TREATY


Sec. 1. Senate Advice and Consent subject to two reservations, one understanding, and three declarations.

The Senate advises and consents to the ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the “Convention”), adopted at The Hague on November 23, 2007 (Treaty Doc. 110–21), subject to the reservations, one understanding, and three declarations set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20 of the Convention.

Sec. 2. Reservations. The advice and consent of the Senate under section 1 is subject to the following reservations, which shall be included in the instrument of ratification:

(a) In accordance with Articles 20 and 62 of the Convention, the United States of America makes a reservation that it will not recognize or enforce maintenance obligation decisions rendered on the jurisdictional bases set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20 of the Convention.

(b) In accordance with Articles 44 and 62 of the Convention, the United States of America makes a reservation that it does not consent to the use of the French language in communications between the Central Authority of any other State and the Central Authority of the United States of America.

Sec. 3. Understanding. The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

The United States is not a party to the Convention on the Rights of the Child and understands that the reservation of the Convention in the preamble of this Treaty does not create any obligations and does not affect or enhance the status of the Convention as a matter of the United States or international law.

Sec. 4. Declaration. The advice and consent of the Senate under section 1 is subject to the following declaration, which shall be included in the instrument of ratification:

The United States of America declares, in accordance with Articles 61 and 63 of the Convention, the United States of America the Convention shall extend only to the following: all 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Sec. 5. Declarations. The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) The Convention sets forth a special procedure for the amendment of the forms annexed to the Convention. In the event that the United States of America does not have a particular amendment to the forms adopted in accordance with Article 55 to enter into force for the United States of America on the first day of the seventh calendar day after the date of its notification by the depositary to all parties, the Executive Branch may by notification in writing to the depositary make a reservation, in accordance with Article 62 of the Convention, with respect to that amendment and without the approval of the Senate.

(2) This convention is not self-executing.

TREATY WITH UNITED KINGDOM CONCERNING DEFENSE TRADE COOPERATION

TREATY WITH AUSTRALIA CONCERNING DEFENSE TRADE COOPERATION

Mr. REID. Mr. President, I ask unanimous consent that the Senate consider Calendar No. 6, Treaty Documents Nos. 110–7 and 110–10; that the treaties be considered as having advanced through the various parliamen-

tary stages, up to and including the presentation of the resolutions of ratification; that any committee reservations and declarations be agreed to as applicable; that any statements be printed in the RECORD; further, that when the votes on the resolutions of ratification are taken, the motions to reconsider be considered made and laid on the table en bloc, and the President of the United States be immediately notified of the Senate’s action.

The PRESIDING OFFICER. Without objection, Mr. REID, Mr. President, I ask for a division vote on each resolution of ratification.

The PRESIDING OFFICER. A division has been requested.

Senators in favor of the resolution of ratification, please rise.

Those opposed will rise and stand until counted.

With two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification was agreed to, as follows:

TREATY

[Treaty with United Kingdom Concerning Defense Trade Cooperation (Treaty Doc. 110–7)]

Section 1. Senate Advice and Consent subject to Conditions, Understandings And Declarations.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on June 21 and 26, 2007 (Treaty Doc. 110–7) (as defined in section 5 of this resolution), subject to the conditions in section 2, the understandings in section 3 and the declarations in section 4.

Section 2. Conditions.

(1) United States preparation for treaty implementation.

(A) At least 15 days before any exchange of notes pursuant to Article 20 of the Treaty, the President shall submit to the Congress a report—

(i) describing steps taken to insure that the Executive branch or congressional action required to implement the Treaty is so ordered that United States industry are prepared to comply with Treaty requirements;"
September 29, 2010

CONGRESSIONAL RECORD — SENATE

(2) Treaty partner preparation for treaty implementation. Before any exchange of notes pursuant to Article 20 of the Treaty, the President shall certify to Congress that the Government of the United Kingdom has promulgated all necessary regulatory changes, including:

(A) changes to export control regulations, setting forth a Treaty-specific Open General Export License (OGEL);

(B) changes to the United Kingdom Security Policy Framework and related security regulations for Government and United Kingdom Industry; and

(C) changes to the MOD Classified Material Releasing Procedures, to take account of Treaty Re-exports and Re-transfers.

(3) Joint operations, programs and projects.

The Secretary of State shall keep the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives informed of the lists of combined military and counter-terrorism operations developed pursuant to Article 3(1)(a) of the Treaty; cooperative security and defense research, development, production, and support programs developed pursuant to Article 3(1)(b) of the Treaty; and specific security and defense projects developed pursuant to article 3(1)(c) of the Treaty. (4) Reports.

(A) The President may remove a Defense Article from the list of Defense Articles exempt from the Scope of the Treaty, the President shall provide a copy of the Federal Register Notice delineating the policies and procedures that will govern the control of such Defense Article, consistent with Section 4(7) of the Implementing Arrangement, as well as an explanation of the reasons for adopting those policies and procedures, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives within five days of the issuance of such Notice.

(5) Changes to the definition of the territory of the United Kingdom.

(A) The Secretary of State shall inform the Committee on Foreign Relations of the Sen- a confidence vote in the United Kingdom Community pur- suant to section 73(a)(2)(B) or section 81 of the Implementing Arrangement.

(B) The Secretary of State shall inform the Committee on Foreign Relations of the Sen- a confidence vote in the United Kingdom Community, and the Committee on Foreign Affairs of the House of Representatives not later than 5 days before the U.S. Government agrees to establish the initial conditions of membership of the United Kingdom Community of a non-governmental United Kingdom entity, if the Department of State is aware that the entity, or any one or more of its relevant senior officials, has committed, or is committed to committing, a material violation of Treaty requirements, or procedures by a Member of the Approved Community.

(6) Approved Community membership.

(A) If sanctions are in effect against a person in the United Kingdom Community pursuant to section 73(a)(2)(B) or section 81 of the Implementing Arrangement, or if the Department of State is aware that a person in the United Kingdom Community or facility outside the territory of the United Kingdom Community is aware that the entity, or any one or more of its relevant senior officials, has committed, or is committed to committing, a material violation of Treaty requirements, or procedures by a Member of the Approved Community, the Department of State shall provide the President and the Senate of the United States a report concerning the results of such investigations or prosecutions.

(7) Transition policies and procedures.

(A) No fewer than 15 days before formally establishing the procedures called for in Section 5(5) of the Implementing Arrangement, the President shall provide to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report concerning the policies and procedures developed to govern the transition to the application of the Treaty, pursuant to Article 12(3) of the Treaty, of Defense Articles acquired and delivered under the Foreign Military Sales program.

(B) No fewer than 15 days before formally establishing the procedures called for in Section 2(2) of the Implementing Arrangement, the President shall provide to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report concerning the policies and procedures developed to govern the transition to the application of the Treaty, pursuant to Article 14(2) of the Treaty, from the requirements of a United States Government export license or other authorization.

(8) Congressional oversight.

(A) The Secretary of State shall inform the Committee on Foreign Relations of the Sen- a confidence vote in the United Kingdom Community, and the Committee on Foreign Affairs of the House of Representatives in accordance with Article 20 of the Treaty and of Defense Articles acquired under the Treaty and of Defense Articles that are exempt from the Scope of the Treaty pursuant to Article 3(2) of the Treaty.

(B) The Department of State shall brief the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives regularly regarding the results of such investigations and prosecutions, and of such investigations and prosecutions, and any actions taken in response to current or past findings or recommendations.

Section 3. Understandings.

The Senate's advice and consent to the ratification of the Treaty with the United Kingdom Concerning Defense Trade Cooperation is subject to the following understandings, which shall be included in the instrument of ratification:

(1) Meaning of the phrase “identified in.”

It is the understanding of the United States that the phrase “identified in” in the Treaty shall be interpreted as meaning “identified pursuant to.”

(2) Meaning of the word “scope.”

It is the understanding of the United States that the word “Scope” in the Treaty shall be interpreted as meaning “the Treaty’s coverage as identified in Article 3.”

(3) Cooperative programs with exempt and non-exempt defense articles.

It is the understanding of the United States that if a cooperative program is mutually determined, consistent with Section 2(2)(e) of the Implementing Arrangement, to be within the Scope of the Treaty pursuant to Article 3(1)(b) of the Treaty despite in- article 3(1)(c) of the Treaty, the exempt Defense Articles shall remain exempt from the Scope of the Treaty pursuant to Article 3(2) of the Treaty, the exempt Defense Articles shall remain exempt from the Scope of the Treaty. The Department of State shall apply only to non-exempt Defense Articles required for the government and defense research, development, production, and support programs, performed in the U.S. Government.

(4) Investigations and reports of alleged violations.

It is the understanding of the United States that the words “as appropriate” in Section 19(3)(f) of the Implementing Arrangement do not detract in any way from the obligation in Article 13(3) of the Treaty, that “Each Party shall promptly investigate any suspected violations of any alleged violations of the procedures established pursuant to this Treaty, and shall
promptly inform the other Party of the results of such investigations.

(ii) Exempt defense articles. It is the understanding of the United States that any intermediate consignee of an Export from the United States under the Treaty must be a member of the Approved Community as approved by the United States Government.

(7) Scope of treaty exemption. The United States interprets the Treaty not to exempt any person or entity from any United States statutory and regulatory requirements, including any requirements of licensing or authorization, other than those included in the International Traffic in Arms Regulations, as modified or amended.

Accordingly, the United States interprets the terms ‘license or other written authorization’ in Article 2 and the term ‘licenses or other authorizations’ in Article 6(1), as these terms apply to the United States, and the term ‘licensing requirement by the United States Government’ in Article 7, to refer only to such licenses, licensing requirements, and other authorizations as are required by the United States pursuant to the International Traffic in Arms Regulations, as modified or amended; and the United States interprets the reference to ‘the applicable licensing requirement by the United States’ in Article 5(2) of the Treaty, as these terms apply to the United States, and the term ‘license or other written authorization, other than those included in the International Traffic in Arms Regulations, as modified or amended.’

Section 4. Declarations.

The Senate's advice and consent to the ratification of the Treaty with the United Kingdom Concerning Defense Trade Cooperation is subject to the following declarations:

(1) Self-execution.

This Treaty is not self-executing in the United States, notwithstanding the statement in the preamble to the contrary.

(2) Private rights.

This Treaty does not confer private rights enforceable in United States courts.

(3) Intellectual property rights.

No liability will be incurred by or attributed to the United States Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the United States Government's permitting Exports or Transfers or its approval of Re-exports or Re-transfers under the Treaty.

Section 5. Definitions.

As used in this resolution:


(4) The terms ‘Management Board’ and ‘Management Plan’ have the meanings given to them in Section 1 of the Implementing Arrangement.

(5) The terms ‘person’ and ‘foreign person’ have the meaning given to them by section 38(g)(9) of the Arms Export Control Act (22 U.S.C. 2778(g)(9)). The term ‘U.S. person’ has the meaning given to it by part 120.15 of title 22, Code of Federal Regulations.

The PRESIDING OFFICER. Senators in favor of the next resolution of ratification, please rise and stand until counted.

With two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification was agreed to, as follows:

TREATY

[Treaty with Australia Concerning Defense Trade Cooperation (Treaty Doc. 110–10)]

Section 1. Senate Advice and Consent Subject to Conditions, Understandings and Declarations.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007 (Treaty Doc. 110–10), (as defined in section 5 of this resolution), subject to the conditions in section 2, the understandings in section 3 and the declarations in section 4.

Section 2. Conditions.

The Senate's advice and consent to the ratification of the Treaty with Australia Concerning Defense Trade Cooperation is subject to the following conditions, which shall be binding upon the President:

(1) United States preparation for treaty implementation.

(a) At least 15 days before any exchange of notes pursuant to Article 20 of the Treaty, the President shall submit to the Congress a report—

(i) describing steps taken to ensure that the Executive Branch of the United States Government is prepared to comply with Treaty requirements;

(ii) analyzing the implications of the Treaty, and especially of Article 3(3) of the Treaty, for the protection of intellectual property rights of United States persons;

(iii) explaining what steps the United States Government is taking and will take to combat improper or illegal intangible exports (i.e., exports as defined in part 120.17(a)(4) of title 22, Code of Federal Regulations) under United States law and regulation as required by Article 5(2) of the Treaty;

(b) are prepared to prevent attempts to export pursuant to the Treaty by United States persons who are not eligible to export Defense Articles under United States law or regulation, even if such person has registered with the United States Government;

(c) a certification that the Secretary of Defense has promulgated appropriate changes to the National Industrial Security Program Operating Manual and to Regulation DoD 5200.1-R, ‘Information Security Program’ and has provided guidance to industries regarding marking and other Treaty compliance requirements; and

(v) a certification that a capability has been established to conduct and maintain post-shipment verification, end-use/end-user monitoring and related security audits for Exports under the Treaty, as continued by the President, has not been suspended or reduced).

(2) Treaty partner preparation for treaty implementation.

(a) Before any exchange of notes pursuant to Article 20 of the Treaty, the President shall submit to Congress a certification that changes to the International Traffic in Arms Regulations (parts 120-130 of title 22, Code of Federal Regulations) have been published in the Federal Register pursuant to the Arms Export Control Act, as appropriate, that would, upon entry into force of the Treaty:

(i) make clear the legal obligation for any person involved in an Export, Re-export, Transfer, or Re-transfer under the Treaty to comply with all requirements in the revised International Traffic in Arms Regulations, including by taking all reasonable steps to ensure the accuracy of information received by the Department of Commerce that is that is a member of the Approved Community cooperating with United States Government instructions and requirements regarding United States Defense Articles added to the list of exempt Defense Articles pursuant to Article 3(2) of the Treaty;

(b) Before any exchange of notes pursuant to Article 20 of the Treaty, the President shall submit to Congress a certification that changes to the International Traffic in Arms Regulations (parts 120-130 of title 22, Code of Federal Regulations) have been published in the Federal Register pursuant to the Arms Export Control Act, as appropriate, that would, upon entry into force of the Treaty:

(i) make clear the legal obligation for any person involved in an Export, Re-export, Transfer, or Re-transfer under the Treaty to
transfers of controlled technology and brokering of controlled goods, technology, and services, and setting forth:

(i) the criteria for entry into the Australi- an Community and terms for maintaining Australian Community membership; and
(ii) the record-keeping and notification re- quirements for the Australian Department of Defence officials to perform post-shipment verifications and end-use/end-user monitoring; and

(iii) the handling, marking and classifica- tion requirements for United States and Aus- tralian Department of Defence Articles Exported or Trans- ferred under the Treaty;

(iv) the conditions for handling United States Defense Articles that are added to or removed from the list of items exempted from Treaty applica- tion;

(v) the rules for transitioning into and out of the Australian Community;

(vi) auditing, monitoring and investiga- tive powers for Commonwealth officials and powers for United States officials to perform post-shipment verifications and end-use/end-user monitoring; and

(vii) offenses and penalties, and adminis- trative and criminal penalties and suspens- ion and termination from the Australian Community, to enforce the provisions of the Treaty and its Implementing Arrangement; and

(b) promulgated regulatory changes setting forth:

(i) the criteria for entry into the Aus- tralian Community, and terms for main- taining Australian Community membership;

(ii) the criteria for individuals to become authorized to access United States Defense Articles received pursuant to the Treaty;

(iii) the criteria for individuals from the Australian Community membership, including a framework for license-free trade with the United States in classified or controlled items fall- ing within the scope of the Treaty; and

(iv) the conditions Australian Community mem- bers must abide by to maintain membership, including:

(a) record-keeping and notification re- quirements;

(b) marking and classification require- ments for defense articles Exported or Trans- ferred under the Treaty;

(c) requirements for the Re-transfer to non-Approved Community members and Re- export to a third country of defense articles; and

(d) maintaining security standards and measures articulated in Defense protective security policy to protect defense articles pursuant to the Treaty;

(v) provisions to enforce the procedures es- tablished pursuant to the Treaty, including auditing, monitoring, and powers for Australian Department of Defence officials and powers to allow Department of Defence officials to perform post-shipment verifications and end-use/end-user monitoring; and

(vi) offenses and penalties, including ad- ministrative and criminal penalties and sus- pension and termination from the Australian Community, to enforce the provisions of the Treaty; and

(vii) requirements and standards for transi- tion into or out of the Australian Commu- nity and Treaty Community.

(3) Joint operations, programs and projects.

The Secretary of State shall keep the Com- mittee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives informed of the lists of combined military and counter-ter- rorism cooperation programs and projects under Article 3(1)(a) of the Treaty; cooperative se- curity and defense research, development, pro-duction, and support programs developed pursuant to Article 3(1)(b) of the Treaty; and specific security and defense projects devel- oped pursuant to Article 3(1)(c) of the Treaty.

(A) The President may remove a Defense Article from the list of Defense Articles exempt from the Scope of the Treaty, if such article is not included in the Australian Community, if the President determines that such article is not necessary for the implementation of the Treaty and its Implementing Arrangement, as well as an explanation of the reasons for adopting such policies and procedures, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of such proposed removal.

(B) When a Defense Article is added to the list of Defense Articles exempt from the Scope of the Treaty, the Secretary of State shall provide a copy of the Federal Register Notice delineating the policies and proce- dures that will govern the control of such Defense Article, consistent with Section 4(7) of the Implementing Arrangement, as well as an explanation of the reasons for adopting such policies and procedures, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives within five days of the issuance of such Notice.

(5) Approved community membership.

(A) If sanctions are in effect against a per- son in the Australian Community pursuant to Article 3(1)(a) of the Arms Export Control Act (22 U.S.C. 2778(a)(22)(B) or 2780), the United States shall raise the matter pursuant to Article 4(2) of the Treaty, Section 8(8) of the Implementing Arrangement.

(B) The Secretary of State shall inform the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any person, or any one or more of its rele- vant senior officers or officials, (i) has been convicted of violating a statute cited in paragraph 38(g)(1) of the Arms Export Control Act (22 U.S.C. 2778(g)(1)); or (ii) is, or would be if that person were a United States person,

(a) ineligible to contract with any agency of the U.S. Government;

(b) ineligible to receive a license or other form of authorization to export from any agency of the U.S. Government; or

(c) ineligible to receive a license or any form of authorization for defense arti- cles or defense services from any agency of the U.S. Government.

(C) The Secretary of State shall inform the Commit- tee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Represent- atives of any person, or any one or more of its rele- vant senior officers or officials, (i) has been convicted of violating a statute cited in paragraph 38(g)(1) of the Arms Export Control Act (22 U.S.C. 2778(g)(1)); or (ii) is, or would be if that person were a United States person,

(a) ineligible to contract with any agency of the U.S. Government;

(b) ineligible to receive a license or other form of authorization to export from any agency of the U.S. Government; or

(c) ineligible to receive a license or any form of authorization for defense arti- cles or defense services from any agency of the U.S. Government.

the Senate’s advice and consent to the ratification of the Treaty with Australia shall be required prior to the President’s recommendation to Congress, the President shall provide the Senate with a report concerning the policies and procedures developed to govern the members of the Australian Community; and

(e) annually thereafter, the President shall submit to the Congress, and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, as well as the Joint Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report concerning the policies and procedures developed to govern the members of the Australian Community.

(f) The Secretary of State shall inform the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any person, or any one or more of its relevant senior officers or officials, (i) has been convicted of violating a statute cited in paragraph 38(g)(1) of the Arms Export Control Act (22 U.S.C. 2778(g)(1)); or (ii) is, or would be if that person were a United States person,

(a) ineligible to contract with any agency of the U.S. Government;

(b) ineligible to receive a license or other form of authorization to export from any agency of the U.S. Government; or

(c) ineligible to receive a license or any form of authorization for defense arti- cles or defense services from any agency of the U.S. Government.

(g) the Senate’s advice and consent to the ratification of the Treaty with Australia shall be required prior to the President’s recommendation to Congress, the President shall provide the Senate with a report concerning the policies and procedures developed to govern the members of the Australian Community; and

(h) annually thereafter, the President shall submit to the Congress, and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, as well as the Joint Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report concerning the policies and procedures developed to govern the members of the Australian Community.
which shall be included in the instrument of ratification:

(1) Meaning of the phrase “identified in.”

It is the understanding of the United States that if a cooperative program is mutually determined, consistent with Section 2(2)(e) of the Implementing Arrangement, to be within the Scope of the Treaty pursuant to Article 3(1)(b) of the Treaty despite involving the use of any non-exempt defense articles, the Treaty shall be interpreted as meaning “identified in” the Treaty.

(2) Cooperative programs with exempt and non-exempt defense articles.

It is the understanding of the United States that if a cooperative program is mutually determined, consistent with Section 2(2)(e) of the Implementing Arrangement, to be within the Scope of the Treaty pursuant to Article 3(1)(b) of the Treaty despite involving the use of any non-exempt defense articles, the Treaty shall be interpreted as meaning “identified in” the Treaty.

(3) Intellectual property rights.

The nominations considered and confirmed en bloc are as follows:

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Nancy E. Lindborg, of the District of Columbia, to be Assistant Administrator of the United States Agency for International Development, for a term of five years, vice Andrew W. Natsios, resigned.

Mr. REID. Mr. President, I now ask unanimous consent that the Agri-

Mr. REID. Mr. President, I now ask unanimous consent that the Senate proceed en bloc to their consideration; that the nominations be confirmed en bloc, that the motions to reconsider be considered made and laid upon the table en bloc, that any statements relating to the nominations be printed in the RECORD, and that the President be immediately notified of the Senate's action.

Mr. REID. Mr. President, I now ask unanimous consent that the Senate proceed en bloc to their consideration; that the nominations be confirmed en bloc, that the motions to reconsider be considered made and laid upon the table en bloc, that any statements relating to the nominations be printed in the RECORD, and that the President be immediately notified of the Senate's action.