). Similarly, these provisions do not specify if parties (such as sublicensee sub-contractors) from countries other than those listed in § 126.15 may also benefit from expedited processing if they are engaged in work related to a Government-to-Government agreement between Australia, the United Kingdom, Canada and the United States. AIA respectfully requests § 126.15 be expanded to cover such situations, as use of non-AUKUS contractors and subcontractors will be necessary to support military deployments. Excluding non-AUKUS parties from the expedited licensing process may prompt industry to prepare and submit duplicative license applications to authorize the same activity, one for the AUKUS parties involved and one for the non-AUKUS parties and would require the U.S. government to devote resources to process such duplicative applications.

Fourth, AUKUS license applications should be subject only to a small number of standard provisos. AIA members appreciate the efforts outlined in § 126.15(c) and (d) to fast-track United Kingdom- and Australia-related export license submissions. However, we note that even if AUKUS licenses are expedited, they may be rendered ineffective by unexpected provisos and conditions. DDTC should collaborate with industry to align on a short standard list of provisos that may be included on AUKUS licenses in the normal course. Industry recognizes there may be circumstance which warrant non-standard provisos; however, standardization for the majority of license applications would alleviate uncertainty on the scope of activities, technical exchanges, and services that will be authorized.

Fifth, DDTC should remove unnecessary requirements to staff AUKUS license applications through multi-agency review. In circumstances where items are subject to the ETL but are in furtherance of (“IFO”) a Department of State TAA or MLA, AIA members ask that DDTC and the Department of Defense remove requirements to staff the license application through multi-agency review. In such cases, items to be exported, reexported, or transferred were already reviewed as part of the Agreement’s case review, and when applicable, as part of the Congressional Notification process. Therefore, staffing the IFO license application through multi-agency review would be duplicative and cause unnecessary delays. Similarly, where a license is required due solely to exceeding the amounts described in Section 123.15 (relating to Congressional notifications), there is no need for staffing the application.

Sixth, AIA submits that additional resources will be needed to support the expedited licensing process. AIA members are concerned that without additional resources DDTC and DTSA may not be able to process UK and Australia submissions under this new section of the ITAR because historically the proposed expedited timeframes have not materialized.

Seventh, to promote the effective implementation of this expedited licensing requirement, AIA recommends the Department of State commit to including in the annual report required by Section 1344 of the 2024 NDAA on the AUKUS Exemption a certification that the expedited timelines required under the 2024 NDAA are satisfied.

Eighth, to enhance expediting licensing, DDTC should waive agreement signature and Non-Disclosure Agreement (“NDA”) requirements for Authorized Users who are party to ITAR agreements which are (1) for end-use by AUKUS governments and (2) include non-AUKUS parties. ITAR agreements meeting these criteria will be required to support supply chain activity outside the UK and Australia, and waiving these administrative hurdles for Authorized Users included as signatories to such agreements would facilitate more efficient execution of the agreements. To support this enhancement, AIA members suggest that an NDA requirement be included in the Authorized User registration process.

Ninth, DDTC should waive agreement signature and NDA requirements for Authorized Users who are party to ITAR agreements which (1) are for end-use by AUKUS governments, (2) authorize defense articles and technology on the ETL, and (3) do not include any non-Authorized Users. While such scenarios are not eligible for the AUKUS Exemption, and hence must be licensed, there is little reason to require agreement signature and NDAs for AUKUS Authorized Users, and doing so will merely burden AUKUS objectives.

Comment IV.B. Address reexports outside of AUKUS nations

The AUKUS Exemption proposed rule does not address reexports of defense articles from the UK and Australia, where the defense articles were exported under the AUKUS Exemption.

One of the fundamental principles of AUKUS is the requirement for all nations to have comparable export control and compliance systems. If the UK and AU are considered to have comparable trusted systems, the AUKUS exemption should allow for the “reexporter’s country” export approval process to authorize reexports of defense articles received under the AUKUS exemption, and not require reexport approvals from any originating country.

1. A requirement to seek approval from the originating nations’ government will introduce a significant burden to industry and the government. For example, an Australian company could be required to obtain GC approval from both the US and UK in advance of obtaining an Australian export authorization to reexport a defense article containing technology from all three nations received under the AUKUS exemption.

2. Because the three-partner country export control systems are certified as comparable, each nation is a member of the four multilateral regimes, and the technologies are all Exemption eligible, the only reason a partner nation's independent approval system might be of concern would be related to another AUKUS partner's unilateral controls. As such, consideration of such unilateral controls could be built into the nation's review and approval process and eliminate the excessive requirements that will be required to reexport.

If this is not acceptable, AIA respectfully submits that DDTC should create special provisions to facilitate reexport applications (i.e., beyond filing General Correspondence requests as per the current system). Specifically, AIA recommends that DDTC create a new Open General License ("OGL") to allow UK and Australia authorized users to reexport unclassified ITAR items outside of AUKUS members to destinations that are not prohibited under Section 126.1 once the corresponding government of the UK or Australia has issued a license or other authorization for export. (This concept is similar to the Commerce Department's License Exception Additional Permissive Reexports ("APR"). See 15 C.F.R. § 740.16.) This would allow those companies to avoid having to get two licenses (one from DDTC and one from their country) for every reexport/retransfer. Again, based on the certification of the UK and Australian export control systems as comparable to the ITAR, there is no apparent reason to require duplicative export licensing.

AIA recommends that DDTC revise the ITAR as follows:

"Open General License No. 3

Qualifying Reexports from Australia and Canada"

(a) The Directorate of Defense Trade Controls (DDTC), pursuant to the International Traffic in Arms Regulations (ITAR) 120.22(b), hereby provides the following Open General License No. 3. Open General License No. 3 licenses the reexport (as defined in ITAR §120.51) of unclassified defense articles to any destination other than destinations prohibited under ITAR §126.1, if the reexport is pursuant to a valid export license issued by Australia or the United Kingdom.

(b) The reexport of any unclassified defense article under section (a) is subject to all the following requirements, limitations, and provisos:

(1) Requirements. The reexporter shall:

(i) comply with the requirements of ITAR 123.9(b);

(ii) maintain the following records of each reexport: a description of the defense article, including technical data; the name and address of the recipient and the end-user, and other available contact information (e.g., telephone number and

electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article; the date of the transaction; and the method of transfer;

(iii) ensure that such records are made available to DDTC upon request; and

(iv) utilize Open General License No. 3 as the license or other approval number or exemption citation.

(2) Limitations and provisos:

(i) the defense article to be reexported was originally exported pursuant to a license or other approval issued by DDTC pursuant to section 38 of the Arms Export Control Act (AECA), the Defense Trade Cooperation Treaty between the United States and Australia (ITAR 126.16), or the Defense Trade Cooperation Treaty between the United States and the United Kingdom, (ITAR 126.17);

(ii) a defense article originally exported pursuant to ITAR 126.6(c) may not be reexported under this license;

(iii) a defense article described in ITAR 126.16(a)(5) or 126.17(a)(5) may not be reexported under this license;

(iv) technical data may only be reexported under this license for the purpose of organizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article;

(v) any major defense equipment (as defined in ITAR 120.37) valued (in terms of its original acquisition cost) at \$25,000,000 or more and any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$100,000,000 or more, may only be reexported under this license for the purpose of:

i. maintenance, repair, or overhaul defense services, including the repair of defense articles used in furnishing such services, if the reexport will not result in any increase in the military capability of the defense articles and services to be maintained, repaired, or overhauled; or

ii. a temporary reexport of defense articles for the sole purpose of receiving maintenance, repair, or overhaul; and

(vi) Open General License No. 3 may not be utilized by persons to whom a presumption of denial is applied by DDTC pursuant to ITAR 120.16(c) or 127.11(a), including, among other reasons, for past convictions of certain U.S.

criminal statutes or because they are otherwise ineligible to contract with or receive an export or import license from an agency of the U.S. Government.

(c) Open General License No. 3 is an other approval as defined in ITAR 120.57(b), including for purposes of ITAR part 127. Any retransfer that satisfies the requirements specified herein may be undertaken pursuant to Open General License No. 3.

(d) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of any retransfer conducted pursuant to Open General License No. 3.

Entry Into Force

Open General License No. 3 is valid for three years, effective August __, 2024 through July 31, 2027. The Department may later consider reissuing Open General License No. 3 prior to July 31, 2027 and extend the period of validity, or otherwise amend the license.

Open General License No. 3 is limited to transactions described herein, all other transactions subject to the ITAR require a separate license or approval as described in the ITAR.

The Department of State approves Open General License No. 3 pursuant to ITAR 120.22(b) and subject to the enumerated limitations, provisos, and requirements as well as the requirements contained elsewhere in the ITAR. Open General License No. 3 may not be utilized unless and until these limitations, provisos, and requirements have been satisfied.

If DDTC is unwilling to create an OGL in the near term reflecting the straightforward mechanism described above, DDTC could move toward such an OGL over time. For instance, DDTC could take steps such as (1) expedited licensing in such situations, (2) enabling UK and Australian exporters to use the DDTC's Defense Export Control and Compliance System ("DECCS") electronic licensing system, (3) creating a presumption of approval for licensing in such situations, and/or (4) creating a pilot OGL that applies to certain less-sensitive ITAR items exported under the AUKUS exemption, *i.e.* a "positive list" approach, or excluding certain items from the OGL, *i.e.* a "negative list" approach.

Finally, in any event, DDTC should clarify that both the recipient of an item under the AUKUS Exemption as well as the original U.S exporter can apply for retransfer or reexport authorization for an item to leave the territory of Australia or the United Kingdom. This would encourage use of the exemption for time-sensitive transactions that may need coverage for servicing or repairs outside of the approved community.

Part V - Exemption for Classified Transfers to Dual Nationals and Third Country Nationals (ITAR § 126.18(e))

Comment V.A. Confirm that the use of this provision is NOT limited by the ETL.

In general, AIA members welcome this provision because it will ease the administrative burden on companies in Australia and the UK. We request that DDTTC confirm that the use of this provision is not limited by the ETL.

Comment V.B. Revise §126.18(e) to remove the requirement for an employee to be a “regular” employee.

Employment relationships may vary, especially in the context of emerging technologies as will often be the case in AUKUS scenarios. AIA respectfully submits that U.S. national security is best protected through the requirement that the individual have an AU or UK security clearance, versus imposing a somewhat arbitrary requirement that the individual be a “regular” employee as defined in the ITAR.

* * *

Thank you for the opportunity to comment on the Proposed Rule. If you have any additional questions or would like to discuss these comments further, please contact AIA via dak.hardwick@aia-aerospace.org.

Uploaded to www.regulations.gov.

Courtesy copy sent to: HeidemaSJ@state.gov