

Export support available in other countries

Introduction

- 4.1 This chapter provides an overview of support available for defence industry exports in other countries, with a view to considering how these approaches could inform Australian policy.
- 4.2 In addition, there was notable interest in the evidence on the forms of defence industry protection available in other countries. These measures are outlined within this chapter.

Forms of industry support and protection available in other countries

- 4.3 In broad terms, forms of support for defence industries overseas are of the following types:
- Legislative and policy protections designed to minimise or restrict foreign competition with the local defence industry, including the application of offset policies;
 - Legislation and policies specifically designed to protect local defence industries; and
 - Political, administrative and diplomatic promotion of the defence industry and defence exports.
- 4.4 Mr Chris Burns (Defence Teaming Centre) said:
- Most governments around the world use policies and programs of preference and guard their indigenous defence industries. These are offered under many titles, including offsets, industrial

cooperation and industrial participation. Indeed, in some countries, they are enshrined in law.¹

- 4.5 BAE Systems submission noted the existence of ‘protectionist trade policy and/or subsidisation of defence industry by many advanced nations including the US and European countries.’² The Australian Manufacturing Workers’ Union’s submission agreed that defence industries in other countries are ‘strongly supported and protected by their national governments by strong regulatory barriers to foreign participation’.³ The AMWU added:

These barriers not only ensure that foreign defence firms have privileged and often exclusive access to domestic defence business, they also ensure that any Australian defence industry growth plan that is centred on exports as the driver of growth is unlikely to succeed, regardless of the policy mechanisms put in place domestically.⁴

- 4.6 The RSL’s submission made similar observations and suggested that Australian defence imports may be ‘underwritten by the Government of the producing country’ to achieve a low price.⁵

- 4.7 Protection and support for naval shipbuilders was noted during the inquiry as being prevalent in North America and Europe. H I Fraser Pty Ltd submitted:

Shipbuilding nations such as the USA and Spain recognise that when you design a ship you can create a ‘protected species’ of local suppliers. These protected species are then sole-sourced every time a platform is exported.⁶

- 4.8 Austal stated in its submission:

...many first world countries provide direct support to their shipbuilding industry through mandated in-country supply of assets. This support may take the form of legislation, offset requirements, foreign ownership restrictions, or simple preference in the source selection evaluation criteria.⁷

- 4.9 Austal’s submission added:

1 Burns and Taylor, *Committee Hansard*, 9 October 2014, p.14.

2 BAE Systems Australia, *Submission 3*, p.3.

3 AMWU, *Submission 24*, p.5.

4 AMWU, *Submission 24*, p.5.

5 RSL, *Submission 13*, p.5.

6 H I Fraser Pty Ltd, *Submission 2*, p.1.

7 Austal, *Submission 31*, p. 9.

In Europe for example it is difficult to conceive that a naval combatant would be procured in the UK from a supplier other than BAE, or in the Netherlands from a supplier other than Damen or in Germany from a supplier other than TKMS or Lurssen.⁸

4.10 Mr Chris Burns (Defence Teaming Centre) said that the UK and Canada had developed 30-year navy and national shipbuilding plans. He said:

They developed these plans in the realisation that, when you take a truly long-term perspective and consider the whole-of-life cost-benefits to the nation, you appreciate the value for money and return on your investment if you partner with and commit to support the local national defence industry base.⁹

Offsets

4.11 During the inquiry, a number of witnesses and submissions noted the existence of offset policies¹⁰ in other countries. Defence's submission defined offsets as being a requirement for a percentage of the contract's value to be sub-contracted locally or for other forms of benefit to be granted.¹¹

4.12 Information from Quickstep Technologies (attached to a submission from the Australian Industry and Defence Network Inc) detailed offset policies in other countries. Although citing a published survey conducted by the Australian Department of Defence in 2010 on offsets in other countries,¹² the submission's information bore close resemblance to a US Department of Commerce report published in 2007.¹³ This information is presented in the table below.

8 Austal, *Submission 31*, p.9.

9 Burns and Taylor, *Committee Hansard*, 9 October 2014, p.13.

10 Defence's submission defined offsets as being a requirement for a percentage of the contract's value to be sub-contracted locally or for other forms of benefit to be granted. Department of Defence, *Submission 41*, attachment A.

11 Department of Defence, *Submission 41*, attachment A.

12 AIDN, *Submission 32*, p.8 ('attachment A - Quickstep Submission'). See also <<http://www.aidn.org.au/documents/aidn%20australian%20industry%20involvement%20paper%20-%20may%202014.pdf>>.

13 US Department of Commerce Bureau of Industry and Security, 'Offsets in Defense Trade: Twelfth Study', December 2007, at <https://www.bis.doc.gov/index.php/forms-documents/doc_download/129-twelfth-report-to-congress-12-07> (viewed 26 August 2015). The Department of Commerce had based its research on communication with embassies in the United States.

Table 4.1 Offset policies in other countries

Austria	100%; though may be 'up to 200%'
Belgium	100% minimum
Brazil	100% minimum
Canada	100% 'usually'
Denmark	100% minimum
Finland	100% minimum
Germany	'Applies a policy of "industrial balances" based on 100% of the contract value.'
India	30%
Israel	35% minimum
Italy	70% minimum; 'generally' 100%
Netherlands	100% minimum
Poland	100% 'typically'
Portugal	100% minimum
South Korea	30%
Spain	100% 'typically'
Sweden	100% 'typically'
Turkey	50% minimum
United Arab Emirates	60% 'typically'

Source AIDN, Submission 32, pp.8-9 (attachment A - 'Quickstep submission')

4.13 Notwithstanding whether the information above remains current, the Committee was urged to consider offsets as an option to grow the Australian defence industry. Mrs Sue Smith (Executive Officer, Australian Industry and Defence Network Inc) said:

In relying on the poorly supported proposition that offsets do not work, the Australian government stands alone in not valuing or preserving its national defence industry capability, and undervalues its importance to Australian security. If offsets do not work, why do most other countries in the world apply them? Foreign offsets are a significant barrier to Australia industry being able to compete in the global defence industry marketplace.¹⁴

4.14 Sonartech Atlas submitted that the 'majority of our potential export customers have offset programs'.¹⁵ Quickstep Technologies gave a favourable view of offsets:

The Defence industry suppliers in many countries enjoy significant Government support which sees Australian suppliers

¹⁴ Smith, *Committee Hansard*, 31 October 2014, p.40.

¹⁵ Sonartech Atlas, *Submission 26*, p.16.

at a considerable disadvantage. Offset policies provide mandatory work and have been very effective in developing the capabilities and scale of in-country suppliers.¹⁶

- 4.15 Introducing offsets was not supported by Northrop Grumman, Lockheed Martin Australia or Defence. Mr Mike Lovell (Director, Operations and Integration, Northrop Grumman Australia) said:

In terms of offsets, our experience is that offsets are not the right way to go for Australia. We think they artificially inflate the cost and price to the Commonwealth. From our own experience we have seen some scheduled delays as local suppliers ramp up new capability, sometimes from scratch, to meet that offset. We think that every dollar we put into offsets is a dollar less that could be spent on the capabilities of the ADF.¹⁷

- 4.16 Mr Lovell said he believed that participation in the Global Supply Chain program was a better option.¹⁸ Lockheed Martin Australia submitted:

The majority of other comparable nations are still requiring offsets as a condition of a defence purchase. Offsets are inherently inefficient and expensive to taxpayers. Thus, by removing offsets and creating programs such as GSC [Global Supply Chain], the Australian government support of its industry in this way is more efficient and able to provide value for money in acquisitions, for its taxpayers.¹⁹

- 4.17 Defence's submission stated:

The establishment of Australia's involvement in the JSF [Joint Strike Fighter] procurement program was an example that of the principle of international competitiveness being applied over mandatory offsets in Australian defence procurement. Successive Governments have affirmed this move away from offsets, and this continues to be Defence's policy.²⁰

- 4.18 Notwithstanding Defence's view, projects that generate work through 'build to print' tasks are not of the same significance as projects that lead to the creation of intellectual property within Australia.

16 AIDN, *Submission 32*, p. 8 ('Attachment A - Quickstep submission')

17 Lovell, *Committee Hansard*, 13 February 2015, p.40.

18 Lovell, *Committee Hansard*, 13 February 2015, p.41.

19 Lockheed Martin, *Submission 39*, p.3.

20 Department of Defence, *Submission 41*, attachment A.

4.19 The Australian Government discontinued offsets in the early 1990s and has since introduced other measures.²¹ Defence advised:

Offsets programs were replaced for a number of reasons: uncertainty in relation to whether the programs were securing for Defence and industry the type of higher technology workload or technology transfers Australia was seeking to obtain; uncertainty in relation to whether Australia paid a price premium for the offsets work it secured; and, the programs which superseded offsets being designed around most, if not all, of the objectives offsets sought to achieve in a way which reduced the potential economic distortions involved.²²

4.20 H I Fraser Pty Ltd submitted that Australia is viewed internationally as 'rich pickings' because of the absence of offsets.²³ The Committee notes that the UK Trade and Investment (a non-ministerial UK Government department) publishes guidance for British defence exporters interested in selling to Australia. The UKTI's Defence and Security Organisation advises that whilst Australia 'has no specific offset policy', exporters should note the requirements of Australian Industry Capability and Priority Industry Capability programs:

The AIC Program requires tenderers to provide AIC Plans which demonstrate how they will maximise opportunities for Australian companies to participate in the proposed project. Bids for defence projects at or above the USD 20 million threshold value will require an AIC Plan. Also, projects that have Priority Industry Capability (PIC) implications will also require an AIC Plan as part of the bid.²⁴

4.21 In a submission to the JSCFADT's Trade Sub-Committee on Middle East trade and investment relationships, Austal viewed the AIC program as being a form of offsets. Austal submitted:

Offset programs are intended to encourage companies to invest and establish local businesses, facilitate technology transfer, provide skills and jobs, help to diversify the economy, provide

21 For example, the AIC program, PICs, GSC program and NACCISP program. Department of Defence, *Response to Questions on Notice* (Question No. 3).

22 Department of Defence, *Response to Questions on Notice* (Question No. 3).

23 H I Fraser Pty Ltd, *Submission 2*, p.2.

24 UK Trade and Investment Defence and Security Organisation, 'Defence and Export Market Briefing: Australia', 27 March 2015, at <<https://www.gov.uk/government/publications/defence-and-security-export-market-briefing-australia/defence-and-security-export-market-briefing-australia>> (viewed 26 August 2015).

self-reliance etc. The Australian Industry Capability (AIC) program, run by the Defence Material Organisation, is a form of offset program with similar objectives.²⁵

- 4.22 Austal's assessment highlights that Defence's opposition to offsets is perhaps in conflict with the intent of the AIC program.

Comparable countries

- 4.23 The inquiry terms of reference required the Committee to assess 'the export support given to Defence industry by governments of comparable nations.' Sonartech Atlas' submission noted that this could be subjective:

What would be a comparable nation? What is the best means of determining or identifying a comparable nation?²⁶

- 4.24 Sonartech suggested that factors such as gross domestic product, defence expenditure, industry size, alliances and capabilities would be relevant considerations.²⁷ Supacat Pty Ltd's submission suggested that 'each country's relationship between its defence forces and defence industry are different' and depend upon 'the different histories and cultures of those countries'.²⁸ The US position as a global superpower, for example, is an obvious point of distinction.

- 4.25 Several countries were cited during the inquiry as being suitably comparable or relevant to Australia. Some submissions provided case studies or discussed the arrangements of individual countries:

- BAE Systems (Submission 3): US, UK and South Korea;
- Ferra Engineering (Submission 15): Canada
- MBDA (Submission 16): UK
- Sonartech Atlas (Submission 26): Canada, US, UK and Turkey; and
- Department of Defence (Submission 41): UK, US, Canada, Sweden.

- 4.26 The Committee received submissions from the Governments of Sweden, Germany and Japan, which discuss certain aspects of the defence industry and export control policies.²⁹

25 Austal, *Submission 23*, p.9 (submission to JSCFADT Trade Sub-Committee inquiry into Middle East trade and investment).

26 Sonartech Atlas, *Submission 26*, p.12.

27 Sonartech Atlas, *Submission 26*, p.12.

28 Supacat, *Submission 18*, p.3.

29 See Submissions 45, 46 and 49 respectively.

- 4.27 Based on the above considerations, Canada, the UK and the US have been used as case studies for the purpose of assessing, in more depth, the export support available in comparable countries.

4.28 As shown below, there are contextual differences between Australia, Canada, the UK and the US.

Table 4.2 Australia, Canada, UK and US economic and defence industry comparison

	Gross domestic product and defence spending³⁰	Size of defence industry	Exports and imports 2009 to 2013³¹ (\$m)
AU	<i>Gross domestic product:</i> \$US1.095trillion; per capita US\$46,400 (Purchasing power parity 2014) <i>Defence spending:</i> 1.93% of GDP (2015) ³²	<i>Workforce:</i> Up to 29,000 (2010) ³³ <i>Revenue:</i> At least \$AU9.28billion (2014) ³⁴	<i>Defence exports:</i> 20th (438) <i>Defence imports:</i> 7th (5,027)
CAN	<i>Gross domestic product:</i> US\$1.592trillion; per capita US\$44,800 (PPP 2014) <i>Defence spending:</i> 1% of GDP (2013)	<i>Workforce:</i> 70,000 (2013) <i>Revenue:</i> CAN\$12.6billion (2011) ³⁵	<i>Defence exports:</i> 15th (1,199) <i>Imports:</i> 34th (1,052)
UK	<i>Gross domestic product:</i> \$US2.459trillion (2014); per capita \$39,500 (PPP 2014) <i>Defence spending:</i> 2.49% of GDP (2012)	<i>Workforce:</i> 155,000 (2012) <i>Revenue:</i> £22.1billion (2012) ³⁶	<i>Defence exports:</i> 6th (5,515) <i>Defence imports:</i> 16th (2,284)
US	<i>Gross domestic product:</i> US\$17.42trillion (2014); per capita US\$54,600 (PPP 2014) <i>Defence spending:</i> 4.35% of GDP (2012)	<i>Workforce:</i> 1.05million (2010) <i>Revenue:</i> \$US324billion (2010) ³⁷	<i>Defence exports:</i> 1st (39,080) <i>Defence imports:</i> 6th (5,074)

30 CIA World Factbook country profiles.

31 SIPRI Yearbook 2014 (Oxford University Press, Oxford, 2014), pp.258-259 and pp.268-269. SIPRI advises that the trend value indicator is not intended to be compared with gross domestic product or military expenditure to measure economic burden; see pp.271-272.

32 Australian Strategic Policy Institute, 'The Cost of Defence: ASPI Budget Brief 2015-16', p.vi.

33 Department of Defence, 'Building Defence Capability: A Policy for a Smarter and More Agile Defence Industry Base', June 2010, p. 28.

34 Australian Defence Magazine, Vol.23, No.1, December 2014/January 2015, p.26.

35 Tom Jenkins, 'Canada First: Leveraging Defence Procurement Through Key Industrial Capabilities' February 2013, p.xii, at <<http://www.tpsgc-pwgsc.gc.ca/app-acq/documents/eam-lmp-eng.pdf>> (viewed 26 August 2015).

36 UK Department of Business, Innovation and Skills, 'Securing Prosperity: A Strategic Vision for the UK Defence Sector', September 2013, at <<https://www.gov.uk/government/publications/securing-prosperity-a-strategic-vision-for-the-uk-defence-sector>> (viewed 26 August 2015).

37 Deloitte/Aerospace Industries Association of America, 'The Aerospace and Defense Industry in the US: A Financial and Economic Impact Study', March 2012, p.3, at <https://www.aia-aerospace.org/assets/deloitte_study_2012.pdf> (viewed 26 August 2015).

4.29 The table below considers the broad similarities and differences of defence industry policy in Australia, Canada, the UK and the US.

Table 4.3 Australia, Canada, UK and US defence industry policy comparison

	Key characteristics of defence procurement policy	Offset policy	Key measures to support and promote defence industry and defence exports	Lead promotion dept. and lead regulation dept.
AU	Competitiveness, innovation and value for money	No	Encourages primes to consider local industry Research and development Marketing assistance Export finance	Dept. of Defence (Both promotion and regulation)
CAN	Right equipment on time; domestic economic opportunity; oversight of procurement decisions	Yes – 100%	Dedicated export strategy Contractual guarantees from state-owned company Marketing assistance Export finance	<i>Export promotion:</i> Trade Commission Service & Canadian Commercial Corp. <i>Export regulation:</i> Dept. of Foreign Affairs, Trade & Development
UK	Competitiveness, qualified by support for some capabilities and retaining freedom of action	No	Ministerial advocacy Use of military personnel at trade shows and events Marketing assistance Export finance	<i>Export promotion:</i> UK Trade and Investment ³⁸ <i>Export regulation:</i> Dept. for Business, Innovation & Skills
US	Local industry protection with limited foreign competition; competitiveness and innovation within domestic industry	No	Laws restrict procurement from foreign sources Government sales program Marketing assistance Export finance	<i>Export promotion:</i> Dept. of Commerce Defense Security Cooperation Agency <i>Export regulation:</i> Dept. of State

4.30 Information in the above table has been derived from analysis of case studies of measures and policies to support defence exports in Canada, the UK and the US in the next sections of this chapter.

4.31 Briefly, some aspects of Swedish and South Korean practices were of interest to the Committee. BAE Systems submitted that the South Korean Government had successfully transformed their defence industry and has emerged as a leading global defence exporter, growing tenfold between 2007 and 2013.³⁹ Mr Peter Nicholson, (BAE Systems) said that this increase was due to increased Korean Government involvement in defence industry and changes to the tax system.⁴⁰

38 The UKTI is a non-ministerial department.

39 BAE Systems, *Submission 3*, p.6.

40 Nicholson, *Committee Hansard*, 13 February 2015, p. 35.

4.32 BAE Systems' submission stated that Korean Government involvement included incentives for industry consolidation and an offset program that allowed Korean companies to gain technology and positions with foreign entities.⁴¹ BAE Systems submitted:

The Korean government wishes to see not only improved competition in the domestic market but consolidation so that its defence exports are better placed to succeed in the global market place.⁴²

4.33 The submission added:

The South Korean government will continue to leverage its huge industrial base... to support the overall package that can be brought to bear to support defence deals.⁴³

4.34 Sweden has a designated agency known as the Defence Export Agency with primary responsibility for Swedish defence exports.⁴⁴ The Swedish Minister for Defence submitted:

The promotion includes exports from large to small and medium sized enterprises as well as export of civilian applications of military technologies. On behalf of the Armed Forces, the Defence Export Agency also performs sales of surplus stock.⁴⁵

4.35 ABDI's submission gave a favourable assessment of Sweden's defence export arrangements:

Sweden has a single agency for all export promotion and support, and has stated that export support is required for the country to preserve and develop the necessary industry skills and capabilities in the defence sector.⁴⁶

4.36 In Sweden, defence exports promotion is overseen by the Ministry for Foreign Affairs and rests outside the defence portfolio.⁴⁷

41 BAE Systems, *Submission 3*, pp.6-7.

42 BAE Systems, *Submission 3*, p.6.

43 BAE Systems, *Submission 3*, p.7.

44 Swedish Minister for Defence, *Submission 45*, p.1.

45 Swedish Minister for Defence, *Submission 45*, p.1.

46 ABDI, *Submission 9*, p.4.

47 Swedish Minister for Defence, *Submission 45*, pp.1-2.

Canada

4.37 A submission from Ferra Engineering stated that the 'Canadian approach is highly relevant to Australia'.⁴⁸ Canada's 2014 Defence Procurement Strategy has three objectives:

- Delivering the right equipment to the Canadian Armed Forces and the Canadian Coast Guard in a timely manner;
- Leveraging our purchases of defence equipment to create jobs and economic growth in Canada; and
- Streamlining defence procurement processes.⁴⁹

4.38 A submission from Australian Business Defence Industry noted that 'Canada has developed a specific Export Strategy to guide developments associated with the export of defence-related goods and services.'⁵⁰

Canada's Export Strategy for Defence Procurement has six key elements:

- Strengthening institutional collaboration at the federal level to ensure that government support meets industry expectations for international business development;
- Marshalling Canada's international diplomatic network, including defence attachés, on behalf of Canada's defence industry;
- Improving outreach strategies to small and medium-sized enterprises and leveraging existing relationships in the defence and security sectors;
- Enhancing coordinated support for Canada's presence at key international events;
- Strengthening access to and relationships in markets where Canada already has major trade interests while opening new markets for defence trade with Canada; and
- Streamlining the administration of export controls while continuing to fully respect Canada's established foreign, trade and defence policies.⁵¹

4.39 Most of Canada's defence exports are destined for the United States.⁵²

4.40 The Canadian Government has recently established independent oversight of its large defence acquisitions valued at CAN \$100 million

48 Ferra Engineering, *Submission 15*, p.5.

49 Public Works and Government Services Canada, 'Defence Procurement Strategy', February 2014, at <<http://www.tpsgc-pwgsc.gc.ca/app-acq/stamgp-lamsmp/sskt-eng.html>> (viewed 26 August 2015).

50 ABDI, *Submission 9*, p.4.

51 Foreign Affairs, Trade and Development Canada, 'Export Strategy for Defence Procurement' February 2014, at <<http://www.international.gc.ca/media/comm/news-communiqués/2014/02/pw-tp-bg.aspx?lang=eng>> (viewed 26 August 2015).

52 Sonartech Atlas, *Submission 26*, p.13; Department of Defence, *Submission 41*, attachment B.

(and other select projects). According to a news release issued by the Canadian Minister of National Defence, the Independent Panel for Defence Acquisition is intended to provide 'a third-party challenge function' by giving 'third-party advice to the Minister of National Defence'.⁵³ The Canadian Minister's announcement of the independent panel included the following statement:

Defence procurement spending has significant potential to produce substantial spin-off benefits to Canada's knowledge, innovation and export-based economy.⁵⁴

4.41 In its submission, Ferra Engineering stated:

The Government of Canada actively intervenes in the Defence programs in order to realise social and national industry outcomes including the employment of offsets to enhance the sustainability of the Canadian DIB [Defence Industrial Base] and though this comes at a cost, significant national social and industry benefits are being achieved, and the strategy is recognised as providing reasonable cost/benefit.⁵⁵

4.42 Sonartech Atlas submitted that Canada is 'actively trying to stimulate their industry' with programs such as the Industrial and Regional Benefits (IRB) policy, which 'requires the successful bidder of major defence contracts to engage Canadian industry'.⁵⁶ Ferra Engineering submitted that the IRB policy 'effectively' mandates offsets.⁵⁷ Information on the Canadian Industry Department's website confirmed this view:

The IRB [Industry and Regional Benefits] Policy requires companies to undertake business activities in Canada valued at 100 percent of the value of the defence or security contract they have been awarded by the Government of Canada. The IRB obligation is a contractual commitment and part of the overall government procurement contract.⁵⁸

53 Defence Minister of Canada, news release, 'Canada Launches Third-Party Oversight of Defence Procurement', 1 June 2015, at <<http://news.gc.ca/web/article-en.do?nid=982839>> (viewed 26 August 2015).

54 Defence Minister of Canada, news release, 'Canada Launches Third-Party Oversight of Defence Procurement', 1 June 2015, at <<http://news.gc.ca/web/article-en.do?nid=982839>> (viewed 26 August 2015).

55 Ferra Engineering, *Submission 15*, p.5.

56 Sonartech Atlas, *Submission 26*, p. 13.

57 Ferra Engineering, *Submission 15*, p.4.

58 Industry Canada, 'What is the IRB Policy?', at <https://www.ic.gc.ca/eic/site/042.nsf/eng/h_00016.html> (viewed 26 August 2015).

4.43 Canadian defence exporters receive marketing support from the Trade Commissioner Service.⁵⁹ Export Development Canada provides finance options for exporters.⁶⁰ The Canadian Commercial Corporation (CCC) (similar to a state-owned company in Australia) serves as a 'sales agency' and 'procurement agent' for Canadian exporters, by acting as a guarantor of contractual terms:

CCC works with governments of other nations and Canadian suppliers to negotiate and execute defence and security contracts, supporting Canadian industry while assisting our allies in meeting their defence and security needs.⁶¹

4.44 The Department of Foreign Affairs, Trade and Development is responsible for Canadian export controls.⁶²

United Kingdom

4.45 The UK's approach to its defence industry and defence procurement is contained in a 2012 White Paper entitled 'National Security Through Technology'.⁶³ The White Paper states:

Our default position is to seek to fulfil the UK's defence and security requirements through open competition on the domestic and global market.⁶⁴

4.46 MBDA's submission noted that Australian defence policy is 'closely aligned' to the UK as both include a focus on open competition.⁶⁵ However, as MBDA also noted, this position is not absolute.⁶⁶ The White Paper states:

59 Canadian Trade Commissioner Service, 'Defence and Security', at <<http://www.tradecommissioner.gc.ca/eng/sector-info.jsp?nid=510>> (viewed 26 August 2015).

60 Export Development Canada, 'Our Solutions' at <<http://www.edc.ca/EN/Our-Solutions/Pages/default.aspx>> (viewed 26 August 2015).

61 Canadian Commercial Corporation, 'Global Defence and Security' at <<http://www.ccc.ca/en/industries-and-markets/global-defence-and-security>> (viewed 26 August 2015); see also Department of Defence, *Submission 41*, attachment B.

62 See <<http://www.international.gc.ca/controls-controles/index.aspx?lang=eng>> (viewed 26 August 2015).

63 Department of Defence, *Submission 41*, attachment B; MBDA, *Submission 16*, p.5.

64 UK Ministry of Defence, 'National Security Through Technology: Technology, Support and Equipment for UK Defence and Security' (Cm8278), February 2012, p.19, at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27390/cm8278.pdf> (viewed 26 August 2015).

65 MBDA, *Submission 16*, p.15.

66 MBDA, *Submission 16*, p.15.

Our principle of Open Procurement will... be qualified by the principle of Technology Advantage: We will take action to protect our operational advantages and freedom of action, but only where this is essential for national security.⁶⁷

4.47 MBDA's submission observed:

This has been achieved in the UK, through a drive to create more innovative and effective business models, rather than UK Ministry of Defence subsidising the defence industry.⁶⁸

4.48 The White Paper does not include offsets as being among actions the UK Government could pursue to maintain advantage or grow exports. The White Paper states that 'we will be supportive, but not protectionist.' For instance, 'Ministers from across Government will do their utmost to assist UK-based suppliers in obtaining export orders.'⁶⁹

4.49 The Australian Business Defence Industry's submission noted that in the United Kingdom, 'exportability issues are considered in the early stages of the capability development process'.⁷⁰ Following the 2012 White Paper, a defence industry plan was developed with three objectives:

- Grow the UK's global market share, through increased exports;
- Foster greater collaboration and innovation across the Sector, bringing products and services to the market that meet customer needs; [and]
- Improve competitiveness through the whole value chain.⁷¹

4.50 An unclassified version of the UK's International Defence Engagement Strategy released in 2013 states that Defence Ministry resources can be used to promote British defence and security sector exports, together with

67 UK Ministry of Defence, 'National Security Through Technology: Technology, Support and Equipment for UK Defence and Security' (Cm8278), February 2012, p.14, at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27390/cm8278.pdf> (viewed 26 August 2015).

68 MBDA, *Submission 16*, p.15.

69 UK Ministry of Defence, 'National Security Through Technology: Technology, Support and Equipment for UK Defence and Security' (Cm8278), February 2012, pp.9-10, at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27390/cm8278.pdf> (viewed 26 August 2015).

70 Australian Business Defence Industry, *Submission 9*, p.4.

71 UK Department for Innovation, Business and Skills and Ministry of Defence, 'Defence Growth Partnership: Implementing the Strategic Vision for the UK Defence Sector', July 2014, p.10, at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329781/bis-14-953-defence-growth-partnership-delivering-growth-implementing-the-strategic-vision-for-the-uk-defence-sector.pdf> (viewed 26 August 2015).

UK Trade and Investment Defence Security Organisation (UKTI DSO) and the Foreign and Commonwealth Office.⁷²

4.51 The UKTI DSO is a specialised agency offering assistance to the UK defence sector at events and exhibitions worldwide.⁷³ ABDI noted in its submission that a distinctive element of the UK's approach to defence exports is that the UK 'handles defence and security related exports through a single agency outside of the Ministry of Defence'.⁷⁴

4.52 Assistance is available for defence exporters from UKTI Export Support Teams, which comprise serving UK military officers. Sonartech Atlas submitted that this was a 'distinct difference' between the UK and Australia.⁷⁵ The UKTI's website states:

The purpose of Export Support Teams is to provide specialist military services and advice to legitimate UK defence and security companies in order to help them succeed in the export market.⁷⁶

4.53 These services are offered in exchange for payment of a fee, depending on the level of service requested at exhibitions or events. While some basic services are free, 'premium' marketing support from UKTI starts at £2,475 and use of Export Support Team personnel at the stand costs £2,426 (plus tax).⁷⁷ In contrast to the UK's fee-for-service model, there is no fee payable for promotional assistance provided by Team Defence Australia.⁷⁸

4.54 A submission from Saab Australia Pty Ltd supported adopting the UKTI model of linking industry with customers:

Saab recommends that consideration be given to forming various user groups that enable industry to engage directly with end users in order to receive feedback and suggestions on enhancements that

72 UK Ministry of Defence, 'International Defence Engagement Strategy', February 2013, at <<https://www.gov.uk/government/publications/international-defence-engagement-strategy>> (viewed 26 August 2015).

73 Department of Defence, *Submission 41*, attachment B.

74 ABDI, *Submission 9*, p.4; see also Taylor, *Committee Hansard*, 13 February 2015, p.12.

75 Sonartech Atlas, *Submission 26*, p.14; BAE Systems, *Submission 3*, p.5.

76 UK Trade and Investment Organisation, 'Defence and Security Exporting: Event and Exhibition Support', at <<https://www.gov.uk/government/publications/defence-and-security-exporting-event-and-exhibition-support/defence-and-security-exporting-event-and-exhibition-support>> (viewed 26 August 2015).

77 UK Trade and Investment Organisation, 'Defence and Security Exporting: Event and Exhibition Support', at <<https://www.gov.uk/government/publications/defence-and-security-exporting-event-and-exhibition-support/defence-and-security-exporting-event-and-exhibition-support>> (viewed 26 August 2015).

78 Department of Defence, 'Terms and Conditions for Participation in a Team Defence Australia Event', clause 1, at <http://www.defence.gov.au/teamaustralia/docs/Standard_Terms_and_Conditions.pdf> (viewed 26 August 2015).

would further improve the saleability of its products in the export market. A group similar to the Export Support Team from UKTI DSO could be used to facilitate the process and engagement between industry and users.⁷⁹

4.55 Mr David Shiner (Vice President, International Sales, Austal) also supported the UK's approach to defence sales:

...you actually have the services presenting platforms, be it maritime, land or air customers, for display, supported at very senior levels, inviting industry and export customers to visit. That has been and remains a very powerful tool. For the export and user customer, it is a great recommendation to find another service chief actually operating and using that particular product.⁸⁰

4.56 QinetiQ submitted that support for the UK defence industry includes the utilisation of defence attachés at diplomatic posts:

The UK's approach to promoting defence exports is based on clear cooperation between its defence attachés and trade-focused staff at diplomatic posts. As part of their responsibilities, UK defence attaches are directed to provide support to UK defence companies abroad. They provide background briefing on political and economic context and can facilitate introductions. This does not entail engagement in commercial activities, but it does ensure that the UK's international network of defence staff actively consider opportunities in their regions for defence exports.⁸¹

4.57 UK Export Finance provides assistance with finance, credit and insurance for 'all exporters, large and small, and all types of UK exports'.⁸²

4.58 The Export Control Organisation, located within the Department for Business, Innovation and Skills is responsible for UK export controls.⁸³

79 Saab Australia Pty Ltd, *Submission 10*, p.7.

80 Shiner, *Committee Hansard*, 13 February 2015, p.30.

81 QinetiQ, *Submission 12*, p.3; see also Taylor, *Committee Hansard*, 13 February 2015, p.12.

82 UK Export Finance, 'An Overview' at <<https://www.gov.uk/guidance/export-finance-and-insurance-an-overview>> (viewed 26 August 2015).

83 See <<https://www.gov.uk/government/organisations/export-control-organisation>> (viewed 26 August 2015).

United States

4.59 Mr Gilbert Watters (Senior Principal Consultant – Government, QinetiQ Australia) said that the size of the United States’ defence and export industry gives the US an immense commercial advantage:

If the US wants to buy an aircraft, they contract Lockheed Martin, Boeing or Raytheon to develop it; and then the US government owns the technology but the people who know about how it works reside in those companies. That puts them in a very advantageous position in terms of selling those big assets around the world.⁸⁴

4.60 The 2015 US National Security Strategy confirms the importance the US Government places upon maintaining its capability advantage:

We will protect our investment in foundational capabilities like the nuclear deterrent, and we will grow our investment in crucial capabilities like cyber; space; and intelligence, surveillance, and reconnaissance. We will safeguard our science and technology base to keep our edge in the capabilities needed to prevail against any adversary.⁸⁵

4.61 The US Government does not have an offsets policy.⁸⁶ Nonetheless, the Committee was informed that US law inhibits foreign defence imports and protects local industry. BAE Systems submitted:

Buy America legislation militates against US primes incorporating foreign systems into larger complex weapons systems unless they are:

- Demonstrably superior to anything offered by US companies;
- A broader ANZUS alliance consideration overrides the requirements of the legislation; or,
- The prerequisite to acquisition of major weapons systems such as the F-35 is acceptance of an Australian export (e.g. Norwegian purchase of F-35 and the Joint Strike Missile).⁸⁷

84 Watters, *Committee Hansard*, 13 February 2015, p.15.

85 United States National Security Strategy, February 2015, p.8, at <https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf> (viewed 26 August 2015).

86 US Department of Commerce Bureau of Industry and Security, ‘Offsets in Defense: Nineteenth Study’, March 2015, p.2, at <https://www.bis.doc.gov/index.php/forms-documents/doc_download/1203-nineteenth-report-to-congress-3-15> (viewed 26 August 2015).

87 BAE Systems Australia, *Submission 3*, p.2.

- 4.62 A submission from Austal, an Australian shipbuilding company, described the US shipbuilding market as ‘highly protected’ by the Merchant Marine Act of 1920 (also known as the ‘Jones Act’) and the Buy American Act of 1933.
- 4.63 The Buy American Act of 1933 requires the US Government to give preference to US made products, except if supplies cannot be obtained or if it would be contrary to the public interest.⁸⁸ In defence procurement, the Defense Federal Regulation Supplement mandates that products from overseas may only be considered in limited circumstances, such as when:
- ...an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.⁸⁹
- 4.64 Another exemption can arise where costs are unreasonable. This is defined as being when the domestic equivalent costs 50 per cent more than the option of purchasing from a foreign supplier.⁹⁰ Subject to the necessities of national defence, the Defense Federal Regulation Supplement has granted Australia (along with numerous other countries) an exemption:
- As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition of qualifying country end products from... qualifying countries.⁹¹
- 4.65 Professor Goran Roos said that the restrictions to accessing the US market are nevertheless numerous:
- To outline these restrictions, firstly, there are the federal acquisition regulations. There is the important Defense Federal

88 The Buy American Act of 1933 – 41 USC § 8302 states: ‘Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.’

89 Defense Federal Acquisition Regulation Supplement 48 CFR § 225.103(b)(i).

90 Defense Federal Acquisition Regulation Supplement 48 CFR § 225.105.

91 Defense Federal Acquisition Regulation Supplement 48 CFR § 225.872-1(a). The DFARS further state: ‘The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.’

Acquisition Regulation Supplement, DFARS as it is called. There is the Buy American Act; the Balance of Payments Program; the Berry amendment; the special matters restriction; the no-foreign-content-restriction; the security classification of programs; the requirement to prove it is on US soil; the Small Business Act; the Data Distribution Code; ITAR; and proxy border special security arrangements they can arrange.⁹²

- 4.66 Pursuant to Chapter 15 of the US-Australia Free Trade Agreement, certain defence products were excluded, including weapons, guided missiles, aircraft, ships, naval vessels and combat vehicles.⁹³ A briefing note on the website of the Australia's US Embassy indicates that these treaty exclusions override the regulatory exemptions:

Chapter 15 of AUSFTA does not apply to a range of US procurements, including... :

[...]

- Procurements of a small number of specified goods by the Department of Defense and the General Services Administration;

[...]

In procurements such as those listed above, the exemption from *Buy American Act* requirements provided for Australian goods and services does not apply. The procuring entity must therefore consider US-origin requirements on relevant products.⁹⁴

- 4.67 Prof Roos also noted that no single entity is responsible for defence procurement and the branches of the armed forces act independently.⁹⁵ Mr William Taylor (Senior Strategy and Business Development Manager, QinetiQ Australia) commented on the challenges of the US market:

In the US, the federal acquisition regulations exceed 1,800 pages, and they are supplemented by other defence federal acquisition regulations.⁹⁶

92 Roos, *Committee Hansard*, 9 October 2014, p.6; see also AMWU, *Submission 24*, p.2.

93 Department of Foreign Affairs and Trade, 'US-Australia Free Trade Agreement: Chapter Fifteen - Government Procurement', at <<http://dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-agreement/Pages/chapter-fifteen-government-procurement.aspx>> (viewed 26 August 2015).

94 'Brief Guide to US Government Procurement and the Australia United States Free Trade Agreement (including 'Buy American')' [undated], at <<http://usa.embassy.gov.au/files/whwh/USGovProcurementandAUSFTA.pdf>> (viewed 26 August 2015).

95 Roos, *Committee Hansard*, 9 October 2014, p.6.

96 Taylor and Watters, *Committee Hansard*, 13 February 2015, p.10.

4.68 Austal's submission described how the Jones Act regulates the US shipping industry:

The law regulates maritime commerce in U.S. waters and between U.S. ports and deals with cabotage, requiring all goods transported by water between U.S. ports be carried on U.S. flag ships, constructed in the United States, owned by U.S. citizens, and crewed by U.S. citizens and U.S. permanent residents.⁹⁷

4.69 Austal concluded in its submission:

As a result of this legislation, all naval vessel construction contracts awarded by the United States Navy are awarded to US shipbuilders, resulting in the continuing success of naval shipbuilding in the US.⁹⁸

4.70 The US Government has been reforming its defence acquisition processes through a process known as 'Better Buying Power'.⁹⁹ Notwithstanding the statutory protections for US industry, which were noted during the course of this inquiry, the third and most recent iteration of Better Buying Power focuses on innovation, incentives and competition – including from foreign suppliers. An April 2015 memorandum authorised by the US Under Secretary of Defense for Acquisition, Technology and Logistics stated:

The sources of a great deal of today's technical innovation are not located in the United States. We have global allies, friends, and trading partners who share our values and can assist us in pursuing innovation and technological superiority. ... The current process through which the Department manages acquisition programs does not draw out the full potential for international solutions.¹⁰⁰

4.71 US military exports are facilitated by the Foreign Military Sales program. In its submission, Sonartech Atlas described the FMS program as 'the most prevalent means of export of US arms and probably the most well-

97 Austal, *Submission 31*, p.9; see also 46 USC Subtitle V – Merchant Marine.

98 Austal, *Submission 31*, p.9.

99 US Department of Defense, 'Better Buying Power', at <<http://bbp.dau.mil/background.html>> (viewed 26 August 2015).

100 US Under Secretary of Defense for Acquisition, Technology and Logistics, memorandum, 'Implementation Directive for Better Buying Power 3.0 – Achieving Dominant Capabilities Through Technical Excellence and Innovation', 9 April 2015, at <[http://www.acq.osd.mil/fo/docs/betterBuyingPower3.0\(9Apr15\).pdf](http://www.acq.osd.mil/fo/docs/betterBuyingPower3.0(9Apr15).pdf)> (viewed 26 August 2015).

known'.¹⁰¹ The Department of State's website summarises the purpose of the FMS program:

FMS is a government-to-government program through which the U.S. Government sells conventional military weapons, equipment, and services to allied and friendly nations to assist them in meeting their legitimate defense requirements.¹⁰²

4.72 The Defense Security and Cooperation Agency (located within the Department of Defense) is responsible for the FMS program.¹⁰³ The Department of Defence submitted that FMS program includes grants, leases and loans of equipment, training and financing.¹⁰⁴ Direct support for defence exports is primarily facilitated through the US Commercial Service.¹⁰⁵ The Department of Defence stated in its submission that available support includes:

- Business Counselling and Advocacy;
- Market Research – providing country and industry overviews, country commercial guides and trade data and analysis;
- Trade Events - supporting international trade shows, business matching, and trade missions; and
- International Partners – identifying agents, distributors, licensees or strategic overseas partners.¹⁰⁶

4.73 The US has military officers stationed in embassies to assist with government-to-government military sales.¹⁰⁷

4.74 In his 2010 State of the Union address, President Obama announced an intention to double US exports within five years and reform defence exports controls.¹⁰⁸ The subsequent National Export Initiative included measures such as increased export financing, export promotion and improved access to foreign markets.¹⁰⁹

101 Sonartech, *Submission 26*, p. 14.

102 US Department of State, 'Third Party Transfers and Foreign Military Sales Teams and Functions', at <<http://www.state.gov/t/pm/rsat/c14021.htm>> (viewed 26 August 2015).

103 See <<http://www.dsca.mil/programs>> (viewed 26 August 2015); Supacat Pty Ltd, *Submission 18*, p.2.

104 Department of Defence, *Submission 41*, attachment B.

105 Department of Defence, *Submission 41*, attachment B.

106 Department of Defence, *Submission 41*, attachment B; see also US Commercial Service, 'Services for U.S. Companies' <<http://www.trade.gov/cs/services.asp>> (viewed 26 August 2015).

107 BAE Systems, *Submission 3*, pp.5-6.

108 The White House, 'Remarks by the President in State of the Union Address', 27 January 2010, at <<https://www.whitehouse.gov/the-press-office/remarks-president-state-union-address>> (viewed 26 August 2015).

109 'National Export Initiative', Executive Order 13534 of March 11, 2010 (3 CFR, 2011 Comp., pp.198-201).

- 4.75 The Directorate of Defense Trade Controls, located within the State Department, has primary responsibility for oversight of export controls.¹¹⁰

110 See <<https://www.pmddtc.state.gov/index.html>> (viewed 26 August 2015).

