



Space Industry
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Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Subject: *Agreement between the Government of Australia and the Government of the United States of America on Technology Safeguards Associated with United States Participation in Space Launches from Australia*

Dear Committee Secretary,

Thank you for inviting the Space Industry Association of Australia ('SIAA') to make a submission to the Joint Standing Committee on Treaties' ('JSCOT') inquiry into the *Agreement between the Government of Australia and the Government of the United States of America on Technology Safeguards Associated with the United States Participation in Space Launches in Australia* ('TSA').

SIAA is the peak body for the Space Sector in Australia. We provide a collective voice on behalf of over 75 domestic and international member organisations with capability across all aspects of Space activities. SIAA membership reflects a breadth and depth of capability, including launch providers, advanced manufacturing, law firms and professional services firms within a diverse membership of startups, small-to-medium sized enterprises ('SMEs') and aerospace primes.

SIAA is supportive of the TSA's aims and believes that the TSA is in the national interest.

On 4 May 2021, SIAA wrote to the then Australian Foreign Minister, Senator The Hon Marise Payne, and current US Secretary of State The Hon Antony J Blinken advocating for a US-Australia Technology Safeguards Agreement "in support of US and Australian national security, civil and commercial space priorities."

Close to three years later, we are pleased that the treaty text is now tabled in the Australian Parliament, and we look forward to its entry into force later this year.

The ability to conduct spaceflight of United States ('US') technology from Australia will provide key additional capacity to the US Space Sector. This strengthened partnership builds on Australia's position as a close strategic partner of the US and will provide new opportunities for the Australian space industry.

What follows are SIAA's detailed reflections on the TSA addressing the following:

- Purpose
- Implementation
- Intersection with the US International Traffic in Arms Regulations ('ITAR')
- Proposed Government efforts post TSA entry into force

I commend our response to you and hope it is of assistance to the JSCOT. We are available to provide clarifications or answer questions regarding our submission at your convenience.

Regards,

Jeremy Hallett
Executive Chairman
Space Industry Association of Australia
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1. Purpose of the TSA

SIAA believes there is an opportunity for Australia to participate in the significant US spaceflight market by enabling such activities to take place from Australian territory, including:

- Launch of US rockets carrying either US or other spacecraft
- Launch of Australian or other rockets carrying US spacecraft
- Return of US spacecraft

To date, these activities have been unable to occur in Australia as they involve the export from the US to Australia of Missile Technology Control Regime ('MTCR') Category I controlled technology. A process which is difficult, indeed prohibitive, to achieve through extant mechanisms.

If such activities were to occur in Australia, we believe the whole sector will benefit including launch services providers, spaceport operators, satellite manufacturers, ground segment providers and professional services firms.

The intended function of the TSA is to provide the framework, implemented via extant licensing processes, that allows the export of spaceflight related MTCR Category I technology from the US to Australia enabling US spaceflight in Australia.

We believe the TSA will function as such, enabling Australia to participate in the US spaceflight market. However, we note this does not abrogate the need for Australia to be self-reliant when it comes to spaceflight to ensure space technology and capabilities are available to secure and advance Australia's interests and those of its citizens.

The TSA has never been presented to SIAA as a trade agreement or an arrangement to enable technology sharing, collaboration, or manufacturing in Australia of US-origin MTCR Category I technology. That this is not covered in the TSA is not a surprise to SIAA.

Further, based on other TSAs (e.g. the US-UK and US-NZ TSAs) and our own engagement with the US system, we have anticipated the strict control conditions to be placed on relevant US technology when in Australia. These controls are present in the TSA and are unsurprising to SIAA.

We note that the TSA acknowledges that Australia is developing space launch vehicles independent of the US. The TSA does not contain language that will curtail these efforts. This contrasts with the agreement between New Zealand ('NZ') and the US¹ in which NZ must provide assurances it *"is not currently developing or acquiring any Missile Technology Control Regime Category 1 rocket systems, and will not develop or acquire such systems in the future without prior consultation with the Government of the United States of America."*

This is key positive difference in the Australian TSA and an important concession achieved by the negotiation team.

We note the Minister for Industry and Science, The Hon Ed Husic MP, was quoted in InnovationAus² on 10 March 2024, saying, "The TSA will unlock opportunities across the entire value chain for Australian organisations to deliver the innovations, data and knowledge from space that improve life here on Earth." We agree.

¹ *Agreement between the Government of New Zealand and the Government of the United States of America on Technology Safeguards Associated with United States Participation in Space Launches from New Zealand*

https://www.treaties.mfat.govt.nz/search/details/t/3858/c_1

² <https://www.innovationaus.com/space-treaty-stoush-opens-up-over-sovereign-controls/>

2. Implementation

The TSA is fit for purpose to enable Australia to participate in the US spaceflight market. However, it is a complex, highly technical text, with broad – sometimes circular – definitions, odd grammar, and an understandably heavy use of jargon. Unpicking the text and its intent and translating into an effective implementation will be a challenge. Work will need to be done by both Government and the Sector in implementing the TSA.

We understand that the US and Australian Governments will implement the TSA via their extant licensing processes. In Australia, this will be done by the Australian Space Agency through the authorities contained in the *Space (Launches and Returns) (General) Rules 2019* (Cth). We believe the Australian Government implementation should focus on:

- Ensuring that the definitions in the TSA do not unnecessarily or unintentionally capture other technologies. In their current form we do not believe they do.
- Ensuring that the Australian government, companies and individuals are not unnecessarily or unintentionally prevented for participating in the US spaceflight activities we hope the TSA will unlock.
- Completing preparatory work for entering into the so-called “politically binding arrangements with other governments” for the launch of US spacecraft using foreign launch vehicles from Australia.
 - This will be critical to unlock Australia as a high-volume, high-cadence global spaceflight destination. Our understanding is that a “politically binding arrangement” is tantamount to a Memorandum of Understanding (‘MoU’). We note the NZ TSA requires more onerous “legally binding agreements”. The Australian Space Agency should move quickly to establish MoUs with relevant governments to unlock further commercial opportunity for Australia.
- Education of the sector – and the public – of the purpose of the TSA and what is required to be implemented by the sector to make use of the TSA. In particular, clear guidance on the sequencing of the US and Australian licensing process, when in the process documentation deliverables are due and the expected lead times for decisions.

We remain willing and able to assist the Australian Space Agency as it implements the TSA, and we urge the Australian Space Agency to increase the transparency to industry of its progress in implementing the TSA.

Further, noting Minister Husic’s stated optimism about positive impact of the TSA, we also highlight that should the implementation and ongoing management of the TSA require additional resources within the Australian Space Agency they should be funded by Government and provided accordingly.

It should not be underestimated how onerous the requirements are on the Space Sector to meet the TSA’s compliance obligations. We are keenly interested in working with the Australian Space Agency in tracking the cost to industry to implement the TSA including exploring the possibility of government funding being made available to unlock the benefits of the TSA for Australia.

Finally, it will be important to measure the progress in implementing and subsequent operation of the TSA. We propose that an annual review be conducted into the implementation, operation and benefits (or drawbacks) of the TSA with the first review to be conducted 12 months after TSA entry into force.

3. TSA and ITAR

We note in the House of Representatives Daily Program for 19 March 2024³ that the Defence Trade Controls Amendment Bill 2023 will be debated and presumably pass the House taking it one step closer to becoming law.

According to the Explanatory memorandum⁴ the bill will “support the creation of an export licence-free environment among and between AUKUS partners.” It goes on to say that the “export licence-free environment will revolutionise trade among and between AUKUS partners and encourage industry, higher education and research sectors in all three nations to innovate and cooperate with lower technology transfer barriers and costs of trade.”

An export license-free environment between Australia and the US was inconceivable when the negotiations for the TSA commenced. It now seems likely to take effect by the end of calendar year 2024. This gives us cause to wonder whether this potential change influenced the negotiations at all.

Our current understanding is that the TSA will be a relevant framework in tightly specific contexts. We understand that TSA will not be applicable in the case of ITAR-controlled US exports that are not related to the MTCR. It is our understanding of SIAA that the TSA framework is relevant when ‘Launch Activities’ require a license process.

However, we do have concerns that the broad definitions in the TSA will lead unintended consequences in a potential export license-free environment. We believe this can, in part, be mitigated through implementation, however we also urge the Australian Space Agency to engage closely with their colleagues in the Department of Defence as the export license-free environment is implemented.

4. Proposed Government efforts post TSA entry into force

Since the commencement of negotiations for the TSA, AUKUS has fundamentally changed the relationship between the US and Australia (and the UK) providing the opportunity for Australia to build upon the TSA and secure a closer Space relationship with the US.

There are three specific initiatives the Australia Government should pursue:

i. US National Space Policy concession for spaceflight of US Government payloads

The US National Space Policy⁵ states “United States Government payloads shall be launched on vehicles manufactured in the United States”.

The TSA enables US commercial payloads to be launched on Australian rockets from Australia however US government policy means that this is still not possible for US government payloads. We urge the Australian Government to address this policy within the US system to obtain an exemption for Australia allowing US government payloads to be launched on Australian rockets.

³ House of Representatives Daily Program 19/03/2024

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=date-eFirst;page=0;query=Dataset%3Adaily%20Title%3A%22Daily%20Program%22;rec=0;resCount=Default>

⁴ Defence Trade Controls Amendment Bill 2023 Explanatory memorandum

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7121_ems_396adcd1-2309-49f7-8f43-5cc1b529ddf3%22

⁵ <https://www.federalregister.gov/documents/2020/12/16/2020-27892/the-national-space-policy>

This would be of commercial benefit to the Australian Space sector providing access to an even larger US market. It would also be consistent with our understanding of US national security imperatives relating to diverse and proliferated spaceflight from locations outside of the US.

ii. Adjustment to US Information Sharing arrangements

AUKUS Pillar II lists “Information Sharing” reform as one of its objectives. Information Sharing impediments manifest themselves in the US Government process through disclosure policy – that is the security classification of material, and so-called *Not Releasable to Foreign Nationals* (‘NOFORN’) classification of material. Either of these are likely to prevent an Australian company participating in a US government Space (or other technology) program. We have a concern that these impediments will stifle opportunity otherwise unlocked by the TSA.

The Department of Defence in Australia is the policy owner for effecting change to Information Sharing arrangements with the US. We urge the Government to accelerate the engagement with the US system on achieving changes to Information Sharing so that the full benefit of the TSA can be realised.

iii. US Partner Agreement for MTCR Category I technology

The TSA does not enable the technology sharing, collaboration, or manufacturing in Australia of US-origin MTCR Category I technology. However, it occurs to us that the Department of Defence’s Guided Weapons and Explosive Ordnance (‘GWEO’) ambitions include the manufacturing of US missiles in Australia, and the collaboration between Australia and the US on missile technology.

Noting this ambition and given that missile technology is MTCR Category I technology (the same as spaceflight technology covered in the TSA), we can only assume that work is already underway for some sort of agreement to be put in place with the US to enable technology sharing, collaboration and manufacturing in Australia of MTCR Category I technology. If it is not underway, it should be. This would make best use of the momentum generated by the TSA, AUKUS and the export license-free environment.

Either way, should such an agreement come to pass it must be inclusive of spaceflight technology covered by the TSA as a way to unlock further technology advancement and commercial activity for the Australian Space Sector in collaboration with the US.