



## **CRS Report for Congress**

# **The U.S.-Australia Treaty on Defense Trade Cooperation**

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### **Summary**

The United States and Australia signed a Treaty on Defense Trade Cooperation in September 2007 that would facilitate defense trade and cooperation between the two nations. On the strategic level, the treaty would further develop ties between two very close allies who have fought together in most of America's conflicts, including most recently in Iraq and in Afghanistan. This treaty is proposed at a time when the United States has found few friends that have been willing to work as closely with the United States in its efforts to contain militant anti-Western Islamists as Australia has proven to be. The treaty with Australia needs to be ratified by the U. S. Senate to come into force.

### **U.S.-Australia Treaty on Defense Trade Cooperation**

Former Prime Minister of Australia John Howard and President George W. Bush signed the U.S.-Australia Treaty on Defense Trade Cooperation in Sydney on September 5, 2007, immediately before the Asia-Pacific Economic Cooperation (APEC) summit. Proponents view the treaty as bringing what are already very close allies even closer together by facilitating defense trade between the two states and members of their respective defense industries. However, some are concerned that a treaty approach is not the best way to deal with perceived problems with arms and defense technology export controls.

### **The Treaty**

The treaty would ease restrictions associated with the International Trade in Arms Regulations (ITAR) by creating a comprehensive framework within which most defense trade can be carried out without prior government approval. The trade must support combined U.S.-Australian counterterrorism operations, U.S.-Australia "research and development, production and support programs," and Australia and U.S. government-only

end-uses in order to be eligible.<sup>1</sup> Exports of defense articles outside the community consisting of the two governments and approved companies of the two nations would require U.S. and Australian government approval. Supporters state that the treaty will help the two nations strengthen interoperability between their military forces, help sustain them, and use defense industries in direct support of the armed forces.<sup>2</sup>

Many of the details of how the treaty will operate have yet to be worked out. According to press releases, “under the implementing arrangements that are contemplated by the treaty, our industries will move from the licensing regime under the U.S. International Traffic in Arms Regulations, to the more streamlined procedures that will be set forth in these implementing arrangements.”<sup>3</sup>

## The Australian Perspective

The treaty, which was negotiated under the former Liberal [right of center] Government that took office in 1996, would provide Australia with streamlined access to U.S. defense trade. This treaty would simplify U.S. export controls on defense articles to Australia that reportedly, along with U.S. defense industry, has been frustrated with existing restrictions.<sup>4</sup> Australia and the U.S. reportedly approved 2,361 licenses and concluded 312 agreements in 2006. The treaty would also provide Australia with:

- operational benefits from greater access to U.S. support;
- improvements to military capability development due to earlier access to U.S. data and technology;
- cost and time savings from significant reductions in the number of licenses required for export of defense equipment; and
- improved access for Australian companies involved in bidding on U.S. defense requirements, or in supporting U.S. equipment in the Australian Defence Force (ADF) inventory.<sup>5</sup>

If passed, the treaty will likely require the enactment of enabling legislation in Australia and as a result will need the support of the newly elected government of Kevin Rudd to come into force. Key legislation that may require amendment are the Customs Act of 1901, Customs Regulations 1958, and Weapons of Mass Destruction (Prevention of Proliferation) Act of 1995. Rudd’s Labor Party’s sweeping victory in the November 24, 2007 election has given him a strong mandate.

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<sup>1</sup> A treaty aimed at achieving similar cooperation with the United Kingdom was signed by President Bush and former Prime Minister Blair on June 21, 2007. That treaty was sent to the Senate for ratification on September 21, 2007.

<sup>2</sup> “Fact Sheet: U.S.-Australia Defense Trade Cooperation Treaty,” *U.S. Fed News*, September 6, 2007.

<sup>3</sup> “Press Briefing,” Four Points Sheraton, Sydney Australia, Office of the Press Secretary, The White House, September 5, 2007.

<sup>4</sup> Breanne Wagner, “Arms Sales,” *National Defense*, September 1, 2007.

<sup>5</sup> Australian Government, Department of Defence, “Fact Sheet: Australia-U.S. Treaty on Defense Trade Cooperation.”

The Labor Party has denied election year accusations in Australia that it would in some way downgrade the Australia-U.S. alliance and stated “Labor will enhance our strategic relationship and seek to make an already special friendship even stronger and more effective.”<sup>6</sup> The defense trade treaty is expected to be supported by the new Prime Minister due to the large bipartisan support for the Australia-New Zealand-United States (ANZUS) alliance in Australia. While Prime Minister Rudd views the United States and the ANZUS alliance as central to Australia’s security he has indicated that Australia would begin a staged withdrawal of troops from Iraq. He has also stated that under his leadership Australia would consider increasing the number of troops stationed in Afghanistan.<sup>7</sup>

Prime Minister Rudd has stressed that the history of the alliance is a bipartisan one that was instigated in World War II by President Roosevelt and Australian Labor Party Prime Minister John Curtin. He has also stated that “for Labor the U.S. alliance sits squarely in the centre of our strategic vision. Intelligence sharing, access to advanced technologies, systems and equipment, together with combined military exercises and training enhances Australia’s national security.”<sup>8</sup> Rudd has been described as believing that a strong American presence in the region is crucial to regional stability and that U.S. strategic engagement in Asia is central to Australia’s security.<sup>9</sup>

## **The Strategic and Political Context and U.S. Interests**

The treaty would further draw Australia into a very small circle of closely trusted allies that have stood with the United States not only in past conflicts but also in recent conflicts in Afghanistan and Iraq. It would do this at a time when the United States is increasingly unpopular in the world. In May 2007, Secretary of State Condoleezza Rice described the alliance as “... one that reflects the deep bond of enduring ideals and shared history, colonial origins, democratic development, and shared political and cultural values ... ours is an alliance that remains strong...”<sup>10</sup> During his September 2007 visit to Australia, Pacific Commander Admiral Timothy Keating stated, “Every war we fought for the last century, the Australians have been with us, and we have been with them ... they are members of the coalition of the committed, nor just the coalition of the willing.”<sup>11</sup>

The treaty could improve the image of the United States in Australia by demonstrating the benefits of the alliance. Australian attitudes towards the United States

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<sup>6</sup> Robert McClelland, “Strengthening the Australia-U.S. Alliance,” Address to the Foreign Correspondents Association, August 2, 2007.

<sup>7</sup> Stephanie Peatling, “Rudd’s Iraq Plans Unchanged After Bush Meeting,” *The Sydney Morning Herald*, September 6, 2007.

<sup>8</sup> Kevin Rudd, “Fresh Ideas: National Security Policy,” Speech to the Australian Strategic Policy Institute, August 9, 2007.

<sup>9</sup> Robert Ayson, “Kevin Rudd and Asia’s Security,” *PacNet*, November 28, 2007.

<sup>10</sup> Secretary Condoleezza Rice, “Remarks with Australian Foreign Minister Alexander Downer at the Ronald Reagan Library, May 23, 2007.

<sup>11</sup> “Keating Meets with Australian Leaders to Enhance Military Partnership,” *Department of Defense Documents*, September 21, 2007.

have changed significantly in recent years. Only 48% of Australians polled thought that the United States would be a “very close” economic partner of Australia in five to ten years as opposed to 53% that thought China would be. This is quite remarkable given that Australia is a longstanding treaty ally that has fought alongside the United States in most of America’s wars and established a Free Trade Agreement (FTA) with the United States in 2005.<sup>12</sup>

Several factors have contributed to the decline in U.S. popularity in Australia. These include Bush Administration policies; the view that the United States is a self proclaimed world watch dog; the war in Iraq; and U.S. foreign policies. Dissatisfaction with the bilateral FTA and with the United States’ position on global warming also appear to be key factors. In a recent poll sixty seven percent of Australians polled had an “unfavorable” opinion of President Bush despite former Prime Minister John Howard’s close relationship with the President. Some 48% of those polled in 2007 felt that it would be better for Australia’s national interest to “act more independently of the U.S.”<sup>13</sup>

Despite these negative polling results, some 92% of Australians believe that the U.S. will be a very close or close security partner over the next decade<sup>14</sup> and some 79% still believe that the U.S. alliance under ANZUS is “very important” (37%) or “fairly important” (42%) to Australia’s security. It is striking that despite the decreasing popularity of U.S. foreign policy since 2001, some 74% of Australians polled still trust that the United States would come to Australia’s assistance were it to be threatened by some other country. Thus, it appears that Australians draw a distinction between the current U.S. government and its policies and the long term value of the ANZUS alliance.<sup>15</sup>

## Issues for Congress

Some have expressed concern that the treaty as proposed with Australia could lead to reduced congressional oversight. Many of those concerned with the treaty are concerned not primarily because they believe Australia would transfer military technologies to unfriendly states or entities but out of concern that the treaty could undermine existing congressional oversight as defined in ITAR. The lack of supporting implementing arrangements to accompany the treaty document is also of concern to some. In September 2007, the Australian Embassy reportedly stated that details of the

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<sup>12</sup> Alan Dupont, “Benefits Offset Costs of US Alliance,” *The Sydney Morning Herald*, October 3, 2007.

<sup>13</sup> Professor Murray Goot, “Australian Attitudes Towards the U.S.: Foreign Policy, Security, Economics and Trade,” The 2007 U.S. Studies Centre National Survey Results, University of Sydney, October 3, 2007.

<sup>14</sup> Alan Dupont, “Benefits Offset Costs of US Alliance,” *The Sydney Morning Herald*, October 3, 2007.

<sup>15</sup> Professor Murray Goot, “Australian Attitudes Towards the U.S.: Foreign Policy, Security, Economics and Trade,” The 2007 U.S. Studies Centre National Survey Results, University of Sydney, October 3, 2007.

implementing agreements for the treaty would be worked out in the coming months.<sup>16</sup> The arrangements will:

define precisely how the treaty will operate in both Australia and the United States, and how its obligations will be implemented to the mutual satisfaction of both countries. These arrangements include identifying the changes that might be needed to our legal and regulatory regimes, and putting these changes into effect.<sup>17</sup>

Until such time as the implementing arrangements are made known it will be difficult to comprehend the full scope of the treaty. By using a treaty, which must be ratified by the Senate, to redefine defense trade cooperation with Australia, the Administration appears to some to be putting in place an arrangement that avoids the existing regulatory structure.

Proponents argue that the benefits of streamlining defense cooperation with this close ally far outweigh separation of powers concerns as well as the potential that Australia would be the source of technologies or weapons falling into unfriendly hands.<sup>18</sup> The potential that third party transfers could result in the re-export of U.S. technology to potential enemies is reportedly addressed in the treaty by allowing the United States to vet such transfers.<sup>19</sup> The treaty has been welcomed by representatives of the U.S. defense industry as most of Australia's key weapons systems are American-made by companies such as Boeing, Northrop, and Raytheon. Australia's defense budget has experienced a 47% real growth rate over the past 11 years.<sup>20</sup> (See attached chart of U.S. arms sales agreements and deliveries with Australia for further information.)

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<sup>16</sup> Gregory Furguson and William Mathews, "Australia, U.S. Sign ITAR Treaty," *Defense News*, September 10, 2007.

<sup>17</sup> "Australia US Treaty on Defence Trade Cooperation Fact Sheet," Attachment to Media Release of September 5, 2007 by the Office of the Prime Minister.

<sup>18</sup> "A Good Move," *Defense News*, September 10, 2007.

<sup>19</sup> Breanne Wagner, "Arms Sales," *National Defense*, September 1, 2007.

<sup>20</sup> Gregory Furguson, "Australian Defense Budget Climbs 10%," *Defense News*, May 14, 2007.

**U.S. Arms Sales Agreements and Deliveries with Australia**  
 (Total Values of Agreements and Deliveries Concluded, Fiscal Years 1995-2008)  
 (in current U.S. dollars)

Fiscal Year	Agreements	Deliveries
1995	\$149 million	\$303 million
1996	\$170 million	\$223 million
1997	\$277 million	\$196 million
1998	\$240 million	\$207 million
1999	\$394 million	\$269 million
2000	\$405 million	\$332 million
2001	\$157 million	\$308 million
2002	\$169 million	\$232 million
2003	\$389 million	\$213 million
2004	\$478 million	\$185million
2005	\$380 million	\$391 million
2006 <sup>a</sup>	\$2.44 billion	—
2007 (estimate)	\$277 million	—
2008 (estimate)	\$406 million	—

**Source:** Defense Security Cooperation Agency (DSCA), *Fiscal Year Series*, as of September 30, 2005, and the State Department's *Congressional Budget Justification for Foreign Operations FY2008*. Note: DSCA's fiscal year begins on October 1<sup>st</sup> and ends on September 30<sup>th</sup>. These data represent U.S. government-to-government agreements and deliveries under the U.S. Foreign Military Sales (FMS) program.

**Note:** This chart was compiled by Information Research Specialist Tom Coipuram.

- a. The 2006 sales figure is significantly higher than other years listed due to the sale of up to four C-17 Globemaster III aircraft, up to 18 Pratt & Whitney F117-PW-100 engines, up to three MK 41 Vertical Launch Systems, up to three MK 7 AEGIS Weapon Systems, as well as associated equipment and services. The total value, if all options are exercised, could be as high as \$3 billion. See "Australia — C-17 GlobeMaster III Aircraft," Defense Security Cooperation Agency (DSCA) News Release, April, 3, 2006, and "Australia — MK 41 Vertical Launch Systems," DSCA News Release, July 14, 2006.