



Committee Secretary
Joint Standing Committee on Foreign Affairs,
Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

Date
10 July 14

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INQUIRY INTO GOVERNMENT SUPPORT FOR AUSTRALIAN DEFENCE INDUSTRY EXPORTS - SUBMISSION

Dear Secretary,

1. Saab Australia Pty Ltd is major supplier of defence technology to the Australia Defence Force and has established a significant export market of locally developed military command and control systems. As recognition of this increased emphasis on exports we have recently established an International Defence Division operating in our headquarters in Adelaide, which currently employs software, hardware and systems engineers.
2. It is for this reason that we would like to submit a number of observations and recommendations which we believe will enhance the international defence export prospects of Australian based companies.

Background to DECO and Australia's export control regimes

3. Saab understands and accepts the need for controls over the export of certain technologies, noting the two main reasons for these controls:
 - a. it is in Australia's national interest to do so, particularly noting the recent threats (known attempts to access State and corporate facilities placing directly at risk information regarding Australia's Defence and essential services security), including for the protection of the armed forces of Australia and its allies during operations; and
 - b. the need for Australia to comply with its international obligations regarding the proliferation of certain technologies, or place at risk the ability of the country (and therefore Saab) to have access to technology needed to secure and ensure Australia's security and Saab's business interests.
4. Saab therefore accepts the need for: good corporate citizens; and for an active and effective Government/agency 'gatekeeper' in the form of the Defence Export Control Office (DECO), to each play their part to prevent proliferation of technologies that Saab deals with in order to protect Australia, its citizens and our way of life.

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5. As part of this, Saab accepts that controls need to extend beyond physical (tangible) goods as has been the case in Australia to date, to also cover the supply of controlled technology via intangible (including electronic) transfer and brokering.

DECO legislative and policy reform activities

6. It has been pleasing to Saab to see DECO's openness to consider reform of the blanket rules regarding controls over intangible exports and brokering that were introduced via the Defence Trade Controls Act (DTC Act) in May 2013 (to take effect May 2015), and the (outwardly at least) practical outlook being taken to that reform process, for example by considering a 'risk-based' approach to controls and regulation.
7. As a result of looking at a 'risk-based' approach, DECO has been open to considering having low risk technologies to low risk destinations treated differently to other proposed exports, particularly where the exporter is known to DECO and where there is no evidence that the exporter is not able or willing to work within the export control rules. Saab supports this approach and has been working with DECO to help work out how such arrangements might work best.
8. Saab is also pleased to see the removal of controls over what are often called 'deemed exports', ie transfers within Australia to foreign nationals, in the final (May 2013) form of the DTC Act, and also DECO's openness to considering removing controls over oral communication. Controls of this nature are impractical if not impossible to enforce, and come with a high degree of overhead and cost for industry for little benefit in Saab's view, so it is pleasing to see the DECO has been open to considering these changes.
9. Saab hopes that this willingness to consider new and more practical approaches (based on a clear assessment of the risk in broad categories) continues and assumes that it will, given the alignment of such an approach with the Government's stated reform agenda.
10. That said there are a few areas in which continued or additional reform in relation to DECO are requested/ suggested/ recommended.

Concern: Multiple Acts and agencies

11. The first is Saab's continuing concern about having a number of Acts being administered by a number of Government departments/agencies with overlapping or related goals or considerations related to controls over the movement of military and dual use technologies, as shown in the table below.

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12.

Department/agency	Legislation	Operation
Customs	Customs Act	Assessing, issuing and enforcing Import permits
Customs	Customs Act	Enforcing Export permits
Defence (DECO)	Customs Act	Assessing and issuing Export permits
Defence (DECO)	Weapons of Mass Destruction (WMD) Act	Assessing and issuing Export permits
Defence (DECO)	Defence Trade Controls Act	Assessing and issuing Supply (intangibles) & Brokering permits
DFAT	Autonomous Sanctions Act	Enforcing Autonomous sanctions

13. One result of this overlap in coverage of different legislation with which DECO is involved is that industry will be provided by DECO with two permits (with two separate permit numbers and in two separate documents) where one export arrangement involves both tangible (physical) and intangible (electronic, eg email) export, even of the same technology (as often occurs for Saab where work is done to develop and integrate both hardware and software, for both Australian and foreign end use). This is seen by Saab as an unnecessary overhead for both Government and industry.
14. Saab is also concerned about the misalignment of reform activities being undertaken by DECO, and the associated reforms required on the Customs side. The most common response from DECO to questions asked regarding the status of associated reform by Customs (to ensure consistency and alignment between DECO and Customs) has been 'we need/have to talk to Customs' - but there has been no evidence of progress to date. A telling point is the absence of Customs representatives from the DTC Act/Enhanced Export Controls Steering Group and associated groups (eg Defence industry experts working group).

Recommendation: Multiple Acts and agencies

15. Saab would prefer to see all controls over the movement of military and dual use technologies arise under one Act (or a small set of Acts, sensibly divided in scope), with one agency/Government interface, providing a one-stop-shop and ensuring consistency and alignment regardless of the basis for the controls (Wassenaar, WMD, Defence Trade Cooperation Treaty, UN or autonomous sanctions, Australia import controls). This would save both Government and industry time and money, and help to ensure that controls are understood, complied with and enforced most efficiently and effectively.

Concern: DECO Interface with industry

16. Another area where reform within DECO (and/or the 'one-stop-shop' described above) is seen as vital is the interface with industry. Changes to the process for applying for export permits that were rolled out by DECO in 2013 are welcomed but those advances fall well short of the overall changes needed in Saab's view. The further steps required were described by DECO at the time of the 2013 rollout as "phase 2" of a set of planned changes, however it now appears that these further changes will not be happening.

Recommendation: DECO Interface with industry

17. The originally proposed 'phase 2' changes are, in Saab's view, necessary - the efficiency and effectiveness of the licensing process will be best served by having an online portal through which submissions are made, communication (questions/answers) exchanged and maintained with the case, status able to be checked and responses (permits or rejections) provided and reporting performed. Currently email is used, with a better job done than in the past to coordinate submissions, questions, answers and permits/rejections (through the use of submission identifiers, for example) but there are still the difficulties of having to tie together information and status across a number of emails, potentially to or from a number of different people, and the status of applications is not clear to Saab unless contact is made by either DECO or Saab.

18. One option would be to model the interface with industry on that used by Sweden's Inspectorate of Strategic Products (ISP), the Swedish equivalent of DECO, maybe even ask ISP if the interface can be provided as a starting point for a similar portal in Australia.

Concern: Resourcing at DECO

19. Resourcing at DECO (which correlates with timeliness of responses and potential for reform, eg of the interface with industry described above). As things stand, Saab does not experience many issues (and no significant ones) with respect to the timeliness of responses from DECO following submissions from Saab. In fact, Saab would in general commend DECO on its responsiveness

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and willingness to work with Saab to facilitate assessments efficiently and effectively, and with regard for Saab's desired timelines. With the impending activation of the controls of intangible supply and of brokering in early 2015 however (and the lead up activities to prepare for it), this good record may be at risk in future.

Recommendation: Resourcing at DECO

20. Investment in DECO reform required - Obviously further reform work as described above (eg providing an online portal as described above in paragraph 14 under 'Interface with industry') will also require funding, an investment that Saab views as providing efficiencies into the future so worthy of the investment at this time.

Concern: Scope of brokering controls

21. Saab is in agreement with the premise behind the inclusion of brokering in the DTC Act, however the control over brokering remains a concern to Saab as it is unclear what will and will not constitute brokering. Saab is not a company that sits in Australia and acts as a paid "middle man" for arms deals around the world, but it is a company involved in the movement of military technology around the world.
22. On the assumption that Saab will, at least at times, be involved in activities that are captured as 'brokering' by the DTC Act, Saab intends to register with DECO as a potential broker. It is clear from Part 3 of the Explanatory Memorandum for the DTC Bill that Defence would expect this, as it says 'Defence proposes that some Australian entities which form a part of multinational companies are likely to require registration as brokers, as a result of the multinational structure of the company and how their business is conducted'. Saab is a multinational company, being ultimately owned by Saab AB in Sweden, which has subsidiaries and business operations in many countries throughout the world. Saab's business model requires and involves a high degree of interconnectedness between the Saab group's various operations worldwide.
23. The question will then arise as to when Saab needs to request a brokering permit for a particular activity. If Saab is brokering in any particular circumstance, a permit from DECO will be required (which will take time to obtain), and records kept as set out in the DTC Regulations – so this represents an impost on industry operations in terms of time and cost, and therefore not welcome in relation to activities that the Act is not intended to capture.
24. Brokering is defined very broadly in the DTC Act as: any Australian or anyone in Australia 'arranging' the movement of controlled goods or technology between two places outside Australia (even, except for certain specified countries, within other countries). The DTC Act states that Saab will be brokering if it receives a 'commission, fee or other benefit' for doing so – but then says that brokering is not limited to those situations.

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25. Saab's concern is that either the legislation is drawn up more broadly than intended. On top of the uncertainty that this creates, Saab is concerned that this may result in significant additional time and cost, including requiring significant additional training, tools, systems and auditing, and that this extra impost will be suffered in many cases not intended by the legislators.
26. So what are the boundaries? There are many questions that arise, interconnected to a large degree, when trying to apply these rules to business operations, particularly in the marketing/demonstration sphere, where pre-sale movement of controlled goods and technology for demonstration is commonplace. For example, how early in the 'arrangements' (which may or may not go ahead) does brokering begin, and how much involvement is required, before a permit is required?

Recommendation: Scope of brokering controls

27. Saab requests that either the legislation be amended to include more precise rules (which can be expanded later if it turns out that the rules do not capture all potential mischief of concern to the legislators), or that further guidance is provided to industry as to the policies and procedures that will underpin the assessments conducted and permits issued with respect to brokering.

Concern: Military staff support for industry

28. Saab has previously requested support from military specialists to provide subject matter expertise at exhibitions or significant demonstrations. The response from Defence has been negative with the reasoning being 'maintainance of probity' at all times. It is interesting to contrast the differences between Australia and many other countries in the extent to which their respective Defence Departments directly support defence Industry with such requests.
29. The UK Trade and Investment Defence and Security Organisation (UKTI DSO), is responsible for promoting the UK defence and security sectors overseas. They work to support industry-led export campaigns, and second military staff to UKTI DSO to provide specialist subject matter expertise. Where appropriate, they also work directly with Industry in support of their export aspirations. The Export Support Team (EST) comprises of serving military personnel with a wide range of expertise. The EST is a unique and intrinsic part of the UKTI Defence & Security Organisation. The purpose of EST 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.

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Recommendation: Military staff support for industry

30. Saab believes the government should establish policy and a mechanism which permits Defence personnel to actively engage in support of Australian Defence Industry. A small pool of selected uniformed staff at both the officer and enlisted level should be identified and made available to support international exhibitions, demonstrations and tender presentations similar to what the UKTI DSO have established with their Export Support Team.
31. Saab also believes that where appropriate Defence should be prepared to endorse Australian developed products and services which meet specified criteria and have been successfully introduced into service. Testimonials are frequently used by Industry to support their export tenders, however, getting approval within the Department is often difficult to find.

Concern: Military engagement with industry

32. On several occasions Saab has attempted to establish user group communities for systems in operational service in Australia. There would be a large number of benefits to both defence and industry if these groups were to be approved and established. These include valuable feedback on operational performance and areas which could be improved and the opportunity for companies to showcase the development work or enhancements they are developing for these systems. This process of engagement would significantly improve Australian Defence Industry prospects for export as the products would be refined and tempered by the high levels of operational experience in the Australian Defence Force. The ADF is held in very high regard regionally and products which meet their exacting standards would have strong sales potential internationally. Saab recognises that Defence exhibitions is one area in which Industry can display its improvements; however, the issue is getting access to end user feedback in the first instance.

Recommendation: Military engagement with industry

33. 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 would further improve the saleability of its products on 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.

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