Welcome
US-UK Defence Trade Cooperation Treaty - Introduction

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Introduction
This presentation will cover:

- Objectives of the Treaty
- Potential benefits
- How does it work?
- Next Steps
Current US Export Control Issues

- US export control regime requires individual ITAR licences for all defence exports & transfers to the UK.
- Can be slow, complex & unpredictable.
- Administrative burden.
Treaty Origins

- Iraq War - lessons learnt.
- ‘Special Relationship’.
- Bush & Blair - ‘The Big Idea’.
- Transatlantic Trade - more efficient & responsive.
- Previous UK attempts for ITAR exemptions since 2000 all failed.
- US Congress ‘conservative’ about relaxing Export Controls.
- 5 years of complex negotiations - US Senate finally consents in 2010.
- Treaty finally comes into force – 12 April 2012.
Treaty Objectives

- Strengthen & deepen defence & security relationship between UK & US.
- Improve interoperability between UK & US forces & support provided to our Armed Forces.
- Facilitate closer UK-US cooperation including between our Industries.
- Enhance strengths of UK & US defence industries.
- Get the best US and UK equipment to the front line quicker.
Treaty operation

- Allows for export or transfer of certain US defense articles & defense services controlled pursuant to the ITAR within an Approved Community (AC) in the US & UK.
- More on the AC later.
- Serve as the basis for an ITAR exemption (22 CFR ITAR 126.17).
- Only Canada & Australia have similar exemptions.
- UK has created new Open General Export Licence (OGEL) for defence exports under Treaty to the US.
How does the Treaty Work?

- Permits ITAR exemption for USML items if (and only if):
  - Project is for UK and/or US Government End Use and on an approved list;
  - Recipient(s) are members of the UK and US Approved Community; and
  - Items are not on Exemptions List of excluded items (see ITAR Part 126, Supplement No.1).
Treaty Scope & Five Key Lists

- Treaty can only be used for UK & US Government end-use programmes only – it will apply to transfers in support of:
  - **List One** - UK & US combined military or security operations;
  - **List Two** - UK & US cooperative security & defense research, development, production, & support programmes;
  - **List Three** - Specific defence projects where HMG is end-user; and
  - **List Four** - US Government end-use.
- **List Five** - Intermediate consignees also published on a list.
- All lists controlled & published on DDTC website.
- Basically, you can only use the Treaty if your business relates to a programme on one of the approved lists.
Other Conditions for Use of the Treaty

- Access to Treaty items/technical data permitted ONLY to staff with UK Security Check (SC) clearance granted by Her Majesty’s Government.
- Unclassified items must be classified UK RESTRICTED while in the UK Approved Community & ultimately protected under the UK Official Secrets Act.
- Re-transfer and re-exports out of the UK Approved Community will still require US Dept of State approval and UK MOD approval via F680 process.
- Detailed marking & record keeping requirements.
- Only intermediate consignees specified in the approved UK Intermediate Consignees list may be used.
Benefits to the UK & US Armed Forces

- Improved access to equipment from US to support UK frontline troops.
- Improved ability to counter emerging threats.
- Longer term, improved interoperability between UK & US forces.
- UK & US industry better able to work together to develop new capabilities – more cost effective, so better value for defence.
Benefits to UK industry (1)

- Removal of need for individual ITAR licence applications for each transfer when for US/UK Government end-use.
- Ability to share information more easily without the need for a Technical Assistance Agreement.
- UK & US companies better able to work on joint projects. Faster, easier & more efficient.
- Better opportunities for UK Approved Community members to access US defence programmes.
- UK companies may gain competitive edge if they can directly bid on qualifying US Government programmes.
- A contract advantage: receiving ITAR controlled data in a timely fashion means UK companies won’t miss out on RFPs.
- Unlike a TAA, scope & conditions are revealed up front.
- Unlike a TAA, there is no expiry date.
Benefits to UK Industry (2)

- Eliminates time & cost spent on preparing export licenses & other approvals.
- UK & US Industry partners may immediately begin discussions & collaboration on projects that qualify under the treaty.
- No time spent on drafting, submitting & obtaining export authorisation for the transaction.
- Possible to transfer items to different suppliers within Approved Community without need for re-transfer authorisation from the US Dept of State.
- All these elements create a powerful tool that can be used to rapidly respond to time sensitive, mission critical requests.
- Treaty is up and running whereas wider US Export Control Reform is still work-in-progress.
An Evolving Process

- Use of Treaty will start to become more widespread.
- First live Govt to Govt Treaty transaction – December 2012.
- Learn from experience.
- End Use lists will be updated.
- Approved Community members will grow.
- Scope of Exempted Technology List will hopefully be narrowed as trust & confidence grows.
- Increasing feedback & evidence from UK defence industry.
- US ITAR licenses will still be required for technologies not covered by the Treaty & for facilities not in the Approved Community.
Engaging with industry feedback & concerns

- ADS Group Ltd has formally written to Treaty Management Board co-chairs (17 September 2012) summarising early feedback and concerns.
- US and UK government currently addressing concerns to improve future utility of the Treaty.
- Will continue to work closely with Export Group for Aerospace and Defence on Treaty issues.
Industry Engagement Plan

- Industry Symposium held in London on 2 October.
- Both co-chairs attended & participated.
- Attended by over 100 delegates.
- Raised awareness & understanding of Treaty.
- Now undertaking comprehensive regional engagement across UK.
- Started in Scotland on 10 December.
- Many events planned for rest of UK during 2013.
- Support industry when considering benefits of joining the Approved Community – due diligence.
What’s happening in the US?

- US Government is running their own outreach plan with US industry.
- British Embassy in Washington is actively encouraging US companies to support the Treaty and open up opportunities for UK Approved Community members.
Next Steps

- UK continues to assess broad scope of the Exempted Technology List.
- Completed commercial guidance for MOD Project Teams.
- Training Courses for MOD UK personnel.
- Supporting ADS Group Ltd to publish comprehensive UK guidance for industry.
- Considering application of Treaty to current & future operations, programmes & projects.
- Reviewing application process (more on this later!)
- Already updated Intermediate Consignees list.
- ITAR licenses will still be required for technologies not covered by Treaty & for companies not in the Approved Community.
Questions
US/UK DEFENCE TRADE COOPERATION TREATY

THE APPROVED COMMUNITY

Arthur Browne – International Relations Group, Defence Equipment & Support

West of England Aerospace Forum, Bristol
Tuesday 15 January 2013
Topics to be covered

- Approved Community (AC) Application Process.
- Hints and Tips.
- Costs.
- Benefits of Membership.
- How do I apply?
- Questions?
Application Process (1)

- All US companies registered with US Dept of State for licensing are automatically AC members.
- But, in the UK, existing MOD List X Industrial Security clearance does not provide automatic AC membership.
- UK companies must submit separate AC application form to MOD Security Advice Centre (SAC).
- It’s the facility/entity that joins the AC not the company.
- Application Form will ask for details on:
  - Name & address of facility to join;
  - Name & address of Head Office (if different);
  - Personal details of Facility Security Controller;
  - Personal details of Board member to be company level point of contact;
  - Personal details of Chairman, Deputy Chairman & Directors.
- SAC undertakes due diligence checks with other UK Government Departments & Agencies.
- If SAC checks are OK, SAC sends nomination form to US Dept of State who undertake additional checks.
Application Process (2)

- Background Checks will explore:
  - Foreign ownership, control or influence;
  - Previous convictions for export control law violations in the view of either government;
  - Previous US export licensing history; and
  - National security risks & contacts with countries subject to arms embargoes/supporting terrorism.
- If satisfactory, State confirms checks have been completed and sends nomination forms back to SAC with conditional approval.
- SAC tasks MOD Assurance Team to visit facility for further due diligence.
- Assurance Team send data capture form & security questionnaire to company in advance of the visit to speed up the process.
- Assurance Team completes visit & provides report back to SAC.
- If adjustments required, a further visit may be necessary.
Application Process (3)

- When standards are achieved Assurance Team will send final recommendation to SAC.
- SAC reviews Assurance Team report & makes final recommendation to MOD Principal Security Adviser on suitability for admission to UK Approved Community.
- Principal Security Adviser informs company and US Dept of State process has been completed.
- US Dept of State allocates US AC ID Number (ACID Number).
- Details added to list of approved UK AC members.
- Facility can start using the Treaty.
- Note – Applications may be vetoed by either government.
- Data Protection Act.
Hints and Tips (1)

- Don’t be afraid to ask questions.
- However, MOD cannot provide legal advice.
- Companies must seek own legal advice during the application process (if necessary) as part of due diligence.
- Must submit a hard copy application form; original signatures are required from authorised company Director.
- Physical assessment of your facility may involve entire site & take a full day.
- Collate documentary evidence prior to site visit to ensure a productive assessment.
Hints and Tips (2)

- Management actions/support may be required prior to any recommendation regarding your facility.
Costs

- Administration
  - Complete Application Form
  - Complete Data Capture Form
  - Assurance Visit
  - Complete vetting applications

- Infrastructure improvements?
- Security furniture?
- Day to day Security
- MOD believes there should be no significant increased cost – should be seen as Industrial Security best practice.
Benefits of AC Membership

- Exclusive Trans-Atlantic club.
- Faster supply of US/UK equipment & information in support of military operations.
- Application & ongoing membership is **FREE**.
- Entire supply chain can apply for membership (provided UK based).
- Overseas companies/facilities cannot join the AC.
- No need for an existing MOD contract or List X sponsor.
- May offer commercial advantage to your company.
- Application currently includes FREE independent security audit of your facility & regular ongoing security support & oversight.
- MOD believes membership is equivalent of having an insurance premium.
State of Play

- 5 UK companies already have facilities in the AC.
- Over 20 additional applications currently being processed.
- Steady & encouraging progress, but more to do.
- Early evidence suggests more attractive for SMEs.
- Regional engagement with industry will increase number of applications.
- US companies already in the AC will start to ask whether future business can be carried out under the Treaty.
How do I apply?

- MOD website.
- Industry Security Notice 2012/01.
- Application Form is at Annex A.
What happens if I join & need to transfer US defense articles & technical information to a non-AC member?

- Department for Business, Innovation & Skills website.
- Guidance note for Exporters 2012/17.
- Explains MOD F680 process.
How to contact us

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The U.S. Government perspective on the U.S.-UK Defence Trade Co-operation Treaty

Anna Kerner, Political Officer, Political Section
U.S. Embassy, London
The U.S.-United Kingdom Defense Trade Cooperation Treaty
The Treaty is a Powerful Tool

• The International Traffic in Arms Regulations (ITAR) now allow for the export to the UK, and the retransfer within the UK, of many defense articles and services without the wait and uncertainty associated with traditional ITAR authorizations.

• The only other country that has a similar exemption in the ITAR is Canada. Today, the majority of defense articles and services sent to Canada are exported pursuant to this ITAR exemption.

• We look forward to working with the community that uses the ITAR treaty exemption to make it a more powerful tool.
How Do I Use the ITAR Exemption?

ITAR treaty exemption check list:

- Is your transaction pursuant to an authorized end-use?
- Is the item being exported/transfered eligible?
- Is the recipient a member of the Approved Community (e.g., an authorized recipient)?
- Am I using an authorized intermediate consignee?

These are the same questions you need to ask when you are exporting under a traditional ITAR authorization.

For the text of the exemption, see §126.17 of the ITAR
Scenario 1: The UK Ministry of Defence needs to have military helicopters overhauled/repaired. The program is on the list of authorized end-uses.

*Under the ITAR Treaty Exemption:* Approved Community members in the UK can obtain the parts, components and technology from the U.S. supplier immediately. Thereby meeting an urgent operational need more quickly.

*Under an ITAR license or other written authorization:* The U.S. supplier must apply for and receive an authorization before the items can be shipped.

If you are a member of the Approved Community, you can get ITAR items faster and more reliably.
Sample Treaty Exemption Export

Scenario 2: The U.S. Department of Defense releases a RFP, open for 30 days, which contains a clause noting it is an ITAR treaty exemption eligible RFP. A U.S. firm wants to team with a UK firm on the bid, but first it needs to send the UK firm ITAR controlled technical data.

Under the ITAR Treaty Exemption: Approved Community members in the UK can immediately receive the ITAR controlled technical data and develop their response to the proposal within the 30 day deadline.

Under a license or other written authorization: It would be difficult for the U.S. company to prepare the ITAR license, submit it and get an approval with sufficient time left to collaborate with the UK company on the RFP. The U.S. company may choose to work with a U.S. partner instead.

If you are a member of the Approved Community, it can make it possible to team with U.S. partners.
TAA vs. Treaty Exemption

**Technical Assistance Agreement (TAA)**
- You need to apply for it and wait for approval.
- You need to wait and see what will be approved and what the conditions are.
- Authorization limited to what you apply for. Need a modification if you exceed it.
- Is valid for a limited period of time.

**Treaty Exemption**
- You can use it without the need to apply and wait for approval.
  - This is important when it comes to bidding on contracts.
- You know the scope and all the conditions upfront, so you can better structure bids/contracts.
- Broad authorization. Allows you to broaden scope of activities through the course of the project.
- Is valid indefinitely.

Each has conditions to comply with, accept the ITAR treaty exemption conditions do not change, so compliance procedures are predictable and there is no lag time associated with traditional ITAR authorizations.
UK firm pursues an opportunity that necessitates an exchange of ITAR controlled goods/technology between the UK and the U.S.

**UK firm is in the Approved Community**

- Acquire the technical specifications under the Treaty:
  - No regulatory delay

- Submit tender bid and enter into technical discussions with U.S. firm using the Treaty OGEL:
  - No regulatory delay

- Ship goods to the U.S. firm using the Treaty OGEL:
  - No regulatory delay

**UK Firm is not in the Approved Community**

- Acquire the technical specifications through traditional ITAR authorization:
  - DSP-5 - ~15-30 days,
  - TAA - ~3+ months

- Submit tender bid and enter into technical discussions with U.S. firm using traditional ITAR authorization:
  - UK SIEL -20 working days; Other OGEL - no regulatory delay; DSP-5 - ~15-30 days, TAA - ~3+ months

- Ship goods to the U.S. firm using traditional methods:
  - UK SIEL -20 working days;
  - Other OGEL - no regulatory delay
Keep this in Mind

• Many companies already operate under multiple ITAR licenses that have varying conditions, therefore, the provisions of the ITAR treaty exemption should not be that much different to comply with.
  
  – ITAR licenses have varying conditions on them, to include limits to what items can be exported, which end-users can have them, who the intermediate consignees are, etc.

• The ITAR treaty exemption creates a blanket authorization to operate under. You know all of the conditions up front.
  
  – The two major differences between a traditional ITAR authorization and the ITAR treaty exemption are the Approved Community membership requirement and the requirement to mark exports. These are, however, similar to the authorized end-users on a licenses and the license record keeping requirements.
Myths

• U.S. Export Control Reform will supersede the Treaty.
  • **FALSE**: It will compliment the goals of the Treaty and the ITAR treaty exemption is here today.

• I cannot use the treaty systems if there is exempted technology associated with my program.
  • **FALSE**: You simply need to have a TAA, license or other approval in place for the exempted technology.

• I cannot use the treaty systems if the program involves parties outside the UK or Approved Community.
  • **FALSE**: You simply need to have a TAA/license in place that will cover movement of items to those parties.
• The Exempted Technology List (ETL) is too broad.
  – The ETL is a list that will change over time; as technology changes new items will be placed on it and others will be removed. Also, over time, as comfort develops with the Treaty systems, it may result in a narrowing of the ETL.

• The requirement to mark items is impractical or expensive/onerous.
  – The ITAR notes that where it is “impracticable” to physically mark items, you do not mark them, just the accompanying documentation (similar to a license). Recognizing that the marking requirements are in the Treaty we will, in conjunction with our Treaty partner, continue to evaluate how marking can be simplified.
• The Approved Community process is intrusive.
  – The end-users on all of our licenses are screened against various data bases to help ensure that only appropriate parties receive U.S. munitions. We need to do this check for Approved Community companies as well.
  – In addition to this, we must comply with the requirement to ensure that a company or a senior official of the company is not debarred under U.S. law. To do this, we need data on the company and its senior officials.
How is the U.S. Conducting Outreach to Potential Treaty Exemption Users

U.S. private sector:
• Meeting with relevant industry groups and trade associations.

U.S. Government:
• Provide training for contracting officers and other military users.
We Appreciate Your Insights

In order to make the Treaty systems more efficient we need and greatly appreciate your insights!

• In some situations, we are bound by the provisions of the Treaty, which cannot be changed.

• However, we have varying degrees of flexibility in other areas and we plan on exercising this flexibility to make the treaty systems work more efficiently over time.

Our ultimate goal is to have as much ITAR controlled trade as possible utilize the ITAR treaty exception. This will help build a closer security relationship between the U.S. and one of our closest allies.
How Do I Find Out More?

U.S. Government:

- The DDTC Website:
  www.pmddtc.state.gov/treaties

- Department of State Point of Contact:
  Sarah Heidema: (202) 663 2809
  heidemasj@state.gov
Coffee Break
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UK/US DEFENSE TRADE COOPERATION TREATY (DTCT) – A VIEW FROM UK INDUSTRY
UK/US Defense Trade Cooperation Treaty (DTCT)

**Background**
- Signed in Summer 2007
- Presented to the Senate Foreign Relations Committee for approval and ratification in January 2008
- Ratified at the end of September 2010
- Implemented in April 2012

**Aims/Context**
- Intended to free up bilateral defence trade between the UK and the USA
- It does **not** mean an end to ITAR (it is an exemption)
- It is bi-lateral, and is not linked to any other Treaty (e.g. Australia/US Treaty)
- **However**, the DTCTs Implementing Arrangements are complex and may reduce its utility
- But there is an opportunity to improve
UK/US DTCT – Intended Benefits (1)

- Provides simpler arrangements for export of controlled technology from the US to the UK
- Provides more expeditious access to tender information from the USA for UK firms
- Facilitates more effective liaison within transatlantic companies
- *Gives cheaper access to ITAR-controlled goods and technology from the US for UK firms*
UK/US DTCT – Benefits (2) – An Example

UK Company pursuing a business opportunity which would necessitate the bi-lateral exchange of ITAR-controlled goods/technology between the UK and the USA

If the UK Company IS part of the “Approved Community” under the Treaty

- Acquire the technical specifications under the Treaty
  - Almost immediately

- Submit tender bid to the USA using the proposed Treaty OGEL and enter into technical discussions on it
  - Almost immediately

- Ship goods to the USA using the proposed Treaty OGEL
  - Almost immediately

If the UK Company is NOT part of the “Approved Community” under the Treaty

- Acquire the technical specifications through normal ITAR routes
  - DSP-5 takes c.15-30 days. A TAA may take several months and scope is defined

- Submit tender bid to the USA using normal UK licensing routes and enter into technical discussions
  - UK SIEL – 20 working days or other OGEL – almost immediately

- Ship goods to the USA using normal UK licensing routes
  - UK SIEL – 20 working days or other OGEL – almost immediately
UK/US DTCT – Dispelling some myths

- It does not “replace” the ITAR.
  - The Treaty is implemented as an **exemption** to the ITAR (22CFR126.17)
  - Recipients of Defense Articles or Technical Data are still required to handle the technology in a controlled manner.
  - Any movement of Defense Articles or Technical Data beyond the boundary of the “Approved Community” requires US State approval as well as UK Form 680 approval.

- It can’t be used for any USML “export”
  - There is an Excluded Technology List

- It can’t be used for all HMG programmes

- It will not suit every company, nor even all activities within a business unit
UK/US DTCT – constraints/considerations (1)

1. “Excluded Technologies List”
   - **Is very extensive**
   - **Problem:** ETL extent is off-putting for both US and UK companies.
   - **Possible outcome:** “It’s easier to stick with “normal ITAR””
   - **The good news?** There are on-going activities relating to the Export Control Reforms which are intended to produce a more focused ITAR-controlled Munitions List. This could assist in reducing the size of the “Excluded Technologies List”.

2. Transfer restrictions
   - Restricted to specified UK programmes and USG programmes intended for the ultimate end-use of the UK and/or US Governments, and not being supplied to third nations
   - **All transfers under the Treaty must ONLY involve UK and/or US companies**
   - **Problems:** There are relatively few entirely national projects. Many firms make use of global supply chains, and look further afield for potential customers
   - **Likely Outcome:** US and UK companies may prefer to continue existing ITAR arrangements (TAAs, MLAs, Licenses) rather than the Treaty
UK/US DTCT – constraints/considerations (2)

3. Security Clearance

Only “SC” security cleared employees of UK firms in the “Approved Community” will be allowed access to the controlled US technology.

This seems excessive considering the Treaty only covers unclassified technology.

Also, the ITAR has changed significantly in relation to security clearance, following the US/UK Government negotiations and exchange of letters in 2011. (UK companies can make use of the Baseline Personal Security Standard (BPSS) for their dual and third country nationals (ITAR 126.18 screening requirements)

Proposal/Way ahead: Industry has proposed to HMG and USG officials that the DTCT arrangements be amended to enable use of the bilateral agreement negotiated in 2011

4. Protective Marking

All Treaty items are to be marked “RESTRICTED” when within the UK “Approved Community”

UK MoD intends abolishing its “RESTRICTED” classification

Proposal: Clarification by HMG is essential
5. Use of MoD Form 680 system

- Treaty requires the use of the F680 system to cover re-transfers outside of the “Approved Community” in addition to State Department approval
- This adds little benefit to the Treaty
- **Proposal:** Review use of F680 as it offers little beyond the State Department approval

6. Companies will have to operate parallel compliance systems

- Such parallel compliance systems invariably involve additional cost and risk of non-compliance. Benefit of Treaty may be outweighed by cost/complexity
- Enforcement powers under the DTCT?
- **Proposal:** Work to harmonise ITAR, EAR, Treaty, UK national regulations, ICT, etc, etc.
UK/US DTCT – constraints/considerations (4)

7. Use of Personal Data

- The personal details of Directors are passed on as part of the process of applying for Membership of the “Approved Community”
- Does this breach the UK’s Data Protection Act 1998?
- Proposal: Authoritative and definitive legal clarity is required. An alternative way to share information may need to be found.
UK/US DTCT – The practicalities

The DTCT will not be suitable for everyone

“Non-Recurring” activities

- Evaluating benefit and submitting application to MoD
  - Excluded Technologies list” (ETL)
  - Programmes in scope
  - Supply chain considerations
- Site security audit by UK MoD Security
- Security screening – all persons involved need SC clearance
- Developing alternate means of marking, storing and using Defense Articles and Technical Data received under DTCT
- Implementing a “parallel” compliance programme

“Recurring” activities

- Convincing US parties to use the Treaty
- Training
- Enforcement/compliance programmes
UK/US DTCT – the future

- **HMG and USG officials have been listening**
  - There may be some “quick wins” where the implementing arrangements have delegated authority to the DDTC. Some industry aspirations may take longer to come to fruition as they may need to be referred back to the US legislature
  - UK MoD is assisting ADS/EGAD in drafting guidance on the Treaty for companies, which should come out in 2013
- **Industry Trade Associations** such as ADS/EGAD (and SIA in the US) are supportive, and are assisting with the “outreach” activities to ensure that companies are able to make informed decisions about whether they should apply for Membership of the “Approved Community”
Questions and contact details

Questions?

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