

It's Time to Ratify the Defense Trade Cooperation Treaties

Introduction

This week, David Cameron will visit Washington for the first time as Prime Minister to reaffirm Great Britain's 'special relationship' with the United States. Cameron will look to build on his June meeting with President Obama in Toronto as well as the recent visit of UK defense secretary Liam Fox by returning to Great Britain with concrete deliverables in exchange for London's long-standing staunch support of U.S. foreign policy goals. Despite his criticism of former PMs Blair and Brown's handling of the relationship with Washington, Cameron has vowed early in his tenure as prime minister to continue the UK's strong engagement in Afghanistan and to put a priority on relations with Washington. His ministers have nonetheless cautioned that London would not "slavishly" follow Washington's lead. A successful visit, as judged by the British public and media, will help end the unhelpful debate in the UK on the health of the 'special relationship.'

High on Prime Minister Cameron's agenda will be to return to London having secured a commitment from the White House that it will sustain a full court press in order to ratify the U.S.-UK defense trade cooperation treaty. This treaty layers a de jure 'trust community' on top of the 'special relationship' to rationalize defense trade by streamlining export control procedures. It guards against unwanted proliferation of military technology and reserves strict arms control scrutiny for only the most highly classified capabilities. The treaty was designed to provide the United

Kingdom, the most important partner of the United States in global coalition operations, with the same tools and resources as the United States in an expedited timeframe relevant to the battlefield. The treaty will also ensure American warfighters benefit from the best technology and equipment the UK offers. The United States has also negotiated a comparable treaty with Australia. Though submitted to the Senate for ratification in 2007, the treaties have until recently languished as legislative orphans.

Prime Minister Cameron's visit has focused the administration and the Senate on overcoming the legislative stalemate and neglect. Last week, Senator Richard Lugar proposed a way forward which the administration seems inclined to support. If so, this breakthrough should allow rapid Senate action in the wake of Cameron's visit.

These treaties are worth the President's precious political capital and attention because they will provide the United States with important military, economic and political benefits.

- **Militarily**, ratification of the treaties will provide troops in the field with vital equipment more quickly at a critical phase in the war in Afghanistan.
- **Industrially**, the treaties will boost capabilities in the defense industry and increase the efficiency of government spending.
- **Politically**, passage of the defense trade treaties would allow the President to counter his critics who argue his administration has focused too much on America's

Jonathan Ruemelin is a Program Assistant with the Program on International Security.

Damon Wilson is Vice President and Director of the International Security Program at the Atlantic Council. He formerly served as a career official in the U.S. government, most recently as Senior Director for European Affairs at the National Security Council.

Jeff Lightfoot is Associate Director of the Program on International Security.

The views expressed do not necessarily reflect the views of the Atlantic Council.

adversaries and too little on rewarding allies. Ratification would also strengthen the Atlanticist instincts in Cameron's government by demonstrating to a skeptical British public that the 'special relationship' provides important benefits to the UK.

Military: Strengthening America's "Junior Partners"

The defense trade cooperation treaty merits administration and Senate attention because their ratification will provide important benefits to the approximately 10,000 British and 1,000 Australian troops fighting alongside American soldiers in southern Afghanistan. As the United States and its allies complete their 'surge' of troops to the region, **Washington should ensure Britain and Australia can 'surge' their own fighting capability in Afghanistan by buying and deploying the best and latest American equipment.**

Britain is America's most loyal and effective partner in coalition operations around the world. This has been true in Afghanistan since day one. Today, approximately 10,000 British troops are stationed in the southern provinces of Afghanistan where the fighting is the fiercest. Despite their skill and training, British soldiers have been killed or wounded at twice the rate of American troops, in part because British soldiers have acquired the force protection capabilities available to U.S. forces more slowly. The high rate of casualties has eroded public support in the UK for the Afghanistan mission and has even caused some discord between military and civilian officials. Even though Britain is the fourth largest defense spender in the world, in July 2009 64% of Britons believed their troops were badly equipped to fight in Afghanistan.¹ **Britain needs to support its soldiers — indeed, Cameron called it his "biggest duty as Prime Minister" — but more spending is not possible in the face of Britain's budget crunch.**

Ratifying the treaty will help both Britain and the United States develop and deploy crucial battlefield technologies on a budget without sacrificing capability. **Transatlantic development and burden-sharing has been a key pillar of the alliance**, dating back to the Manhattan Project to which nearly 50 British scientists contributed. Since 1946 the United States and UK have underwritten UKUSA, a capital-intensive worldwide signals intelligence collection system. Each initiative produced a cutting-edge capability that has been essential in the pursuit of Anglo-American interests.

Sadly, such cooperation is harder to find today. The F-35 Joint Strike Fighter program is the best example. It should represent the pinnacle of transatlantic defense cooperation. However, given U.S. laws and regulations, American suppliers are not always able to share software code with their British counterparts. This contrasts markedly with the unique cooperation that inspired the British-powered, American-built P-51 Mustang during World War II.

Some are concerned that the treaties would facilitate the exchange of sensitive information, but these concerns are overstated. The State Department already approves over 99.9% of export license requests from Britain, and 95% of all applications. But it takes an average of six months to complete this process. **Ratifying the treaties could cut the license caseload by as much as 20%, conserving finite capabilities to target real dangers in defense exports.** Freed from this bureaucratic friction, private sector collaboration could catalyze breakthroughs that yield operational capabilities for our forces.

Liam Fox recently remarked that Britain recognizes its role as "junior partners" but refuses to be "supplicants." These bold words are perhaps understandable as American export controls strangle international cooperation just as the Quadrennial Defense Review calls for "close collaboration" with allies. The red tape of export controls directly undercuts American strategy and limits the ability of our most active and capable allies to support U.S.-led military operations.

Defense Industry: Creating Efficiencies in a Time of Austerity

The U.S.-UK defense industrial relationship is the strongest linchpin of the transatlantic defense industrial market, with U.S. and UK companies already deeply entrenched in each others' markets. The UK military is an important buyer of U.S. military hardware. With the important cooperation between the United States and the UK in operations and defense sales, the ratification of the U.S.-UK defense trade cooperation treaty would provide important improvements in interoperability between the forces of both nations. **By strengthening the ability of the United States and the UK to sell weapons to each other, the treaty would also ensure that both countries maintain a strong defense industrial base, an important source of jobs in both**

¹ *The Times of London*, July 22, 2009. "Public blames casualties in Afghanistan on poor equipment, poll shows."

countries. **The same rationale applies to the U.S.-Australia treaty.**

On a higher level, ratification would harness the power of competition to drive growth and reduce costs. If the United States, the UK, and Australia synchronize research and development efforts, both partners will save money, curb redundancy, maximize output and assemble building blocks for long-term cooperation. But current law bars early-stage international collaboration. By lowering barriers to entry, government projects could field offers from a wider range of companies, which would cut costs to the taxpayer without diminishing effectiveness. A deeper, more competitive market rewards capable technologies, improves economies of scale and can decouple the fate of the defense industry from the fluctuations of their home nation budgets.

Governments also benefit from market-inspired defense industries. **The relative growth of private sector capabilities disperses risk and could insulate the government from costly early stage project financing.** In a 2009 Industrial Capabilities report, the Defense Department wrote, “Now there exists a dynamic where commercial industry drives the innovation and pays for the research and development, and the Department is able to pick and choose from the best technology and ‘spin-on’ or militarize it to meet unique military needs, at a fraction of the time and cost it would take if the Department tried to develop the technology itself.” Expedited defense trade would allow the Pentagon to establish similar relationships with private companies in the UK and Australia that develop battlefield-relevant technologies.

Ratification would rationalize another outdated economic premise of arms control. Statutes enacted in the 1950s did control arms; in the Western bloc, America alone held the technical knowledge and manufacturing capacity to design, construct and deliver sophisticated weapons. If the United States opted not to export, nobody could obtain those capabilities.

That monopoly is over. Globalization has spread advanced knowledge and manufacturing capacity. The United States once was the arms clearinghouse of the Western world. Now American products are one option among many. Other states are building their indigenous capabilities, so much that 10 of the top 25 arms-producing companies are based outside of the United States. **Export licenses amount to a de facto tax of American exports that corrode U.S. competitiveness and diminish the likelihood of reaching**

President Obama’s goal of doubling exports in the next five years.

Diplomacy: Rewarding Friends and Allies

Ratification of the defense cooperation treaties would reward American allies, demonstrate the enduring utility of the ‘special relationship’ and help the Obama administration fend off allegations by its critics that it focuses too much on engaging adversaries and too little on rewarding friends.

The U.S.-UK relationship has suffered a number of setbacks over the last few years. Former UK Prime Minister Tony Blair’s staunch support for the unpopular U.S.-led war in Iraq led his critics to call him President Bush’s ‘poodle’ and called into question the benefits the UK derives from the ‘special relationship.’ The hiccups have outlived the Bush-Blair duo and have continued into the Obama administration. White House missteps such as presenting 10 Downing with a DVD gift set, removing the Churchill bust from the Oval Office and a mistimed birthday message to the Queen are disquieting.

And there are more profound concerns. Secretary Clinton’s call for reopening negotiations with Argentina on the Falkland Islands alarmed Britain. In March, the House of Commons Foreign Affairs committee criticized the ‘special relationship,’ noting that the phrase “can raise unrealistic expectations about the benefits the relationship can deliver to the UK.” The recent oil spill in the Gulf of Mexico has also unleashed a torrent of populist anger in the United States against BP, causing concern in London that punitive U.S. action could bankrupt one of the UK’s most important sources of tax revenue and pension income for British citizens.

The failure of the United States to ratify the U.S.-UK defense cooperation treaty has unfortunately become yet another sign of malaise in the ‘special relationship’ and has served to embarrass both Washington and the treaty’s backers in London. This is all the more ironic since the treaty was designed in part to reward Great Britain for its strong support of the United States. The UK Parliament ratified the treaty in February 2008, just eight months after it was signed. Over three years have passed since U.S. negotiators signed the treaty, yet on Capitol Hill, the bill has been lingering in committee. The treaty is an important part of Whitehall’s strategy of strengthening relations with the United States and would bolster the Prime Minister and his Atlanticist allies by demonstrating that support for the United States produces tangible benefits for Britain.

Rewarding key allies is also a politically savvy way for President Obama to disarm his critics in the lead-up to Congressional elections. The Obama administration's engagement strategy with Iran, signature of a new START with Russia and moves to reduce tensions with critics of U.S. policy in Latin America have led some conservative voices to argue that the President devotes too little time and attention to America's allies. The criticism comes from abroad as well. In May at the Atlantic Council, Alexandr Vondra, Minister of Defence of the Czech Republic and one of the most articulate Atlanticists in Europe, criticized the Obama administration for having an "enemy-centric" foreign policy. With potential candidates for the Presidency in 2012 attacking Obama's foreign policy priorities, the President can begin to create a new narrative of supporting friends and allies by seeing through the ratification of the U.S.-UK and U.S.-Australia defense trade cooperation treaties.

The Problem: Turf Battles

The treaties have been stuck in part because of concerns on the Hill that the executive branch would gain too much authority if the treaties were ratified as self-executing treaty without Congressional approval of implementing legislation. This concern has nothing to do with the substance of the treaties. Rather, the precedent is unattractive to senators guarding their constitutional prerogatives. The years of stalemate suggest the Senate's balance of risk weights the precedent as a greater hazard. **Senator Lugar's recent proposal for implementing legislation narrowly focused on enforcement seems to provide a path forward which the administration can accept.** Last week's actions set the right tone for Cameron's visit and provide the needed momentum to finalize three issues: text of the draft resolution of advice and consent; whether to amend the treaty to address narrow concerns regarding firearms; and implementing legislation limited to enforcement issues.

Furthermore, the administration had failed to present a united front in advancing the treaties on the Hill. Statutory uncertainty concerns the Department of Justice (DOJ), whose testimony in front of Senate Foreign Relations was notably cooler towards the treaties than that from the Department of State. The Department of Justice's questions about the contours of enforcement legislation are legitimate, but crafting such law is outside their authority. Senator Lugar is proposing language to address enforcement concerns indicating that violations of the treaties are to be considered

as violations of Arms Export Control Act thereby providing clear authority to DOJ. This move means there is a more reasonable chance of enforcement if there is abuse of the treaty provisions, addressing a key Congressional concern.

Recommendation

Ratification of the U.S.-UK and U.S.-Australia defense trade cooperation treaties is long overdue. Progress made since President Obama's meeting with Cameron in Toronto and the Prime Minister's Washington visit have finally resulted in a concerted effort between the legislative and executive branches to resolve their differences. We now have the best chance since the treaties' submission to Congress to move towards ratification. **The goal should be to vote the treaties out of the Senate Foreign Relations Committee before the August recess and obtain the full Senate's advice and consent in October. Both branches now agree on the goal.**

Ratification is indeed achievable in this timeframe, but the treaties' experience underscores that the administration and its Senate advocates must remain fully engaged to avoid further delays in the process. The Committee's plate will be full this fall as debate continues on New START. The defense trade cooperation treaties, which enjoy widespread bipartisan support, should not be delayed if New START slips to a lame duck session. The partisan divide will only strengthen heading into November Congressional elections. These treaties, however, provide an opportunity to underscore that there are areas where both parties can work together to get things done.

Ratification would not only reward a loyal ally and strengthen the hand of an important Atlanticist in Europe, but would also bolster the fighting capability of our closest allies, strengthen the defense industrial base in the United States, the UK and Australia, and reassure allies that supporting U.S. policy results in tangible benefits at home.

For America's other allies, action on these treaties would underscore the administration's resolve and ability to move forward on its broader commitment to modernize antiquated defense export control procedures. Failure to ratify these treaties, however, would shroud the administration's defense export control initiative in a cloud of skepticism and cynicism.

July 2010