

Export Control Reforms

Pillar 1 and 2 activities may require the transfer of items, technologies, and information via Foreign Military Sales and/or government-issued export licenses for Direct Commercial Sales. In the United States, these processes are governed by the Arms Export Control Act, which is administered through International Traffic in Arms Regulations (ITAR) and the Foreign Assistance Act of 1961.

While intended to function as a protection mechanism against adversaries, experts have argued that ITAR presents a significant challenge to the success of AUKUS and have recommended reforms, such as the authorization of the license-free transfer of eligible unclassified and classified ITAR-controlled defense articles and defense services as well as eligible re-exports and re-transfers only between and among the three AUKUS countries.¹

In 2023, bills were introduced in the US Congress targeted at reforming ITAR to ease AUKUS-related collaboration, including the KOALA Act (H.R.4716) and BRITS Act (H.R.4715), which aimed to exempt Australia and the United Kingdom from ITAR, respectively.² In November 2023, the Australian Government introduced its own export reform bill, titled the Defence Trade Controls Amendment Bill 2023, in order to ease technology sharing between Australia and the United Kingdom and United States.³

Then in December 2023, the US Congress passed the 2024 National Defence Authorization Act (NDAA), which includes three key export control-related provisions. First, the NDAA allows “the transfer of controlled goods and technology between Australia, the United Kingdom, and the United States without the need for an export licence.”⁴ It also “directs expedited decision-making for Foreign Military Sales and exports not covered by the national exemption” and “adds Australia and the United Kingdom to Title III of the US Defense Production Act.”⁵

¹ Tom Corben and Bill Greenwalt, “Breaking the Barriers: Reforming US Export Controls to Realise the Potential of AUKUS,” *United States Studies Centre*, May 17, 2023, <https://www.usssc.edu.au/breaking-the-barriers-reforming-us-export-controls-to-realise-the-potential-of-auk-us>.

² Bill Greenwalt, “Two Years On, Is the AUKUS Agreement at the Brink of Failure?” *Breaking Defense*, September 14, 2023, <https://breakingdefense.com/2023/09/two-years-on-is-the-aukus-agreement-at-the-brink-of-failure/>.

³ “Defence Trade Controls Amendment Bill 2023,” *Australian Ministry of Defence*, November 30, 2023, <https://www.defence.gov.au/about/reviews-inquiries/defence-trade-controls-amendment-bill-2023>.

⁴ “Passage of Priority AUKUS Submarine and Export Control Exemption Legislation by the United States Congress.”

⁵ *Ibid.*