



Treaty Series No. 62 (2024)

Exchange of Notes

on the Agreement between the Government of the United States of America and
the Government of the United Kingdom of Great Britain and Northern Ireland
regarding Defence Trade Cooperation in Support of AUKUS

Washington, 5 August 2024

[The Exchange of Notes entered into force 5 August 2024]

*Presented to Parliament
by the Secretary of State for Foreign, Commonwealth and Development Affairs
by Command of His Majesty
September 2024*



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**EXCHANGE OF NOTES ON THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND REGARDING DEFENCE
TRADE COOPERATION IN SUPPORT OF AUKUS**

Note No.1

US Department of State to the British Embassy Washington

Washington

5 August 2024

The Department of State presents its compliments to His Britannic Majesty's Embassy in Washington and has the honor to refer to recent discussions between the Government of the United States of America (the "United States") and the Government of the United Kingdom of Great Britain and Northern Ireland (the "UK") regarding the enhanced trilateral security partnership among the United States, UK, and Australia, known as "AUKUS". Specifically, the Department of State refers to recent discussions regarding the facilitation of a path for creation of an exemption under the U.S. International Traffic in Arms Regulations ("ITAR") allowing for authorized users to conduct license-free trade of defense articles and defense services regulated by the (TAR between and amongst AUKUS nations.

The purpose of this exchange of notes is to address remaining conditions required under US. law (specifically, 22 U.S.C. 5 2778(1)) to create an ITAR exemption allowing authorized users to conduct license-free trade of certain defense articles and defense services regulated by the ITAR (hereinafter the "ITAR 126.7 exemption"). In order to support the assessments and determinations the Department of State must make in connection with the creation of the ITAR 126.7 exemption, the U.S. Government and the Government of the UK agree to the following:

A. Except as specifically authorized by prior written approval of the Department of State, the Government of the UK shall not permit the reexport, resale, or other disposition of the defense articles, including technical data, transferred under the ITAR 126.7 exemption outside of the physical territories of the United Kingdom of Great Britain and Northern Ireland, the United States, or Australia or to any person or entity except those listed as authorized users of the ITAR 126.7 exemption at the time of transfer.

If the said defense articles, including technical data, are for use by the armed forces (meaning for the purposes of this agreement the army, navy, marine, air force, coast guard, national guard, national police, and any military unit or military personnel organized under or assigned to an international organization) of the Government of the UK, the Government of the UK shall use the authorized articles and data received via export, reexport or retransfer (including under ITAR 126.7 exemption) only for the purposes specified in any relevant treaties, agreements, and arrangements between the U.S. Government and the Government of the UK or to which the respective governments are both parties or participants, or for internal security, legitimate self-defense, or civic action.

B. The Government of the UK affirms the description of UK law enclosed with this note as Annex A related to lists of export-controlled items, specifically the United Kingdom Munitions List (UKML), Annex IIg (which includes Annex 4) to the United Kingdom Dual Use List, and the National Security Act 2023, is accurate. If any public authority, including any court, within the UK renders a decision or otherwise adopts an interpretation of UK law inconsistent with the description in Annex A, the Government of the UK shall notify the U.S. Government by diplomatic note within two weeks after the decision is rendered or interpretation is adopted.

C. The Government of the UK shall establish and implement an Authorized User Process (AUP) to control how persons or entities become Authorized Users of the UK (AU-UK) for purposes of any potential ITAR 126.7 exemption. The AUP, and determinations regarding authorized users, shall be subject to the approval of the Department of State.

D. The Government of the UK shall apply the F-680 process described in Annex A by 16 August 2024, and also shall apply a comparable country-based export and transfer exemption from its export controls for the United States by that date.

If the foregoing proposal is acceptable to the UK, the Department of State proposes this note and the reply from His Britannic Majesty's Embassy in Washington to that effect shall constitute an agreement between the two governments, which shall enter into force on the date of the Embassy's note, and which shall remain in force unless either Party terminates the agreement by providing two months' written notice of termination through the diplomatic channel.

The Department of State avails itself of this opportunity to renew to His Britannic Majesty's Embassy in Washington the assurances of its highest consideration.

Enclosures:

As stated.

Note No.2

British Embassy Washington to the US Department of State

Washington

5 August 2024

His Britannic Majesty's Embassy in Washington presents its compliments to the United States Department of State and has the honour to acknowledge receipt of the Department of State's Note, dated 5th August 2024, which reads as follows:

“The Department of State presents its compliments to His Britannic Majesty’s Embassy in Washington, and has the honor to refer to recent discussions between the Government of the United States of America (the "United States") and the Government of the United Kingdom of Great Britain and Northern Ireland (the "UK") regarding the enhanced trilateral security partnership among the United States, UK, and Australia, known as "AUKUS". Specifically, the Department of State refers to recent discussions regarding the facilitation of a path for creation of an exemption under the U.S. International Traffic in Arms Regulations ("ITAR") allowing for authorized users to conduct license-free trade of defense articles and defense services regulated by the (TAR between and amongst AUKUS nations.

The purpose of this exchange of notes is to address remaining conditions required under US. law (specifically, 22 U.S.C. 5 2778(1)) to create an ITAR exemption allowing authorized users to conduct license-free trade of certain defense articles and defense services regulated by the ITAR (hereinafter the "ITAR 126.7 exemption"). In order to support the assessments and determinations the Department of State must make in connection with the creation of the ITAR 126.7 exemption, the U.S. Government and the Government of the UK agree to the following:

A. Except as specifically authorized by prior written approval of the Department of State, the Government of the UK shall not permit the reexport, resale, or other disposition of the defense articles, including technical data, transferred under the ITAR 126.7 exemption outside of the physical territories of the United Kingdom of Great Britain and Northern Ireland, the United States, or Australia or

to any person or entity except those listed as authorized users of the ITAR 126.7 exemption at the time of transfer.

If the said defense articles, including technical data, are for use by the armed forces (meaning for the purposes of this agreement the army, navy, marine, air force, coast guard, national guard, national police, and any military unit or military personnel organized under or assigned to an international organization) of the Government of the UK, the Government of the UK shall use the authorized articles and data received via export, reexport or retransfer (including under ITAR 126.7 exemption) only for the purposes specified in any relevant treaties, agreements, and arrangements between the U.S. Government and the Government of the UK or to which the respective governments are both parties or participants, or for internal security, legitimate self-defense, or civic action.

B. The Government of the UK affirms the description of UK law enclosed with this note as Annex A related to lists of export-controlled items, specifically the United Kingdom Munitions List (UKML), Annex IIg (which includes Annex 4) to the United Kingdom Dual Use List, and the National Security Act 2023, is accurate. If any public authority, including any court, within the UK renders a decision or otherwise adopts an interpretation of UK law inconsistent with the description in Annex A, the Government of the UK shall notify the U.S. Government by diplomatic note within two weeks after the decision is rendered or interpretation is adopted.

C. The Government of the UK shall establish and implement an Authorized User Process (AUP) to control how persons or entities become Authorized Users of the UK (AU-UK) for purposes of any potential ITAR 126.7 exemption. The AUP, and determinations regarding authorized users, shall be subject to the approval of the Department of State.

D. The Government of the UK shall apply the F-680 process described in Annex A by 16 August 2024, and also shall apply a comparable country-based export and transfer exemption from its export controls for the United States by that date.

If the foregoing proposal is acceptable to the UK, the Department of State proposes this note and the reply from His Britannic Majesty's Embassy in Washington to that effect shall constitute an agreement between the two governments, which shall enter into force on the date of the Embassy's note, and which shall remain in force unless either Party terminates the agreement by providing two months' written notice of termination through the diplomatic channel.

The Department of State avails itself of this opportunity to renew to His Britannic Majesty's Embassy in Washington the assurances of its highest consideration.

Enclosures:

As stated.”

His Britannic Majesty's Embassy in Washington has the honour to confirm that the proposal set forth in the Department of State's Note is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that 'the Department of State's note and this note in reply shall constitute an agreement between the two Governments which shall enter into force on the date of this Note, and which shall remain in 'force unless either Party terminates the agreement by providing two months written notice of termination through the diplomatic channel.

His Britannic Majesty's Embassy in Washington avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Enclosure: Annex A

ANNEX A

1. UKML Compositional Terms

The term "component," is not defined within the context of the United Kingdom Military List (UKML), but in practice it encompasses significantly more than the definition of "component" in the U.S. International Traffic in Arms Regulations (ITAR; 22 C.F.R. parts 120-130) 5 120.40(c). For example, articles that meet the ITAR definitions of "part, accessories and attachments," "equipment," or "materiel" are encompassed within the term "component" for purposes of the UKML, including as follows:

- On-aircraft launching and recovery equipment for manned or unmanned aircraft is described in MLIO.a and MLIO.c.1 as a specially designed component of the aircraft.
- Within the ITAR at 5 121.1, United States Munitions List (USML) Category X(d)(3) describes certain materials and coatings for protective eyewear. Such materials and coatings are "components" within the context of the UKML and are thus described in ML17.o if specially designed for laser protection equipment described in ML17.o.

2. IJKML / Annex 4 (which is included within Annex IIq): Specially Designed for Military End Use

Many USML entries describe articles according to specific functions, characteristics, or performance capabilities in instances where the UKML describes a similar set of articles based on whether they are "specially designed [or modified] for military use." The Government of the United Kingdom performs a case-by-case review to evaluate whether an item is "specially designed [or modified] for military use." However, other than technologies excluded by Supplement No. 2 to the U.S. ITAR 5 126, the United Kingdom has assessed that it regulates on the UKML or in Annex 4, within Annex IIg to the United Kingdom Dual Use List the defense articles and services described on the USML, either explicitly or via specially designed [or modified] for military use controls. In addition:

- Articles originally developed [or modified] with military design intent are specially designed [or modified] for military use.
- Non-military use of an article, including by law enforcement or others, would not negate original military design intent or alter an article's status as "specially designed [or modified] for military use."

3. Developmental Items Funded by the U.S. Department of Defense (DOD)

Developmental DoD/MoD funding, especially when paired with evidence that an article was developed or modified to meet that agency's requirements, is strong evidence that the article is specially designed or modified for military use. Virtually all developmental articles funded by the DOD via contract or other funding authorization and not yet in production are specially designed for military use unless the relevant contract or funding authorization identifies the articles as being developed for both civil and military applications. For the United Kingdom, these are often described in ML11.a as Electronic equipment specially designed for military use.

4. I-JKML: IRFNA

Inhibited red fuming nitric acid (IRFNA) (CAS 8007-58-7) is described on the UKML in ML8.d.10.

5. UKML. • ML11.a

On the UKML, ML11.a describes "Electronic equipment, "spacecraft" and components, not specified elsewhere [on the UKML], as follows: a. Electronic equipment specially designed or modified for military use and specially designed components therefor."

ML11.a includes, but is not limited to, the types of electronic equipment listed in the Note to ML11.a of the 2023 Wassenaar Arrangement Munitions List unless that equipment is described elsewhere on the UKML.

6. UKML: ML19

On the UKML, ML 19 describes certain "Directed energy weapon (DEW) systems, related or countermeasure equipment and test models, and specially designed components therefor."

ML19 includes, but is not limited to, the types of equipment listed in Note 2 to ML19 of the 2023 Wassenaar Arrangement Munitions List, unless that equipment is described elsewhere on the UKML.

7. National Security Act 2023

Within the UK's National Security Act 2023 (NSA), any kind of "technical data," as defined by the ITAR in 5 120.33, is considered "protected information," as defined in section 1 of the NSA.

Additionally, providing unauthorised access to ITAR technical data, or the unauthorised disclosure of ITAR technical data is considered "prejudicial

to the safety or interests of the United Kingdom," as defined in section 1 of the NSA.

Finally, the "foreign power condition" as set out in section 31 of the NSA, can be satisfied by the actions of a private entity, activity carried out through or at the direction of a private entity, or by activity indirectly linked to a foreign power.

8. F680 Process

The UK is making its existing Ministry of Defence F680 security process, under its Government Functional Standard (GovS) 007: Security standard, the administrative vehicle through which it will authorize or deny authorization for the release of ITAR-controlled defence articles, including technical data, to foreign persons within or outside of the United Kingdom.

The UK is planning to utilize the communication vehicles available to it, including the Notice to Exporters (NTE) and the Industry Security Notice (ISN), to include the changes to the F680 process in the regular export control education and awareness programmes, as well as publish communications regarding the Authorized User Process, to announce the aforementioned expansion of the F680 process and requirements.

The UK may impose various penalties for violations of the F680 process, including denying eligibility to have access to classified material, amongst other measures, including those set forth in the Procurement Act 2023, with respect to eligibility to tender for contracts. Depending on the severity of the non-compliance with the F680 process, criminal penalties may also be available under the Official Secrets Act or the National Security Act 2023.

Separately, the UK will refer violations of the F680 process to the Export Control Joint Unit for consideration in the adjudication of licence applications submitted by the violating entity.

Additionally, the UK may direct the entity responsible to undertake specific administrative actions to remedy the breach and ensure compliance going forward, including agreements with the entity to enhance compliance systems or to implement a specific system of training and enhanced auditing and reporting.

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