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Defence, Foreign Affairs, International Development and Trade and Industry Committees

Strategic Export Controls

Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny

First Joint Report of Session 2003–04

Fourth Report from the Defence Committee of Session 2003–04

Sixth Report from the Foreign Affairs Committee of Session 2003–04

Fifth Report from the International Development Committee of Session 2003–04

Fourth Report from the Trade and Industry Committee of Session 2003–04

Report, together with formal minutes, oral and written evidence

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The Committees on Strategic Export Controls (Quadripartite Committee)

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Committee staff

The staff who currently work for the Committees on their joint inquiries into strategic export controls are: Steven Mark (Clerk), Christopher Dawnay (Committee Specialist) and Sheryl Dinsdale (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Committees on Strategic Export Controls, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5745; the Committees' email address is quadcom@parliament.uk

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Summary

This Report continues a five-year dialogue with Government on how it controls strategic exports (equipment and technology with a military application). We have examined a wide range of the Government's licensing decisions taken in 2002 and 2003, and have found the vast majority to be uncontentious.

The way in which the Government publishes information on these decisions in its Annual Reports has led to misunderstandings and to avoidable criticism. It is time for a review of these Reports. The information should be published every quarter so that it is provided sooner after licences are granted. It should also enable us and the public to identify more accurately those decisions which give rise to genuine concerns, and we call for the provision of more information on *who* the Government allows military equipment to be exported to, and under what conditions.

We are concerned about how the Government seeks to ensure that equipment is not misused by those to whom it has been provided. For example, the Government does not seem to have investigated adequately claims that equipment exported to Indonesia has been used in military operations in Aceh province in breach of assurances previously given, and possibly in violation of human rights.

The EU Code of Conduct on Arms Exports is the basis for decisions throughout the Union. It is currently under review. The Government's priorities for this review are sound, but should go further. The EU's military embargo on China is also under review: because of continuing human rights abuses, it should not be lifted, but it should be clarified. The ten new member states joining the EU should be offered all the assistance necessary to ensure they are in a position to implement effective export controls in line with the EU Code.

Export controls are only an effective tool against proliferation if they are applied internationally. A further diplomatic effort should be made to ensure that international export control regimes work as channels for sharing information. If they cannot be made to work, they should be rethought. A proposal for an international arms trade treaty to address the very real problem of proliferation, and small arms proliferation in particular, has not attracted support from governments. If it is not the right solution to this problem, another needs to be found urgently.

The British export control system is complex and often misunderstood, even by industry. It should impose no more burdens on British industry than necessary. Changes have recently been made, but other European countries seem to have simpler systems, which appear to give their industries a competitive advantage on the export market. The British system has been made even more complicated with the introduction of controls on trade between second and third countries and on intangible (electronic) transfers of military technology. We are not convinced that the new system targets as accurately as it should those activities of most proliferation concern. We believe that the law should in certain circumstances control British citizens engaging abroad in trade in those weapons most likely to be used by terrorists or in civil wars.

HM Customs & Excise currently bring very few prosecutions for breaches of export controls. It is essential that they and the intelligence and security agencies are adequately resourced if illegal proliferation is to be stemmed.

1 Introduction

Course of inquiry

1. Since April 1999, the Defence, Foreign Affairs, International Development and Trade and Industry Committees have regularly met together to consider the Government's strategic export control system—an arrangement which has become known as the "Quadripartite Committee". These inquiries have now been ongoing for five years. While we have tried to make this Report self-standing, a better sense of its full context will be gained by reading our previous Reports and the Government's replies to them. A list of all our Reports so far this Parliament is published at the back of this volume. A fuller description of the British export control system and of our joint work can be found in our first Report of this Parliament.[1]

2. Strategic exports controlled by the Government include not only the more obvious military equipment, such as guns, tanks and missiles, but also non-lethal military and police equipment, such as anti-riot shields, de-mining devices, and chemical weapon detection systems. The Government also controls a wide range of goods and technology with a proper civilian application, as well as a potential military one (dual-use): such as toxic chemicals used in the manufacture of toothpaste, cryptographic software and space satellites. Even if British defence exports were to cease overnight, export and trade controls would need to remain in place.

3. Since 1 May 2004, these controls have been extended to the intangible (electronic) transfer of military technology and to trade in controlled goods conducted from the United Kingdom (and in certain circumstances by British citizens operating abroad), where these goods are to be exported from a second country to a third country. This raises a wide range of new issues, many of which we have discussed in previous Reports,[2] but on which we have further comment to make below.[3]

4. Our most recent publications were two Reports in May 2003, one on the existing export control system, the other on the Government's proposals for change.[4] In November 2003, a debate was held, based on these Reports.[5] This Report examines developments since May

1 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2001–02, *Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny*, HC 718, paras 5–31

2 Seventh Report from the Defence Committee, Seventh Report from the Foreign Affairs Committee, Sixth Report from the International Development Committee and Eleventh Report from the Trade and Industry Committee, Session 2000–01, *Draft Export Control and Non-Proliferation Bill*,,HC 445; First Joint Report from the Defence, Foreign Affairs, International Development and Trade and Industry Committees, Session 2002–03, *The Government's proposals for Secondary Legislation under the Export Control Act*, HC 620

3 See paras 210–238.

4 Second Joint Report from the Defence, Foreign Affairs, International Development and Trade and Industry Committees, Session 2002–03, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474; HC (2002–03) 620

5 HC Deb 6 November 2003, cc 337–380WH

2003, including the publication in July 2003 of the Government's Annual Report on Strategic Export Controls for 2002.[6]

5. Since 2000, we have taken evidence annually from the Secretary of State for Foreign and Commonwealth Affairs. We did so again in February 2004.[7] In April 2004, we heard from non-governmental organisations (NGOs) and representatives of the defence industries.[8] Later in the same month we paid a brief visit to Brussels and Paris—the former because of the important role of the EU in co-ordinating member states' export policies and practices; the latter to compare the British approach to export controls with that of a fellow member state with an important defence industrial base. In March 2004 we also hosted a meeting at Westminster with the Swedish export licensing authority and their special parliamentary advisory body, the Export Control Council.

6. This is the first year in which we have looked for specialist advice during our inquiry. We are extremely grateful to Dr Sibylle Bauer, Dr Wyn Bowen and Dr Paul Cornish for their assistance and expertise.

Co-operation with Government

7. We are unusual as a Committee because we scrutinise specific licensing decisions taken by the Government. To do this, we need information on these decisions which goes beyond that published in the Government's Annual Reports. The Government has generally sought to be helpful to us in meeting our requests for information. We greatly appreciate the work—according to the Foreign Secretary, "a phenomenal amount"[9]—done by officials in various Government Departments to enable us to carry out effective parliamentary scrutiny.

8. The Government found it difficult to supply us last year with all the information we requested.[10] This year, a solution seems to have been reached with benefits both to the Government and to us: to the Government, because the information is less sifted and therefore less difficult to provide; to us, because we get more information in electronic form, which makes it easier for us to locate and compare decisions of interest.

Information not supplied

9. There has been some inconsistency in how the Government has provided us with information on its licensing decisions. Some of the information we asked for this year was not supplied to us, despite the fact that we have received the same type of information in previous years:

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6 Ministry of Defence, Foreign and Commonwealth Office, Department for International Development, Department of Trade and Industry, *United Kingdom Strategic Export Controls: Annual Report 2002*, Cm 5819, July 2003 (henceforth "*2002 Annual Report*")

7 Ev 1–17

8 Ev 18–33

9 Q 2

10 HC (2002–03) 474, paras 10–15

- We were not provided with information setting out the rationale behind the refusal of specific licence applications, despite having received this information in previous years.
- We were not provided with adequate information on appeals against licensing decisions, despite having received much fuller information in previous years.

10. The Government assesses licence applications against consolidated EU and national criteria.[11] Since the publication of the Government's first Annual Report on Strategic Export Controls, the Committee has asked for and received in confidence information matching specific **licence refusals** to the criteria under which they were refused. This year, however, we were not provided with this information, despite having asked for it in the usual way. When we queried this, we were told that "the information the Committees have requested on the reasons for the refusals decisions taken in 2002 … is not easily available".[12] We were also asked to identify specific refusals for which we wished to see the rationale, to enable the Government "to more easily identify whether there are any particular confidentiality issues under the Code of Practice on Access to Government Information in providing the information in any individual case".[13]

11. We have always been provided with this information in the past and it has never before been suggested that this was either difficult or too sensitive to provide to us in confidence. It is odd that this information is not easily available as much of it is routinely supplied to other EU governments in the framework of the EU Code of Conduct. Information on refusals is, as we have previously stated, a "a vital benchmark", because "a knowledge of where and why the Government has refused to issue licences helps us to judge whether its policy in issuing licences is sensible or consistent".[14] It is information we require if we are to evaluate properly national implementation of the EU Code of Conduct.

12. We are also disappointed that we were not supplied with fuller information on **appeals**. Appeals are an indication of industry's attitude towards the Government's decisions, as well as of the consistency and reliability of those decisions. We have received much more extensive information on appeals in previous years. **We conclude that it is regrettable that we were not provided this year with information matching all refusals of licence applications to the reasons for their refusal and with the level of detail on appeals that we have been used to receiving. We trust that this information will be provided where we request it in the future, in accordance with past practice.**

Information denied

13. The Government has continued to refuse to allow us to see certain information, internal Government documents in particular, and it has continued to rely on the terms of the Code of Practice on Access to Government Information to justify this.[15] The Liaison

11 For a fuller exposition of these criteria, see HC (2001–02) 718, paras 5–10. The criteria are published in full in the Government's Annual Reports on Strategic Export Controls.

12 Letter of 15 December 2003 (not printed)

13 Letter of 15 December 2003 (not printed)

14 HC (2002–03) 474, para 24

15 See HC (2002–03) 474, paras 16–18.

Committee is taking up this issue on our behalf as part of its review of access to information and persons, as it is relevant to select committees more widely.

14. We concluded last year that "it [was] unacceptable that it [had] taken the Government well over a year to decide whether to provide us with analytical information about the application to export an air traffic control system to Tanzania"[16]—information we had asked to see in confidence in March 2002. We also subsequently asked, in November 2002, to see the guidance given to officials on the interpretation of the sustainable development criterion—also in confidence. Eventually, in August 2003, the Government provided us with a negative response to both these requests, the first on the basis that "it would not be possible to provide the Committee with a meaningful and balanced summary of the analysis that protected the commercial confidence of other parties, and which did not at the same time risk harming the frankness and candour of internal discussion",[17] the second on the basis that "to release this paper would risk harming the frankness and candour of internal discussion".[18] Despite further representations from us, the Foreign Secretary has stuck by these refusals.[19]

15. While these are indeed internal Government documents, we do not believe that our ability to scrutinise them behind closed doors would in any way harm the frankness and candour of internal discussions within Government. These are not documents expressing points of view. One contains factual analysis; the other is agreed guidance on the implementation of policy.

16. To confuse matters still further, the Government has provided us in confidence with the internal guidance issued to officials on considering licence applications for spare parts.[20] We very much welcome this proactive move to keep us informed, but we do not understand why it was appropriate to allow us to see this document, but not other similar guidance that we have specifically asked to see.

17. Our impression remains that the Government is denying us access to certain documents unreasonably. **We recommend that the Government should explain in its response to this Report why it considers that access to the documents requested by the Committee would harm the frankness and candour of internal discussions within Government, given that the documents we have asked to see are not internal discussion documents and do not express the points of view of officials, but rather are simply factual analysis and agreed guidance.**

16 HC (2002–03) 474, para 76

17 Appendix 2

18 Appendix 2

19 Appendix 11

20 Not printed

2 Information and scrutiny

Transparency: the state of play

18. There are two main categories of export licence for which applications may be made:

- **Standard Individual Export Licences (SIELs)** are licences which "generally allow shipments of specified items to a specified consignee up to the quantity specified by the licence. Such licences are generally valid for two years where the export will be permanent".[21]

- **Open Individual Export Licences (OIELs)** "are specific to an individual exporter and cover multiple shipments of specified items to specified destinations and/or, in some cases, specified consignees. OIELs covering the export of items entered on the Military List are generally valid for two years, while OIELs covering other items are generally valid for three years".[22]

There are also Open General Export Licences (OGELs), under which exports may be made without the need for a separate licence application.

19. The Government's Annual Report contains information on SIELs and OIELs by destination country and by category of equipment. It does not contain information on quantity (except for small arms) or on end use, and it contains only very general figures on value, which cannot be interpreted reliably. Two hypothetical examples may help to illustrate what this means:

- The Annual Report will show that the Government has licensed the export of 1,000 submachine guns to country X
    - but it will not show whether these weapons are for the use of the country's police force, for sale on the high street or for the use of the army of another country entirely, which happens to have a base in country X.

- The Annual Report will show that the Government has granted an open licence for the export of components for combat aircraft to country Y,
    - but it will not show whether these components are for use only by the Air Force of country Y or by a range of end users, nor whether the components in question are spare tyres, ejector seats or a new targeting system, nor whether there is an upper limit to the quantity of components that may be exported under the licence.

20. In addition to the information in the Annual Report, we have requested supplementary confidential information relating to licensing decisions taken in 2002, including information on all licences issued to a range of countries including China, Indonesia, Iran, Israel, Saudi Arabia and Syria, information on a selection of open licences granted for export to multiple destinations, and information on all SIEL applications refused and

21 *2002 Annual Report*, p 10

22 *2002 Annual Report*, p 11

revoked during 2002. In general, we have received the information we have requested (but see paragraphs 13–17 and 44–46).

21. The Government has also provided us proactively with confidential information on a range of licensing decisions taken during the first nine months of 2003. This followed the release of limited information on these decisions in response to a parliamentary question, and the publication in a national newspaper of an article drawing conclusions from this information which the Government wished to rebut.[23]

Changes already announced to the Annual Report

22. The Government's Annual Report has had the same basic format now since the Annual Report for 1999. There will, however, be three additions to the 2003 Annual Report:

- Information on gifts of military equipment by the Government will be included.[24]
- Licences granted according to the incorporation additional factors announced by the Foreign Secretary in July 2002 will be identified for the first time, although possibly not for the entire year, "because of the need to set up new arrangements for collecting and collating the relevant information".[25] This will not enable the reader to know the final destination of the finished equipment under construction, but it will at least make clear that the finished equipment is liable to be re-exported. We note that there seems currently to be some confusion within Government as to how incorporation cases are recorded in Annual Reports: in at least one case in the Annual Report for 2002 (ELA 36242), the goods for incorporation were shown under their country of final destination, rather than under the incorporating country.
- Thirdly, information on Global Project Licences (for equipment produced collaboratively under the Framework Agreement) will appear for the first time. The first Global Project Licence for a project with British involvement was issued on 24 January 2003, for the export of missiles and missile components to the French Government.[26] The Government has raised with partner countries our suggestion that information should be published in future Annual Reports showing that a country is a permitted destination under a Global Project Licence as soon as the Government is aware that agreement has been reached with an end user in that country for supply of equipment produced under such a licence, but no consensus has yet been reached on this proposal among the Framework Agreement states.[27]

23. There will be more substantial additions to published licensing information for 2004, as a result of the coming into force of Orders under the Export Control Act. According to the 2002 Annual Report, "licences granted and refused under the Government's ability to control trade in controlled goods, and in relation to intangible transfers and technical

23 Appendix 12 (DTI)

24 Government response to the Second Joint Report from the Committees, Session 2002–03,Cm 5943, p 10

25 Appendix 13, q 51

26 Appendix 13, q 52

27 Appendix 11, Section N

assistance, will be included in future editions".[28] Under this Act, controls will be imposed for the first time on trade which does not involve exports from the United Kingdom. **We recommend that the Government should explain in its response to this Report how it intends to publish information on licences which do not involve exports from the United Kingdom, including licences for trade between third countries and licences for the electronic transfer of technology to recipients within the United Kingdom. We further recommend that in the case of trade control licences, the Government should publish both the country of origin and the country of destination.**

The case for a wider review

24. There have now been five years of parliamentary scrutiny and five full years of reporting by the Government. Since the Government is anyway faced with the need to make considerable changes to the information it reports in 2003 and 2004, we believe that the time has come for a wider reassessment of the information published by the Government and the information provided to us in confidence. The aim of publishing information should be to enable sensible and topical public debate to take place on the decisions that the Government has reached. Currently, the Government's Annual Reports fail on two counts: the information that they contain is sometimes misleading because it is incomplete; and the information is no longer topical by the time that it is published.

25. There is some information on export licensing decisions which cannot be published because of commercial confidentiality, security or other concerns—although less in our view than the Government sometimes claims. Our ability to examine such information in confidence is important because it ensures that the Government's decisions do not escape scrutiny, and it provides a level of reassurance to the public.

26. We will now consider how the Government should address what is widely regarded as the main gap in what is currently published: information on who is to use the equipment that the Government licences for export, and on conditions attached to its use. We also look at ways in which the Government could provide information in such a way as to make our scrutiny more effective and more timely. Finally, we have some brief comments to make on the availability of information on actual exports.

End-use information

27. End-use information is key to real transparency and scrutiny. Without this information it is usually impossible to determine whether a licence has been properly granted.

28. End-use information is at least as important for OIELs as for SIELs. As we discuss below,[29] some open licences are more restrictive than others, and this will largely determine whether a decision is of potential concern or not. An open licence for the export of an unlimited quantity of armoured vehicles to any end user in a country will be of more potential concern than an open licence for a limited quantity of these vehicles to a specified

28 *2002 Annual Report*, p 3

29 See paras 29–35.

end user, such as a press association or an international organisation, under specified conditions. Failure to provide the stated end use in such cases can give the impression that a very wide-ranging licence has been granted.

Examples of misleading information

29. The fact that licensing decisions are classified by destination, rather than by recipient, is a common source of misunderstanding. It causes particular confusion in the Government's Annual Reports, when a licence for export to country A is for use by someone (often the Armed Forces) from country B. An example occurred last year, when an open licence was granted for the export of a very wide range of goods to countries such as Tajikistan and Uzbekistan, but which were in fact for the United States Government, for use in support of US military operations overseas.[30]

30. Another example in the Annual Report for 2002 concerns an apparently wide-ranging open licence for export to 42 different countries, including Angola, Ivory Coast and Paraguay, for equipment including components and technology for: submarines, torpedoes, naval mines, aircraft carriers, heavy machine guns, combat aircraft, combat helicopters, anti-ship missiles, surface to air missiles, small calibre artillery, combat helicopters, mortars, and general purpose machine guns.[31]

31. It is hardly surprising, given the description in the Annual Report, that NGOs have voiced concern that the Government has been prepared to allow the apparently unlimited export of wide-ranging offensive equipment to a swathe of unlikely destinations. Saferworld has specifically expressed concern about this licence:

> It may be that many of these countries have little interest in a large proportion of the equipment on this licence, which raises questions about why they should be included in the first place. Conversely, if they are in the market for most of the items listed, this would raise other, but no less important questions, with regard to their suitability in light of various of the Consolidated Criteria. In either case, Saferworld has serious doubts about the wisdom of including these countries as permitted destinations under this licence.[32]

32. What Saferworld does not know, and cannot know, is that this licence is for a single end user for collection from a number of different countries, for a much more restricted range of equipment than is apparent from the Annual Report, with end-use conditions attached including on how the equipment must be stored prior to collection. We know this only because of information provided to us in confidence by the Government. **We conclude that it is unfortunate that the format of the Annual Report makes a licence for a single end user based in a variety of countries look as if it is much more wide-ranging than in fact it is.**

30 HC (2002–03) 474, paras 41–42

31 *2002 Annual Report*, pp 26–27, 233, 323

32 Appendix 16; see also Q 75 (Mr Isbister)

33. Another possibility which is not currently obvious from the Annual Report is that the *ultimate* end user of equipment may not be in the destination country shown, particularly where this country has a defence manufacturing industry. We have previously discussed the issue of 'incorporation' at length.[33] But it is worth being aware that this is an issue which does not only apply to destinations in Western Europe and North America. Equipment licensed for export to Israel or South Korea, for example, may be for eventual end use in another country entirely. As the Defence Manufacturers' Association (DMA) has pointed out:

> Given that Israel has a significant, and dynamically active, indigenous Defence Industry, and that most licence applications are for components – it is not clear what % of these sales are intended for use by the Israelis and what might be incorporated into equipments for export from Israel to other nations (including the UK!).[34]

34. This may make the application of less concern (if the end user is a NATO ally) or of more concern (if the end user is a country to which the British Government would not normally allow the export of such equipment) than if the end user were in the country named in the Annual Report. In future Annual Reports, such licences will be identified, although the ultimate destination will not be.[35]

35. As explained above, 'open' licences can be more or less open. Saferworld has expressed concern about a licence granted to Indonesia "for equipment including armoured all wheel drive vehicles".[36] Had this licence been for the export of an unlimited quantity of armoured vehicles to the Indonesian Government—the most obvious assumption—this concern might have been warranted. However, in response to a parliamentary question, the Government has revealed that the OIEL in fact authorised the export of no more than three armoured all wheel drive vehicles to provide protection for BBC correspondents in Indonesia.[37] The fact that the Government was, in the Foreign Secretary's words, "about to be pilloried" for this licensing decision is hardly surprising, given that the information that it publishes does not distinguish between equipment for foreign governments and equipment for broadcasting organisations.[38]

Implications for transparency and scrutiny

36. The Government has not ruled out the possibility of publishing limited end-use information, broken down between Government and non-Government.[39] This would be a start, but it would not clarify many of the more recent examples in which information in an Annual Report has lent itself to misleading or worrying interpretations. For example, the Government's suggestion would lead, in the case of a licence for the US Armed Forces operating in Uzbekistan, to the country of destination being identified as Uzbekistan, but

33 See HC (2002–03) 474, paras 130–154

34 Appendix 23 (DMA)

35 See para 22.

36 Appendix 7

37 HC Deb 8 September 2003, c 73W

38 Q 48

39 Appendix 11, Section P; Cm 5943, pp 19–20

to the end user being shown merely as 'Government', which would continue to give the misleading impression that the end user was the Government of Uzbekistan.

37. When we have previously recommended that the Government should "consider publishing information on end users of licences by broad category", the Government has replied that it "remains concerned that there are still significant confidentiality issues arising from the publication of end user information by broad category, and that the examples highlighted by the Committee (i.e. Police and Armed Forces) do not negate these concerns".[40] We suspect, however, that the Government's concerns about "significant confidentiality issues" arising from publishing such information may be overstated, and the evidence that we have received supports this suspicion.

38. It is unsurprising that in their evidence to us, NGOs have consistently called for greater transparency, identifying it as a "key issue".[41] As things currently stand, NGOs are often in the position of not being able to substantiate their concerns about exports. As we were told, "things might be happening, they might not be, but the evidence is not made available".[42]

39. The DMA is a less expected source of support for our argument, but in fact, evidence that we have received from the DMA calls strongly for greater openness in this area:

> The DMA has expressed some strong reservations and frustrations, both publicly and privately, about the limited nature of the end-use related information which is provided in the FCO's Annual Report, and has raised the issue of whether further, additional, detailed information could and should be usefully provided by the Government on end-use matters, without encroaching upon commercial or diplomatic/security sensitivities, which would have the positive effects of achieving greater openness and transparency, and also protecting the British Government and Industry against erroneous claims of irresponsible licensing decisions and commercial activities, respectively … Even taking into account concerns of commercial confidentiality and security, we are sure that in many cases (especially with regard to permanent exports, rather than for temporary licences) more end-use information should be able to be usefully provided than is currently the case. [43]

40. The DMA provides examples of cases in which greater openness would be useful. These are very similar to some of the examples that we have encountered, and discussed above:

> under the UK system, an export of spare parts to a Royal Australian Navy vessel, whilst on a courtesy visit to Indonesia, would appear under the UK system to be an export to Indonesia (the geographical location of the vessel, at the time), rather than Australia (the nationality of the customer)—clearly different levels of contentiousness!

40 Cm 5943, p 20

41 Q 87 (Mr Isbister)

42 Q 96 (Mr Isbister)

43 Appendix 23 (DMA)

> in the 2000 Annual Report the section on Morocco includes mention of a raft of licences being issued for small arms and light weapons, which could result in the unsighted having extremely dubious opinions of HMG for approving these "exports". In fact, we understand that many, if not all, of these are apparently to be accounted for by the supply of props for the filming of "Black Hawk Down" in Morocco.[44]

41. There are limits to how much end-use information it is appropriate to publish. There are some areas in which the provision of information might threaten commercial confidentiality: for example, when equipment is being exported on a trial basis before a contract has been signed.[45] There is also some end-use information which it would clearly not be appropriate to publish for security reasons, such as precisely where it is intended to use non-conventional weapon detection equipment.[46] Equally, most countries would not be prepared to have the *detail* of their procurement programmes published by the British Government. But this is not to say that it is impossible to go any further than the Government currently does in what it publishes. Indeed it seems to us (and also apparently to the DMA) that there is room for the publication of substantially more end-use information than is currently the case.

42. The following are a number of ways in which the Government might wish to consider publishing further information on end use:

- Multiple-destination OIELs could be cross-referenced, to make it clear under each country entry that only one licence is involved. Where such an OIEL is for only one end user, this too could be stated. There may also be circumstances in which the end user is willing to be identified.

- Where an OIEL is for a limited quantity of equipment, stating that this is the case or even revealing the quantity concerned could help to diffuse potential concern about proliferation.

- Publishing information by broad category of end user (Local Armed Forces, Local Police, Foreign Government, International Organisation, Private Security Company, Industry, NGO, Media, Private Individual) could help in many cases to allay concern about the appropriateness of particular export decisions.

43. **We conclude that it would be in the Government's interest to publish more information on end use, because it would enable public debate on export controls to focus on those licensing decisions which are genuinely debatable, rather than to criticise the Government for decisions which appear highly contentious but which are in fact entirely sound. Given the strong support for greater transparency in this area shown not only by us, and not only by NGOs, but also by representatives of the British defence manufacturing industry, we recommend that that the Government should**

44 Appendix 23 (DMA)

45 Q 165 (Mr Otter)

46 Q 157 (Mr Otter)

reassess its position that it cannot "go any further in publishing end-user information".[47]

44. The supplementary information provided to us on licence applications is also often inadequate. It is sometimes impossible to interpret the descriptions we receive of goods licensed for export without some supplementary information on end use. With components in particular, it is often impossible to understand from the licence description alone what the component is, and to know for what main equipment it is intended. This description is often little more than a catalogue number, for which we lack the catalogue. "LINE 18 3120998187239" is a particularly egregious example. Debate based only on the fact that the Government has licensed an unspecified component for export to a country is bound to be misinformed.

45. End-use information, on the other hand, tells us not only that the equipment in question is for spare parts on a vehicle transmission system, but also the type of vehicle involved and further information about the user of the equipment. Similarly, the numerous descriptions of items we have seen such as "PART NUMBER AC66886, SERIAL NO'S TS031 & UF038" tell us next to nothing, whereas the knowledge that the equipment is to support a particular aircraft within a named national airforce is much more useful in reaching a judgement as to whether the export should or should not have been allowed.

46. Where we requested information on OIELs for 2002 we asked to be given the identity of end users, where these were specified; and details of any other conditions affecting the use of the licence. However, we did not receive this information, except in a small number of cases on which we asked the Government for further clarification. Information on end use should not be particularly difficult to supply. We have received end-use information on SIELs issued in 2003 which appears to be drawn directly from applicants' documentation. **We recommend that future supplementary information provided to us on licence decisions should include information on end use where this is requested, as without this information we cannot properly assess the Government's licensing decisions.**

Actual exports

47. We have previously recommended the provision of more information on actual exports. The very basic information provided on the value of exports is not directly comparable with the categories of goods which the Government controls. We regret the fact that it has not been possible to reach agreement within the EU on changing Tariff Codes to enable a greater level of transparency in the information provided on the value of strategic exports, and we hope that the Government will take any opportunities that arise to press for such changes in the future. We welcome the Government's commitment to exploring how it can improve the data available on the value of defence exports.[48]

48. The *Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction*[49] proposes a joint effort by member

47 Appendix 11, Section P

48 Appendix 11, Section Q

49 Henceforth *WMD Action Plan*

states and the Commission to establish equivalence between EC customs classification and the lists of controlled dual-use items. **We recommend that the Government should take a leading role in promoting this initiative.**

Improving parliamentary scrutiny

49. It is now a number of years since a system of prior parliamentary scrutiny of export licence applications was first proposed. We continue to support a system of prior scrutiny of the most sensitive export licence applications, because it would allow us to feed into the licensing process at a point which would be most *effective*. We believe that the arguments which the Government has raised against such a system have been shown in previous Reports to be misplaced.

50. When we took evidence from the Foreign Secretary in February, he did not hold out any hopes that the Government had changed its position on prior scrutiny, but he did suggest that the Government was considering "ways of enhancing retrospective scrutiny".[50]

51. We do not believe that retrospective scrutiny is an adequate substitute for prior scrutiny—but it is what we have, and it is not without its benefits, as the last five years of our joint inquiries have shown. We believe that there are a number of ways in which its effectiveness could be usefully enhanced:

- Information on licence applications is currently only made available long after the decisions on those applications have been taken. Information on decisions taken in January 2002 appeared in an Annual Report published in July 2003, some 19 months later. Providing information on licensing decisions more swiftly after they have been made would mean that the public and the Committee would have a chance to consider more topical decisions and policies than is currently the case.

- More detailed supplementary information on licence applications could be provided to the Committee in confidence as a matter of routine. This would save the Government from much of the effort of having to carry out a separate exercise to compile this information once a year. It would also enable the Committee to distinguish genuinely debatable licensing decisions from decisions which might appear of concern from published information alone.

52. **We recommend that the Government should help us to improve our retrospective scrutiny of export licence applications by publishing more timely licensing information than is currently the case, and by making it a systematic part of the administration of export controls to provide us in confidence with further information on these licensing decisions, including information on end use. We do not regard this as a substitute for a system of prior scrutiny, but it would be an improvement on the current situation.**

50 Q 66

3 Scrutiny of licensing decisions and implementation of the criteria

Individual licensing decisions during 2002

53. We have not been able to examine in detail all of the Government's licensing decisions during 2002, and where we have sought further information, this has not always been sufficient or clear enough to enable us to come to a judgement on the decisions taken. In those cases where we have sought further information, the Government has usually been able to satisfy us that the reasons for its decisions were well considered. In addition to those cases mentioned elsewhere in this Report, the following information may be of interest as an indication of the often fine judgements that are reached:

a) A number of exports to Israel which initially appeared to be of concern turned out to be either for eventual end use in another country entirely or for legitimate defensive purposes.

b) A number of parts for safety equipment were refused for export because of concern about the use of the main equipment for which they were intended, rather than because of concern about the parts themselves.

c) In 2001, the Government allowed the export of production equipment to a particular end user. In 2002, it refused a licence for apparently similar equipment to the same end user. This was because the equipment to be produced in each case was subtly different, with one giving cause for greater concern than the other in terms of the risk to regional stability.

54. In a number of cases, licences were originally refused on the basis of the information available, but were allowed on appeal after further information emerged. The following are examples of the information on which successful appeals were allowed:

a) that components could not be incorporated into other equipment used to attack ground targets, as had previously been thought;

b) that the equipment was being tested on behalf of the Armed Forces of a different country;

c) that the intended end use of the equipment was for sporting purposes by the national Olympic Team.

General issues

Trends in the application of the consolidated criteria

55. The Government assesses licence applications against consolidated EU and national criteria.[51] We have looked in detail at two criteria which were rarely invoked before 2002. Criterion Three of the EU Code requires member states to take into account "the internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts" when assessing licence applications.[52] Until 2002, this criterion was very rarely invoked by the British Government. Between 1999 (when the Government first published statistics on reasons for refusal) and 2001, licence applications were refused on the basis of this criterion only five times. In 2002, by contrast, the criterion was invoked 76 times.[53] The Government has informed us that "many possible factors" could have led to this change, "not all of which necessarily relate to the licensing process". These factors included "global issues and changing situations in particular destinations", but the Government has insisted that "there have … been no changes to the Government's assessment process, which would lead to these increases".[54]

56. The Government has identified for us the 76 licence applications which were refused on the basis of Criterion Three during 2002. Almost all were for export to one particular country. Similar applications might in the past have been refused under Criterion Two (relating to human rights and internal repression), but the grounds for refusing these applications under Criterion Three appear to have been sound.

57. The Government has also identified for us the 15 applications refused on the basis of Criterion Five, relating to "the national security of the UK, of territories whose external relations are the UK's responsibility, and of allies, EU member states and other friendly countries".[55] This criterion had only previously been invoked once since 1999. The refusals under this criterion were for export applications to a variety of destinations, mostly for equipment of possible interest to terrorists, and/or for equipment relating to chemical, biological and nuclear weapons. Such applications might previously have been refused under Criterion Seven (relating to undesirable diversion), but again, there seem to have been good reasons for refusing them under Criterion Five. **We conclude that the Government's argument is credible that its more extensive application during 2002 of criteria relating to internal tensions abroad and the national security of the United Kingdom was caused by events in the wider world, rather than by a change in the Government's application of the consolidated criteria.**

51 For a fuller exposition of these criteria, see HC (2001–02) 718, paras 5–10. The criteria are published in full in the Government's Annual Reports on Strategic Export Controls.

52 European Union Code of Conduct on Arms Exports, Council Document 8675/2/98 (henceforth "EU Code of Conduct")

53 *2002 Annual Report*, p 14

54 Appendix 13, q 30

55 EU Code of Conduct

Criterion Eight (Sustainable Development) and the involvement of the Department for International Development in the licensing process

58. Criterion Eight of the EU Code refers to "the compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources".[56] We have previously looked in some depth into the Government's interpretation of this criterion, and into the involvement of the Department for International Development (DfID) in the export licensing process.[57] DfID is the lead Department for advising on sustainable development considerations, and they carry out detailed assessments against Criterion Eight under certain circumstances, as set out by the Secretary of State for Trade and Industry in August 2002.[58]

59. We noted last year that "it is difficult for us to assess whether the Government is committed to the sustainable development criterion while it has never been used as the reason for refusing a licence".[59] In early 2003, for the first time, one licence refusal was made partly on the basis of Criterion Eight. This was for export to a country which qualifies for debt relief under the Highly Indebted Poor Country (HIPC) initiative.[60] The reason for invoking Criterion Eight appears to have been not only the cost of the goods involved, but doubt about whether the quantity of goods ordered could be consistent with the recipient country's legitimate defence and security needs.

60. Because of the Government's insistence that details of the refusal should remain confidential, there is only so much that we can say in a public Report. But there are two points of interest that emerge from this example:

i. In deciding whether Criterion Eight was relevant in this case, the Government took into account information on exports from third countries as well as from the United Kingdom. This is consistent with their statement that that "the cumulative impact of all arms imports to the destination country, not just exports from the UK" will be captured by the Criteria as a whole and by the indicators to be used under the sustainable development criterion.[61] As we noted last year, the sustainable development impact of a proposed export can be only be assessed in the context of the purchasing country's military procurement policy as a whole.[62]

ii. The second point of interest is in the context of how the Government defines the parameters of Criterion Eight. This example is an extreme one. We have previously considered at some length the Government's decision to license a military air traffic control system for export to Tanzania.[63] It was always arguable that Tanzania

56 EU Code of Conduct

57 See, for example, HC (2002–03) 474, paras 107–115.

58 Appendix 13, q 26; HC Deb 19 September 2002, cc 309–311W

59 HC (2002–03) 474, para 108

60 The Government has asked us not to identify the country in question.

61 HC Deb 19 September 2002, Col 311W

62 HC (2002–03) 474, para 115

63 HC (2001–02) 718, paras 119–134

had a legitimate military need for such a system, even if the decision itself caused controversy. This case is different because it envisaged the export of such large quantities of goods that it would have been difficult to deploy them successfully, let alone to justify that deployment.

We conclude that the Government should give further consideration to its interpretation of the Sustainable Development Criterion.

61. We comment further below on the interpretation of Criterion Eight across the European Union.[64]

62. The 2002 Annual Report is the first to have been signed by all four Secretaries of State involved in the export licensing process. Previous Annual Reports had been signed by the Secretaries of State for Defence, Foreign Affairs, and Trade and Industry, but not by the Secretary of State for International Development. In 1999, when the International Development Committee recommended that Annual Reports should be signed by the Secretary of State for International Development, the Government replied that the Secretary of State did not "consider it appropriate that she should co-sign the report" at a time when DfID considered around 15 per cent of all export licence applications.[65] She remained "of the view that it would not be appropriate for her to sign the Government's Annual Report on Strategic Export Controls" in 2000, by when DfID had chosen to see fewer than five per cent of all export licence applications.[66]

63. In 2002, DfiD again considered under five per cent of all licence applications.[67] Given that DfiD's involvement in the licensing process, statistically at least, was continuing to diminish, it seemed an odd moment for the Secretary of State to choose to put her name to the Annual Report. The Government's explanation is that the Export Control Act of 2002 has "enshrined DfID's role in the assessment process" by making "explicit the need to consider sustainable development issues when assessing licensing applications".[68] Whatever the reason for it, **we conclude that it is a welcome development that for the first time all four relevant Secretaries of State have put their names to the Government's Annual Report on Strategic Export Controls.**

Government and the supply side of defence exports

64. In this section we follow up our comments of last year on the Government's involvement in the defence export market.[69] This occurs through direct sales and disposals and through the promotion of particular defence exports, usually by officials, but in some circumstances by ministers. The main issue we seek to address is how these activities sit with the Government's role in controlling strategic exports.

64 See para 114.

65 HC (1998-99) 55-I, para 152; HC (1998-99) 840

66 Cm 4799

67 Appendix 13, q 26; *2002 Annual Report*, p 11

68 Appendix 13, q 25

69 HC (2002–03) 474, paras 92–106

Sales, gifts and other disposals

65. The Government disposes of substantial quantities of military equipment. Between April 1998 and February 2004, the MoD's Disposal Services Agency (DSA) sold 24 former Royal Naval named capital ships, a variety of aircraft, including 23 Harriers, 9 Jaguars and 29 Tornados, and approximately 23,000 military vehicles.[70] The DSA has recently sold two frigates to Romania, a frigate to Chile and three transport aircraft to Austria.[71] According to an article in Jane's Defence Weekly in October 2003, recent DSA notices had announced the availability of AS90 self-propelled guns, up to 25 Sea Harrier fighter aircraft, and Starburst close air-defence missile systems.[72] Some of this equipment is sold by auction. All exports of these disposal sales (and most of this equipment is presumably exported) are apparently covered by an appropriate licence.[73]

66. Our main concerns regarding sales and gifts are "the criteria used by the Government to decide whether to sell or give military equipment to others, and … the transparency of these sales and gifts".[74] The Government, uniquely, does not require a licence to export military equipment, although much of the equipment that it sells does receive an export licence, because normal practice is to transfer ownership before the equipment leaves the UK. The Government's reply to our Report last year seemed to state that under most (if not all) circumstances, proposed sales and gifts were considered against the Consolidated Criteria before being made.

67. What is unclear is whether the Government subjects its own sales and gifts to the operative provisions of the EU Code of Conduct. **We recommend clarification in response to this Report of whether denial notifications under the EU Code of Conduct are taken into consideration when the Government considers making sales and gifts against the Consolidated Criteria, and whether consultations on proposed Government sales and gifts would be initiated if a denial notification had been issued by an EU Member State for an essentially identical transaction.**

68. The Government has also explained that most (if not all) Government sales are already included in the Annual Report, and has undertaken to include gifts in the future.[75] It is not always possible to tell from the Annual Report where information relates to goods which have been sold by the Government. This is, however, consistent with the Government's general approach under which no-one applying for export licences is identified.

69. The Government has set out two circumstances under which reporting of Government transfers might be more limited than the reporting of exports requiring a licence. The first is the issue of "Government Furnished Equipment (GFE) to a UK contractor in support of a UK defence procurement programme … using an Open General Export Licence".[76] This

70 HC Deb 10 February 2004, cc 1328–1330W

71 Disposal Services Agency website

72 *Jane's Defence Weekly*, 1 October 2003, p 13

73 HC Deb 10 February 2004, c 1327W

74 HC (2002–03) 474, para 92

75 Cm 5943, pp 7–10

76 Cm 5943, p 10

is unproblematic: no goods exported under Open General licences are included in the Government's Annual Reports, and it would be odd to make an exception in this case.

70. The second category causes us more concern. The Government has stated that, while it "may publish the broad details of certain Government to Government agreements, some overseas recipient governments may be sensitive about the reporting of all the transfers of goods, and confidentiality undertakings may form part of such agreements".[77] We are unclear what this means in practice, but it seems to imply at the very least that some sensitive goods are transferred to overseas governments without an export licence being required, and without appearing in the Government's Annual Reports at all. For certain categories of equipment, the Government has undertaken to make reports on imports and exports to the UN Register of Conventional Arms. Those transfers not being reported presumably fall outside these categories. **We recommend that the Government should clarify in its response to this Report under what circumstances transfers of military goods to overseas recipient governments are not reported, including clarification of the circumstances in which transfers would not be reported because of sensitivity on the part of overseas recipient governments or confidentiality undertakings. We further recommend that the Government should give an indication of the type, quantity and value of these unreported exports, preferably in public, but in confidence if absolutely necessary.**

71. We recommended last year that "in the interests of transparency, future Annual Reports should include information on all sales, gifts and other transfers of military equipment by the Government to other end users abroad".[78] In its reply, the Government stated that "the Annual Report includes relevant information on those goods transferred abroad. Information on sales is currently included either in the section providing information on licences, or in the tables on exports".[79] **We recommend that in its reply to this Report, the Government should also set out any circumstances of which the Committee has not expressly been made aware in which information on the type of equipment sold, gifted or otherwise transferred by the Government to other end users abroad does not appear in the Annual Report on Strategic Export Controls, either in the section on export licence decisions or in Tables 7 or 8 of the Annual Report.**

Gifting of military equipment using the Conflict Prevention Pool

72. During last year's inquiry, we considered the gifting of two Mi 17 support helicopters to the Government of Nepal, paid for from the inter-departmental Global Conflict Prevention Pool. In our Report, we supported the Government's decision to provide the helicopters, with conditions limiting their use to logistical, medical and humanitarian tasks. We concluded, however, that the gift should not have been funded from the Global Conflict Prevention Pool.[80]

77 Cm 5943, p 10

78 HC (2002–03) 474, para 104

79 Cm 5943, p 10

80 HC (2002–03) 474, paras 85–90

73. In its reply, the Government did not accept this conclusion. It stated that the supply

> was part of an integrated package of assistance for the Nepalese government, which was designed to increase Nepal's security, reform and development capacity … agreed interdepartmentally as part of a joint conflict resolution strategy for Nepal, aimed at stabilizing the security situation and establishing a suitable environment for a renewed negotiation process. The decision to supply helicopters from the Global Conflict Prevention Pool (GCPP) was taken in the context of that overall strategy.[81]

74. The Government also stated that it was "confident that the ongoing GCPP package as a whole has so far provided a constructive and beneficial balance of security, development and governance assistance for Nepal, and is helping to influence the developing peace process".[82]

75. In January 2004, it emerged through the Nepalese press that an official at the British Embassy in Kathmandu had announced plans to gift two second-hand Short Take Off and Landing (STOL) aircraft to the Royal Nepalese Army (RNA), again funded through the Global Conflict Prevention Pool.[83] In explanation, the Government has stated that "although the RNA human rights record still gives rise to various concerns … the balance remains in favour of our continuing our non-lethal security assistance plan through the Global Conflict Prevention Pool as part of our strategy to influence RNA mentality and effect behavioural change".[84]

76. Conflict prevention seems to have a rather looser meaning within Government than it does in the wider world. The Foreign Secretary has told us that "it is not an oxymoron for us to use the global Conflict Prevention Fund to support, for example, the operation of short take-off and landing aircraft because sometimes you have to prevent conflict and its scale by making use of military action" and he has stressed that "the Conflict Prevention Fund is not a pacifist programme".[85] We note that aspects of recent British military operations, including most recently in Iraq, have been funded from the Ministry of Defence's conflict prevention budget. Nonetheless, we continue to regard it as somewhat perverse to pay for military equipment intended to assist in offensive operations from a fund supposedly dedicated to preventing conflict. We would have preferred the Government to have accounted for the gifts under a different budget heading.

77. At issue last year was the fact that the Government failed initially to request parliamentary approval for certain gifts before they were made, as it is obliged to do. In this case, the Government has assured us that it will "go through the appropriate parliamentary procedure to request approval to proceed with the gift", but only "once all the necessary details regarding the intended gift … are settled".[86] While there is no requirement for the Government to inform Parliament before such details have been settled, it gives an unfortunate impression to us and to others when information about a proposed gift

81 Cm 5943, p 7

82 Cm 5943, p 7

83 eg *Nepali Times*, 19–25 December 2003

84 Appendix 14

85 Qq 58 and 59

86 Appendix 14

emerges through the media, rather than directly from the Government. **We recommend that where a Government official makes an announcement to the public or media about a proposed sale or gift of military equipment, the Government should inform us and the House at the same time.**

Promotion of defence sales by ministers

78. As we noted last year, "it is totally proper and desirable that the Government should promote the sale of British products abroad. But the export of defence equipment is not always desirable, which is why the Government has a series of criteria which it uses at the licensing stage to determine whether a sale should take place".[87] This year we have examined the activities of Government ministers in promoting defence sales in 2002 and through most of 2003. We have been provided with and are publishing information about 24 occasions on which Government ministers have promoted specific defence sales.[88] We have also been provided with information about a further 13 such occasions,[89] details of which we have been asked to keep confidential "because of commercial sensitivities or to protect international relations".[90] **We recommend that the Government should continue to keep us informed on a regular basis of occasions on which Ministers promote specific defence sales.**

79. Ministerial promotional activities in 2002 and most of 2003 concentrated on the sale of Hawk trainer jets to India (the majority of meetings), Typhoon (Eurofighter) aircraft to Singapore, Gripen fighter jets to the Czech Republic, a frigate programme to Chile, and, apparently, the Joint Strike Fighter to the USA. Of these, only the first is likely to be controversial. We commented on the proposed sale of Hawk to India in our Report last year.[91] All of the 13 confidential promotion activities of which we have been informed seem to have been appropriate, and highly unlikely to be in breach of the consolidated criteria. **We conclude that, from the information we have seen, Government ministers appear to be promoting defence exports predominantly in circumstances which are unlikely to be contentious.**

87 HC (2002–03) 474, para 106

88 Appendix 13, q 56

89 Not printed

90 Appendix 13, q 56

91 HC (2002–03) 474, paras 53–56

4 End use assurances: Indonesia

Introduction

80. End-use assurances are undertakings limiting how equipment intended for export will be used. We have previously considered end-use undertakings given by Israel that equipment exported from the United Kingdom will not be used aggressively in the Occupied Territories, and the Government's reaction to a breach of these assurances.[92] The value of end-use assurances depends essentially on how reliable the assurances are perceived to be. These issues have come to prominence again as a result of the use of British built equipment by the Indonesian armed forces in the province of Aceh, in the context of end-use assurances given by the Indonesian Government.

Some recent history

81. The Indonesian province of Aceh has a long history of separatism, with the current dispute dating back to the late 1970s. Human rights abuses, including extra-judicial killings, have been attributed to both sides to the conflict. The FCO has stated that "long-term solutions to this conflict can only be achieved through peaceful negotiation".[93]

82. Until August 2002, the Indonesian Government was bound by an undertaking not to deploy British-built military equipment to Aceh, and to provide advance warning of any possible deployment. In August 2002, the British Government received advanced notification of the Indonesian Government's intent to deploy British-built armoured personnel carriers to Aceh for "casualty evacuation and logistical support". The Indonesian Government provided assurances that this equipment would "not be used to infringe human rights in Aceh or elsewhere". On 3 October 2002, the Foreign Secretary wrote to our Chairman informing him of this.[94]

83. However, in September 2002, while the Indonesian Government gave fresh assurances that "British-built military equipment would not be used offensively or in violation of human rights" anywhere in Indonesia, the British Government also agreed that the Indonesian Government would no longer need to provide advance warning of any deployment of military equipment to Aceh. Neither we nor anyone else in Parliament were made aware of this change in policy until 12 June 2003, when it was set out in a written answer to a parliamentary question.[95]

Purpose and transparency

84. We put it to the Foreign Secretary, and he has accepted, that the Government should have informed us explicitly in October 2002 that it had agreed to do without future

92 HC (2001–02) 718, Ev 48

93 Foreign and Commonwealth Office, *Human Rights: Annual Report 2003*, Cm 5967, p 42

94 HC (2002–03) 474, Ev 17

95 HC Deb 12 June 2003, cc 1038–1039W

notification of the proposed use of British-built equipment in Aceh.[96] We also asked him *why* the Government had agreed to this.

85. The Government's written response on this point is confusing. It suggests that "advance warnings of deployment to Aceh alone was subsumed as soon as the assurances became applicable to the whole of Indonesia".[97] Yet, as a Foreign Office minister has made clear to Parliament, the assurances regarding human rights applied throughout Indonesia before August 2002, as well as afterwards.[98] The Government's answers do not clarify why it was originally considered necessary to seek assurances under which the Indonesian Government would not deploy any British-built equipment to Aceh at all; nor why the situation in 2002, not long before a major military operation in Aceh, was thought conducive to lifting this geographical restriction.

86. In the second half of 2002, the situation in Aceh was unstable, but by no means as bad as it later became. In December 2002, a ceasefire agreement was signed between the Indonesian Government and the main separatist rebel group. But the Government has not suggested that it was content for the Indonesian Government to deploy British-built equipment to Aceh because its concerns about the situation there were declining. It may be that in practical terms the British Government had little choice but to accept the Indonesian Government's decision to deploy the equipment. But it seems to have done so with surprising equanimity. This reaction to the prospect of the deployment of British-built equipment to Aceh raises questions about the purpose of the earlier assurances that this equipment would not be used in Aceh under any circumstances. **We conclude that there has been a serious lack of clarity in the Government's explanation to us of its rationale for allowing the Indonesian authorities to alter end-use undertakings regarding their use of British-built military equipment.**

87. The Government has stated that it is "satisfied with the substance of the new assurances", but these new assurances are weaker than those given previously. They were also accepted at a time when the Indonesian Government was continuing to conduct offensive operations in Aceh, albeit not on the scale of those seen in 2003.

Use of British equipment in Aceh

88. In May 2003, martial law was declared in Aceh and the Indonesian armed forces began military operations against separatist rebels there. Hawk jets supplied by the United Kingdom were used, but according to the Indonesian Government, this use was not "in violation of the assurances" or "offensively".[99] In June 2003, 36 Scorpion armoured vehicles were deployed to Aceh. In the same month, Mr Mike O'Brien MP, a minister in the Foreign Office, visited Indonesia, and reminded the Indonesian Government of the assurances given about the use of British-supplied military equipment, warning "of the possible consequences for defence sales and defence relationships if there was a breach of the assurances". He promised that the Government would "be using all available sources of

96 Appendix 22

97 Appendix 22

98 HC Deb 12 June 2003, c 1039W

99 HC Deb 4 June 2003, c 436W; HC Deb 12 June 2003, c 1039W

information to monitor the use of British-supplied equipment and [would] follow up all credible allegations on the misuse of British military equipment".[100]

89. According to press reports, the status of the end-use assurances has been widely questioned by senior military figures in Indonesia. The senior military spokesman in Aceh reportedly said of the Scorpion armoured vehicles that "they will become a key part of our campaign to finish off the separatists … Maybe later the British foreign minister will have a fit",[101] while the Army's chief spokesman was quoted as saying of Hawk jets that "we have already paid, so there is no problem. We use fighters to defend our sovereignty".[102]

90. David Landsman, the head of the Counter-Proliferation Department in the FCO, has told us that "there is no evidence that Scorpion has been used in Aceh in recent times".[103] There is certainly evidence that Scorpion was used in Aceh during 2003, supposedly "to defend roads against attack". The British Government was well aware of this.[104] In January 2004, Indonesia announced that it would withdraw Scorpion from Aceh in favour of locally produced armoured personnel carriers equipped with light machine guns and grenade launchers.[105] It is therefore possible that by the time Mr Landsman was speaking to us, Scorpion had in fact been withdrawn from Aceh.

91. According to the US State Department report on human rights in Indonesia for 2003:

> Human rights abuses were most apparent in Aceh province … Despite some evidence that military commanders wished to improve the behavior of their troops in the field, numerous human rights violations occurred. Unlawful killings, beatings, and torture by soldiers, police, and rebels were common. In many cases, the victims were not combatants but civilians. Accurate figures on human rights abuses in Aceh were extremely difficult to obtain.[106]

92. As the Foreign Secretary notes, "the [Indonesian] security forces have a legitimate right to adequate protection whilst carrying out their duties, as long as they operate in accordance with international human rights standards and humanitarian law".[107] Whether the Indonesian security forces have been operating in accordance with these human rights standards and with humanitarian law is of course at issue. The US State Department's report would appear to suggest that they have not. In the case of British-built equipment, however, because of the undertakings that Indonesia gave when purchasing this equipment, the Government would be rightly concerned if the Indonesian Government were to use the equipment offensively in Indonesia, even if this use were consistent with human rights standards and humanitarian law.

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100 HC Deb 12 June 2003, c 1039W

101 'Scorpions move in on rebels as Indonesia reneges on weapons pledge to Britain', *The Guardian*, 24 June 2003

102 'British-made jets "used in attack on Indonesia villages"', *The Times*, 26 May 2003

103 Q 21

104 HC Deb 3 July 2003, cc 455–456W

105 'Indonesia says British-made Scorpion tanks to be withdrawn from Aceh', *Agence France Press*, 17 January 2004; *Jane's Defence Weekly*, 4 February 2004, p 19

106 US Department of State, Country Report for 2003 on Human Rights Practicesin Indonesia. Published online at http://www.state.gov/g/drl/rls/hrrpt/2003/27771.htm

107 Q 21

Monitoring possible breaches of the assurances

93. The Government has claimed that it "has no confirmed evidence that British-built military equipment has been used in violation of human rights or offensively anywhere in Indonesia in 2003" and that it "regards the Indonesian Government's assurances about the end use of British built military equipment as standing".[108] David Landsman has told us that "from our researches we have no confirmed evidence that any British built military equipment has been used in any way contrary to the Indonesian assurances anywhere in the country in 2002 and 2003".[109]

94. We asked the Foreign Secretary what steps had been taken (other than asking the Indonesian Government) to find out how Hawk and Scorpion were being used in Aceh, and we asked specifically whether British officials had visited the province themselves. Mr Landsman told us that "the most recent [visit] was in February this year, very recently".[110] But clarification from the FCO reveals that in fact this has been the only visit to Aceh by British officials since the military operation began (indeed, since September 2002), and that its stated purpose was to meet local human rights NGOs in the provincial capital.[111] It is not clear how this meeting contributed to the British Government's knowledge of how British-built military equipment was being used in Aceh.

95. The Campaign Against Arms Trade and TAPOL, the Indonesia Human Rights Campaign, have written to us noting a report in *The Guardian* on 20 January 2004 that local Indonesian television had "on several occasions" shown heavy machine guns mounted on Scorpion vehicles firing at "alleged separatist positions", and commenting that "it would be a simple matter for the Jakarta Embassy to track down the TV footage in question, but as far as we are aware they have not done so".[112] We too have not been presented with any evidence that the Government has examined television footage in order to monitor the use of Scorpion in Aceh.

96. The Foreign Secretary has said that his Department does "not turn a blind eye to anything".[113] **We recommend that in its response to this Report, the Government should explain what steps it has taken to find and examine television footage of Indonesian armed forces' operations in Aceh, including local Indonesian television footage, in the course of monitoring the use of British-built military equipment in Aceh; and what the results of any such monitoring were.**

97. It is of course possible that the Government has taken steps to monitor the use of military equipment in Aceh which it is unwilling to disclose to us, although we would expect there to be other higher priorities for the use of covert resources. Nonetheless, **we can only conclude that we have seen no evidence that the Government has taken any action (other than talking to the Indonesian authorities) to investigate claims that British built military equipment has been used in violation of human rights or**

108 Appendix 13, q 58

109 Q 21

110 Q 17

111 Appendix 22

112 Appendix 20

113 Q 20

offensively in Aceh. This calls into question the importance of such assurances in the eyes of the Government.

Available sanctions

98. We asked the Government what action it believed would be appropriate for it to take if an end user did not abide by assurances given on the use of military equipment, and whether it had set out what the consequences of a breach of such assurances might be. The Government has replied:

> Where substantive misuse or diversion is established, the Government may, for example, revoke existing export licences to that country or end-user, and information on such misuse or diversion will be taken into account when assessing future export licence applications. Where the end-user is another government, the United Kingdom has the full range of diplomatic tools available to it.[114]

This answer discusses misuse and diversion more generally, suggesting that the specific area of end-use assurances is not a subject to which the Government has given much direct thought.

99. Saferworld has suggested that:

> the Government should adopt a system whereby end-user assurances provided by prospective recipients of UK arms and dual-use goods take on the form of a legally-binding agreement – and it should forbid re-export without the express permission of the UK Government. If these assurances are found to have been broken at any point, sanctions should be invoked, such as the revoking of the licence, the suspension of further deliveries and the withholding of spare parts and servicing. [115]

Legal contracts are usually made between an exporter and a foreign government; bringing the British Government into this process would be complex. Saferworld's suggestion might be workable if the aim were to prevent goods from being re-exported without permission. Legal and political measures to this effect have been adopted in some other arms exporting countries. In the case of Indonesia, however, the question is not *who* is using the equipment, but *how* they are using it. In these circumstances, it seems to us that a legal solution might be difficult to enforce. But we agree with the general direction in which Saferworld is pushing, and **we conclude that without more legal or political backbone, end-use assurances are not worth the paper they are written on.**

100. The suspicion in this case and in other cases like it is that the principal function of end-use assurances is to shield the exporting Government from criticism when equipment is misused. This would not be the case if the Government were prepared to monitor more actively the end use of military equipment once it has been exported, and to take action where misuse is discovered. The Government has taken such action at least once in the past, when it discovered a relatively minor and possibly inadvertent breach of end-use assurances by the Israeli Government concerning the use of British-built military

114 Appendix 13, q 59

115 Appendix 16

equipment in the Occupied Territories. But this is the only instance in which we are aware of any action having been taken.

Conclusion: monitoring assurances

101. We have previously recommended that the Government should adopt a more formalised programme of end-use monitoring, and during our evidence session last year, the Foreign Secretary undertook to examine the US State Department's Blue Lantern Program.[116] In November 2003, the Government informed Parliament that "officials in the Foreign and Commonwealth Office have been researching the United States system of end-use monitoring, and will be informing Ministers of their findings in the near future".[117] The Government's conclusion from this research is that it already carries out "the vast majority of the work in the Blue Lantern programme as part of our current licensing procedures". This may be true.[118] The Government writes of having already a "careful system of post-export checks".[119] But the very few cases of end-use monitoring shared with us by the Government suggest that there is very little "system" to the end-use monitoring currently carried out by the Government and that it could usefully be targeted more effectively.

102. **We conclude that the Government's reassessment of how it conducts end-use monitoring is welcome. If end-use assurances or undertakings are to have any real value, the Government must be prepared to monitor the end use of the equipment concerned effectively and actively where the suggestion of misuse arises. There is little point in the Government seeking assurances on the end use of equipment if it is not prepared to conduct a thorough investigation when evidence emerges that those assurances may have been breached, or if it is not prepared to take punitive action when assurances have indeed been breached.**

116 HC (2002–03) 474, Ev 8, Qq 31–32

117 HC Deb 11 November 2003, c 202W

118 Q 156 (Mr Hayes)

119 Appendix 17

5 European Union

103. There have been three main developments in the course of the last year in the European area as far as strategic exports are concerned. First, a fundamental review of the EU Code of Conduct on Arms Exports is currently taking place. As well as considering the Government's priorities for this review, we also examine the Code of Conduct as it stands, and how effectively its provisions are implemented. Second, there have been calls to weaken or remove the EU's arms embargo on China: this too is currently under review. Third, ten new member states have acceded to the Union, with possible consequences for the application of the Code of Conduct and the effectiveness of EU border controls. In addition we consider the role of the European Commission in the Union's export control mechanisms.

Code of Conduct

104. The European Code of Conduct on Arms Exports was adopted on 8 June 1998. It contains political commitments, but is not legally binding. It represents minimum standards which all member states have agreed to apply to exports of controlled goods. These standards are defined through a common set of criteria to be used in deciding whether proposed exports should be allowed.

105. The main mechanism for achieving consistency in the application of these criteria is a system of 'denial notifications'. EU member states circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct together with an explanation of why a licence has been refused. Before any member state grants a licence which has been denied by another member state or states for an essentially identical transaction within the last three years, it must first consult the member state which issued the denial. If following consultations, and if the transactions are indeed 'essentially identical', the member state nevertheless decides to grant a licence, it must notify the member state or states issuing the denial, giving a detailed explanation of its reasoning (an 'undercut notice'). The decision to transfer or deny the transfer of any item of military equipment remains at the national discretion of each member state.

106. The Code is essentially a means for setting parameters. It is open to some interpretation: the British Government has published consolidated EU and national criteria which explain how it interprets the terms of the Code. The aim is not that all applications to export military equipment should be treated identically across the EU, but that where differences in policy and practice do occur, member states should be in a position to judge whether they need to be addressed, and to take action accordingly if they do.

107. In the course of this inquiry, we have also sought views on the effectiveness of EU mechanisms from Governments, Parliaments and NGOs in those EU countries responsible for the greatest share of defence exports.[120] The response rate to our questionnaire has not been high, but we would like to thank all those who did take the trouble to share their views

120 We approached Governments, Parliaments and NGOs in France, Germany, Italy, Spain and Sweden.

with us. We will be publishing a consolidated set of answers from those who are willing to allow their views to be made public. We have also taken evidence from British industry on how they are affected by differing approaches to the EU Code, and from British NGOs on how in their view the British Government interprets the EU Code.[121] In addition we sought views on these subjects during our visit to Brussels and Paris, and from the Swedish Export Control Council during their recent visit to London.

Ongoing review of the Code

108. The Code of Conduct is reviewed annually. This year, however, a more in-depth review is also being conducted, with a final decision on revision of the Code due in the autumn.[122] The UK Working Group on Arms is concerned that this review is being conducted with insufficient consultation with those outside Government; they believe that "the ability of Parliament or other external observers to influence this process will be strictly limited".[123] The Irish Presidency apparently set a deadline of 25 March for proposals for change. This has left those outside Government little or no opportunity to comment. Our Chairman wrote to the Foreign Secretary on 23 March, setting out proposals based mainly on our deliberations and Reports. His letter is published as an Annex to this Report.

109. Given that the Foreign Secretary has told us that he is "in the market for proposals",[124] we are disappointed that more effort has not been made to invite a wider sharing of views on the future of the Code. **We recommend that the Government should urge the presidency of the EU to consult as widely as possible on the future of the Code of Conduct on Arms Exports before decisions are taken in the context of the current review.**

110. Most of the Government's stated priorities for the review involve incorporating into the Code practices which have evolved since its agreement in 1998:

- **licensed production overseas**: "the inclusion of text on licensed production to the effect that member states should carefully consider what might happen to the finished products in licensed production agreements in which their exports or technology or components are the raw materials";[125]

- **arms brokering licence denial notifications**: "where a licence to broker strategically controlled goods is denied, … we want those to be subject to the same process as the export of export equipment currently is, so for example if someone is refused a licence to broker in the United Kingdom and then applies for a similar licence elsewhere, the other country would need to consult us before issuing it";[126]

121 Qq 74–107

122 Q 27

123 Appendix 18 (UKWG)

124 Q 24

125 Q 25

126 Q 25

- **intangible technology transfers**: "the export of military information and designs … should also be reflected in the common criteria";[127] and

- **transparency standards**: "We want to raise transparency standards by including in the Code a provision which obliges member states to publish a publicly available report containing information about equipment exported and not just a breakdown of how many licences they issued for each destination".[128]

111. Only the last of these is likely to be in any way controversial, as it represents the practice of the British Government, but not of all EU member states. **We conclude that the Government's priorities for a review of the EU Code of Conduct are sound, if cautious. We recommend that the Government should seek to ensure that a new commitment is included in the Code of Conduct to publish information on arms exports. This should include information by category of equipment matched to country of destination, as in the British Government's Annual Reports. Convergence should also be sought in terms of how this information is gathered, analysed and presented, so that meaningful comparisons can be made between different countries.**

112. One of the issues for decision will be the status of the Code. The Foreign Secretary has told us that he is "not in favour of turning [the Code] into part of the acquis of the EU, part of EU law, where that could all end up being subject to QMV and adjudicated before the European Court of Justice".[129] Others, including some member state governments, believe that the Code should be a legal instrument, rather than a non-binding political statement. A compromise would be to give the Code the status of a Common Position. Indeed the Foreign Secretary erroneously referred to it as a Common Position in evidence to us.[130] If it were a Common Position, the Code would technically become a legal instrument, but it would be subject to unanimity and would not be justiciable—like other instruments under the Common Foreign and Security Policy. This would only change if all member state governments agreed to alter the Treaties accordingly—an unlikely event. Defining the Code as a Common Position would raise its profile, but would not have any procedural impact on its status. **We recommend that the Government should consider whether raising the status of the Code to that of a Common Position under the Common Foreign and Security Policy would have benefits, in terms of the Code's profile within the EU and the importance that member states would be seen to attach to it.**

113. The impetus behind reviewing the Code should be to ensure that it continues to operate as effectively as possible. One of the key aims of the review should be to enhance existing mechanisms, particularly in information exchange. This is not an area mentioned as a priority by the Foreign Secretary, but we believe that it should be. There are two aspects to this in particular. The first concerns the sharing of intelligence and diplomatic resources. As one of our NGO witnesses has pointed out, some of the newer and smaller EU member states have a potential capacity problem: "They do not have a diplomatic presence on the ground so they often find making decisions about certain countries very

127 Q 25

128 Q 25

129 Q 22

130 Q 27

difficult".[131] The second aspect is to ensure that the sharing of information on licensing policy goes wider than the denial notification system. It might, for example, be appropriate for member states to exchange information relating to early advice on licence applications, such as through the 680 process. **We recommend that a priority of the review of the Code of Conduct should be to seek to enhance existing systems of information exchange.**

114. We noted last year that we had not been able to gain access to any information on licences refused across the EU under the Sustainable Development Criterion.[132] This year, we have heard informally and in confidence of some such cases in other EU countries. What is clear is that the Criterion is interpreted differently by different member states. The British Government seems to interpret the Criterion to include mainly, if not only, exports of *very* high value to *very* poor countries. Other countries have refused licence applications under Criterion Eight for goods of lesser value to relatively wealthy countries and to private end users, apparently interpreting "sustainable development" to include issues such as human security and the proliferation of small arms. Consultations on this criterion have been taking place between member states at EU level, in which the Department for International Development has apparently been taking a leading role.[133] **We conclude that the Sustainable Development Criterion remains the least adequately defined of the EU Code Criteria. We recommend that the Government should seek to reach a mutual understanding with other member states of what the Criterion means in practice, and to refine its definition accordingly in the context of the ongoing review of the EU Code.**

Differing interpretation by different member states - does it matter?

115. Anecdotal evidence and comment suggest that different EU member states treat certain types of licence application differently.[134] Hard evidence, however, is not easy to come by, because of the degree to which most countries protect information about their arms exports.[135]

116. Perhaps unexpectedly, views differ on whether the United Kingdom has too restrictive or too relaxed an approach to strategic export controls. According to the Defence Manufacturers' Association, "there is a general perception within UK Industry that the British Government's interpretation of the EU Code of Conduct (and EU Embargoes) is amongst the strictest of EU Member states". [136] One of our witnesses from industry told us along similar lines that "virtually the whole of the EU is more liberal in its interpretation than the UK is".[137] Saferworld, on the other hand, has warned of "a weakening of export control policy, and an increase in support to countries that are seen as on-side on the war on terrorism".[138] Our impression is that the position of the United Kingdom is mixed: it is

131 Q 95 (Mr Isbister)

132 HC (2002–03) 474, para 107

133 Council of the European Union, Fifth Annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports, Annex, p 7; Q 93 (Mr Cairns)

134 Qq 119, 125

135 Q 96

136 Appendix 19 (DMA)

137 Q 133 (Mr Otter)

138 Appendix 7

relatively restrictive in a number of areas, sometimes to the dismay of British industry, but there are also circumstances in which it is willing to allow exports where some other European countries would be likely to refuse a licence. In particular, Germany, Sweden and a number of the smaller EU member states seem to refuse licence applications because of general concerns over the human rights in the country of destination more readily than the British Government, which tends to give greater weight to a country's military needs balanced against the possibility that particular equipment might be used to commit human rights abuses.

117. In evidence to us, the Foreign Secretary was sanguine about the Code's effectiveness:

> I came to this system pretty fresh when I became Foreign Secretary two and a half years ago and I think I had a healthy scepticism about whether or not this system, which is based on a political agreement (and it is not legally binding across the European Union but it is in many countries' domestic law) was going to be effective, but I have been pleasantly surprised by the extent of co-operation between European countries. I know there are stories about country X or country Y trying to pull the wool or go behind the rules, but I have yet to see evidence of that. Sometimes different judgments are made on similar applications. We may have decided to agree a licence whilst other countries have said they are not going to and they have sent a denial notification. Sometimes the reverse is the case and we have denied a licence and other EU countries have and a third EU country decides to issue a licence. On the whole, however, I think it works pretty well.[139]

118. While there are continued exchanges of view between member states on "aspects of national export policies including policies on exports to specific countries or regions", it is hard for those not participating in those discussions to know to what extent they "contribute decisively to transparency, dialogue and convergence between member states in the field of conventional arms exports", as the Council has claimed.[140]

Denial notification and undercut procedure

119. In some circumstances, differences between member states will become apparent when denial notifications are issued and undercuts contemplated. The risk in such a circumstance is that policy is broadened to meet the lowest common denominator. If country X is prepared to undercut country Y, country Y may decide to allow similar applications in the future so as not to lose the business.

120. But there may also be differences that will not become apparent. If the customer goes to a source in country X first, a licence may be issued which country Y would not have allowed—but country Y has not been approached. Even if country Y was approached, this might well be in such a way as not to trigger a formal licence denial. In general, we would expect business to sound out whether a licence is likely to be granted before seeking the licence itself. The DMA has told us that this is precisely the effect of the British Form 680

139 Q 22

140 Fourth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports. See 2002 Annual Report, p 485.

system, under which companies seek initial guidance on whether licence applications are likely to be approved so that they can avoid wasting time and money on prospective sales for which they will not be granted a licence:

> Because the 680 system is (for the most part) a non-regulatory, voluntary system, an indication that a licence would not be issued has no force under the anti-undercutting provisions of the Code of Conduct, and UK suppliers may well have been walking away from potential business that is then picked up by EU competitors, without even bothering to apply for licences, knowing that these would be refused.[141]

Differences in policy between member states may often therefore not trigger the denial notification system.

121. Consultation procedures will also only be triggered where two or more member states are in a position to export similar equipment. Specialisation of production within the EU means that in many sectors essentially identical goods are produced by (and are therefore likely to be exported from) only one or a very small number of member states.

122. Published statistics on denials and undercuts are very limited indeed. Annual Reports under the EU Code of Conduct provide statistics for 'consultations initiated' and 'consultations received' by each member state, but these do not seem to be altogether reliable. For example, more consultations were apparently initiated than received in 2002: but logically any consultation initiated by one country must also be received by another.[142]

123. The Foreign Secretary, however, has given us a little more information on denials and undercuts during 2003. There are approximately 15 undercuts of denial notifications annually throughout the EU. According to the Government, this suggests "a pretty considerable convergence in the interpretation which each Member State will have to give to the Code of Conduct and applying the criteria".[143] It is impossible to know to what extent this is true given that this small number of undercuts may also result from the ability of exporters to exploit the differences between the licensing policies of different EU member states without triggering the denial and undercut system. The distribution of undercuts among the member states is roughly proportionate to the size of their defence industries, according to the Government.[144]

124. The United Kingdom consulted other member states 20 times in 2003, but it only actually undercut them five times.[145] This suggests that, in many cases, consultations do not in fact lead to undercuts, and that member states do not apply a 'lowest common denominator' approach to licensing outlined above;[146] although we do not know the extent to which exports might take place without being classified as undercuts where consultations have revealed that the transactions in question are not in fact essentially identical with the earlier denials.

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141 Appendix 23 (DMA)

142 Fifth Report under Operative Provision Eight of the EU Code of Conduct on Arms Exports, Table B

143 Q 22 (Mr Landsman)

144 Q 23

145 Q 23

146 See para 119.

125. The Government has provided us in confidence with information on the five occasions on which they undercut other EU member states. All are 'grey area' cases of the type about which we might expect member states to disagree. They relate to countries about which there is legitimate concern, but where it is not clear that the equipment in question would itself contribute to this concern.

126. One of the main advantages of the denial notification system is that it allows countries to share intelligence on particular licence applications where it becomes relevant to do so. Where consultations on essentially identical transactions have not led to an undercut, this is likely to have been because of information shared in the course of the consultation.

127. One case of which we have learnt in confidence suggests that denial notifications can directly affect how future licence applications are treated by the Government. Two applications were made for the export of identical equipment to the same end user in two successive years. In the first year, the Government granted a licence; in the second year, it refused the application. In the interim, a denial notification had been issued by another EU member state. The Government's confidential evidence to us suggests that the denial itself played little or no part in its decision: rather, the Government's understanding of the situation in the country of destination had changed. We suspect, however, that in this particular case, the Government would have found it politically awkward to undercut a denial notification, and that, had a denial notification not existed, the licence application in question might have been granted.

128. We have heard of occasions on which certain member states have acted contrary to the spirit of the Code, by making only the most perfunctory attempts to consult, and even by undercutting their own denial notifications. The publication of a User's Guide to the Code of Conduct, intended mainly for officials involved in the licensing process, has helped to clarify procedures in areas which previously had not been well defined. **We conclude that the publication of the User's Guide to the Code of Conduct is welcome as a guide to good practice for officials across the EU.** It is likely to be of particular value to officials in new member states and to other officials who are new to this very specific and complex area.

Embargo on China

129. A Declaration by EC member states in June 1989 (shortly after the Tiananmen Square massacre) imposed an "embargo on trade in arms with China", but because at the time the EC had not agreed on what items were covered under the expression "arms embargo", it was left to individual member states to interpret the embargo themselves. The scope of other EU embargos (on, for example, Afghanistan, Burma, Congo, Libya, Sudan and Zimbabwe) has been much more closely interpreted. The Committee has previously recommended that "the Government should continue to encourage our EU partners to follow the UK's lead in publishing their national criteria for the application of the China embargo".[147] However, different EU countries continue to interpret the embargo in different ways, and only the UK has published its interpretation.

147 HC (2001–02) 718, para 55

130. The UK interprets the embargo to cover "lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; and any equipment which is likely to be used for internal repression".[148] However, the UK does grant licences for the export to China of significant quantities of components for military aircraft and helicopters.

Calls for change

131. China is an enormous potential market for military equipment. During a visit to China in December 2003, Chancellor Schroeder reportedly said that Germany favoured ending the EU embargo on China.[149] On 18 December 2003 and again on 10 February 2004, the European Parliament passed resolutions urging the EU not to weaken the existing embargo. During a visit to France by the Chinese President in January 2004, President Chirac reportedly said that the embargo "no longer corresponds with the political reality of the contemporary world" and called for it to be scrapped.[150] The USA has apparently been putting pressure on the EU (as well as on Israel) not to increase sales of arms to China.[151]

The British position

132. The policy of the British Government "is to support a review of the embargo", but as of February 2004, the Foreign Secretary had "not come to any final view on the merits of lifting it", awaiting "a full consideration of its effects up to now".[152] No country has suggested strengthening the embargo. The result of the review would "either be a status quo or it would be some lightening of it or its lifting altogether".[153] It is an "open question" whether the review will be completed by the summer.[154]

133. According to the Foreign Secretary, the Council is examining two issues "with great care": first, whether the human rights situation has changed since the Tiananmen Square massacre; second, whether the embargo has been "overtaken" by the agreement of the EU Code of Conduct criteria.[155]

The arguments

134. The reason for the embargo being imposed on China in the first place was principally one of human rights concern; the original EU Declaration referred to "brutal repression".

148 HC Deb 31 March1995, cc 842–843W; available online at http://projects.sipri.se/expcon/euframe/euchiuk.htm

149 'Schröder Backs Sales to China of EU Weapons', *Wall Street Journal*, 2 December 2003

150 'Chirac renews call for end of EU arms embargo on China', *Agence France-Presse*, 27 January 2004

151 'US pressing EU to uphold arms embargo against China', *Washington Post*, 31 January 2004

152 Q 28

153 Q 36

154 Q 31

155 Q 28

The Foreign Secretary did, however, tell us when pressed that "arms control" and "wider strategic questions" were also now relevant issues.[156] US concern about lifting the embargo seems to have little to do with human rights, and much more to do with worries about China's developing military capabilities and the risk of armed conflict with Taiwan.[157] The Foreign Secretary also told us that "the purpose of the embargo" is "to prevent China acquiring new systems or equipment" as an explanation of why the British Government interprets the embargo to cover main equipment, but not components.

135. China's human rights record is not one to inspire confidence. According to the FCO's latest Annual Report on Human Rights, the Government continues to have

> concerns about a wide range of human rights issues in China including: freedom of religious belief; the extensive use of the death penalty; the use of torture; arbitrary detention, including the practice of re-education through labour; freedom of expression; freedom of association; the deprivation of religious and cultural rights in Tibet and Xinjiang; prison conditions and the treatment of prisoners; psychiatric abuse; treatment of Falun Gong supporters; and aspects of the implementation of the one child policy.[158]

We conclude that it would seem hard from this litany of continuing abuses to make a strong case for lifting an arms embargo on China which was imposed in the first place because of human rights concerns. We recommend that in current circumstances the Government should resist calls to lift the arms embargo on China.

136. The argument put to us by the Foreign Secretary that the embargo has been overtaken by the Code criteria was repeated in March, when another FCO Minister told the House that while the Government was still "considering [its] position", "lifting the embargo would not remove our ability to control arms sales to China" through the EU Code.[159] But taken to its logical extension, this argument implies that all EU embargoes are superfluous. Removing the embargo on Zimbabwe would not remove EU governments' ability to control arms sales to that country: but we doubt that the Government would put this forward as a reason for lifting that particular embargo. **We conclude that if the EU Code of Conduct has superseded the arms embargo on China, then it has presumably also superseded other EU arms embargoes as well, given that sales to any embargoed country could equally well be controlled under the EU Code.**

137. The imposition of the embargo on China was a political response to a horrific event: the Tiananmen Square massacre. If that event had not taken place, it is more than likely that no embargo would have been imposed, however tarnished China's human rights record had otherwise been. Many other countries with poor human rights records are not subject to arms embargoes: Saudi Arabia, Syria and Uzbekistan are cases in point. But once an embargo has been imposed, a strong case needs to be made for lifting it, because of the political message that it sends. The US media have claimed that if the embargo were lifted,

156 Q 29

157 eg see 'Keep the ban on arms to China', *International Herald Tribune*, 22 March 2004

158 Cm 5967, p 33

159 HC Deb 25 March 2004, cc 321–322WH. See also HL Deb 12 January 2004, cc 373–376.

"the norm against EU arms sales to China would be significantly diminished, sending a strong signal to defense enterprises throughout Europe".[160]

The need for clarity

138. Given not only continued human rights concerns, but also concerns about regional stability and proliferation, we would be concerned if EU countries exported a wider range of military equipment to China than they do at the moment. The real problem with the embargo on China is its vagueness. It is more difficult to enforce legally than other EU arms embargoes because it is open to varied interpretation. As we discuss below, it creates uncertainty for business. And it makes the embargo difficult to justify: this is after all, an embargo imposed on human rights grounds which limits Chinese access to equipment and technology whether it is likely to be used for internal repression or not. **We recommend that the Government should encourage its EU partners to seek a clearer joint understanding of the purpose and scope of the embargo on China: not in order to lift it, but in order to define it more rigorously and more effectively.**

Effect on British business

139. Current uncertainty about what the embargo means, and inconsistencies in its application across the EU appear to be having a negative effect on industry. The Defence Manufacturers' Organisation has stated that the British interpretation of the embargo is "amongst the strictest of EU Member states".[161] We have also heard that British companies, unlike companies from some other EU countries, are unlikely to seek to supply security equipment for the 2008 Olympic Games in Beijing, because of "uncertainty as to whether licences would be issued".[162]

140. We have been approached by a British company, Oxley Developments Company Ltd, who have been refused a licence application for the export of night vision equipment to the Chinese armed forces. They claim, however, to have discovered that French, German and Belgian companies have exported very similar equipment.[163] The Foreign Secretary has assured us that he is "assiduous in following up any suggestions that British manufacturers, whether in this field or the non-controlled goods field, are being worsted by other countries not playing by the rules".[164] In the case of this embargo, however, it may be that countries are playing by the rules as they see them. The problem is that the rules are not clear enough. **We conclude that a clearer definition of the terms of the arms embargo on China would allow British industry to compete more fairly for contracts in China with other EU member states.**

160 'Keep the ban on arms to China', *International Herald Tribune*, 22 March 2004

161 Appendix 19 (DMA)

162 Appendix 23 (DMA); Q 147 (Mr Otter)

163 Appendix 15

164 Q 35

WMD Action Plan and involvement of Commission

141. Military goods, as defined by the European Union, fall under the Common Foreign and Security Policy pillar of the Treaties, and as such, are a competence primarily of member states. Proposals under this pillar must be agreed unanimously by the Council. While the European Commission attends many of the Council meetings relating to the EU Code of Conduct, it has no formal role or decision-making capacity in this area.

142. Dual-use goods and technology, on the other hand, which have both a civilian and a military use, are controlled by Council Regulation under an Article relating to Common Commercial Policy. Although technically decisions under this Article are decided by Qualified Majority Voting, in practice, because of the essential security issues involved for member states, the Council and Commission have committed themselves to a consensus approach. Amendments to the Regulation are proposed by the Commission, in particular to update the lists of items to be controlled at EU level. The Commission also has other functions, especially in information exchange activities.

143. Non-military security and police equipment are not currently regulated by the EU, but a European Commission proposal to regulate some of these goods was published in December 2002.[165]

144. In June 2003, the Council Secretariat and Commission published their *WMD Action Plan*.[166] This included a number of measures relating to export control. One measure for immediate action was "considering the involvement of the Commission" in the export control regimes. When the Government wrote to us about this proposal in November 2003 the Council was "still considering this issue in the light of Commission proposals".[167] The Government seems to favour a Commission role in a supporting capacity; for example, providing assistance to member states that take up the annual rotating chair in certain international export control regimes.[168] This is a relatively modest interpretation of the Action Plan measure.

Controlling equipment used in torture and capital punishment

145. The European Commission's proposal for a Council Regulation on trade in equipment related to torture and capital punishment would go much further. Article 14 (2) states that under certain circumstances, notably where any Member state objects twice to a licensing decision by another Member state, the final decision on whether to grant the licence in question will be taken by the Commission. The Government's view on this proposed extension of the Commission's competences, shared by at least one other Member State, is that it "does not believe it would be appropriate for the Commission to play such a role and will therefore be seeking changes to this part of the text".[169]

165 See paras 145–149 below.

166 Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction

167 Appendix 13, q 4

168 Appendix 13, q 4

169 Appendix 13, q 3

146. Regulation is overdue at the EU level on trade in equipment related to torture and capital punishment. As the UK Working Group on Arms points out, "this is a major issue that has yet to be addressed even after almost six years of the Code's operation".[170] We are surprised that such equipment has not previously been regulated by the European Union, given its involvement in exports of both military equipment and dual-use goods. **We recommend that the Government should seek to encourage swift agreement to an acceptable Council Regulation on trade in equipment related to torture and capital punishment.**

147. However, we have strong objections to Article 14 of the Commission's proposal. Whether to permit or prevent a strategic export is currently a matter for national decision, and should remain so in our view. This part of the Commission's proposal is misguided on two counts: first, the Commission should not take a deciding role in a dispute between member states; second, member states should not be able to prevent other member states from issuing licences by objecting to them. This part of the proposal also fails to match current arrangements for military and dual-use goods and technology.

148. Happily, the Government appears to be of the same view. A Minister in the DTI wrote to the European Scrutiny Committee in November 2003 to inform them that:

> whilst the UK accepts that the Community has competence to regulate which goods are subject to control, it should be for national licensing authorities to take decisions on individual applications on a case by case basis, and that the aspect of the proposal which would confer such an ability on the Commission is unacceptable.[171]

We recommend that the Government should continue to resist the proposal that the European Commission should have a decision-making role on certain export licence applications for equipment related to torture and capital punishment.

149. A more suitable approach to this area of control would be for the Commission to exercise functions similar to those it holds in the area of dual use, with an extension of the denial notification system and other information exchange mechanisms currently used for dual-use transfers, to encourage convergence between member states' licensing decisions without removing national control over decision-making in this area.

Consistency and the role of the European Commission

150. The Commission has (or is likely to have) a more important role formally speaking in the regulation of exports of dual-use goods and technology and (as proposed) of security and police equipment than it has in the regulation of exports of military equipment. But there is no clear dividing line between these areas, and the aims of regulating trade in these areas are broadly similar in many ways. The EU now has a Strategy against Proliferation of Weapons of Mass Destruction. But the mechanisms for controlling trade in missiles and their components (conventional arms) are different from those for controlling nuclear or chemical material with which these missiles might be armed. The proposed mechanisms

170 Appendix 18

171 European Scrutiny Committee, 38th Report, Session 2002–03, HC 63-xxxviii, para 4.4

for controlling trade in electric shock equipment would be different from the mechanisms for controlling trade in small arms, even though the risks connected to their end use might be broadly similar in human rights terms. The control of these different classes of equipment and technology raises similar issues and a joined-up approach is essential. **We recommend that the Government should encourage broad co-ordination between member states, the European Commission and the Council Secretariat on all issues relating to strategic export controls to ensure a strategic approach to counter-proliferation as well as to the prevention of human rights abuse.**

Peer review process

151. The EU's *WMD Action Plan* also proposed 'peer review' of member states' and acceding countries' export control systems, in teams of two to three countries, to be coordinated by the European Commission.[172] It has taken some time for this peer review to get off the ground. It was suggested that the work was not "attracting the political support [or] human resources that are necessary for the full and thorough implementation of this important exercise",[173] apparently because the Commission lacked the resources to steer the peer review process, and member states were slow to provide the staff and money to assist.

152. The peer review process is, however, now under way:

> Ten cluster groups of three countries per group have been set up. The UK is in two such groups; the first with Ireland and Malta, the second with Greece and Cyprus. Within each group a visit will be made to each country to discuss customs issues, transhipment, identification of goods in the regulation and technical control issues.[174]

The impression we gained from our evidence is that the United Kingdom regards this peer review as one-way traffic, with the more experienced countries imparting their experience to the new member states. We hope that this impression is misconceived. While enlargement was clearly a major impetus behind the peer review process, **we recommend that the Government should approach the peer review process as an opportunity to share experiences with other countries, not just to give other countries the benefit of British experience.**

Enlargement

153. On 1 May 2004, ten new countries became Members of the EU, some "from a very different tradition of export control".[175] Poland is the major arms producer among the accession countries. The Czech Republic produces mainly aviation technology and small arms, and has also been the subject of allegations that it has exported Soviet-era equipment

172 *WMD Action Plan*, para 21

173 The European Union: Seeking Common Ground for Tackling Weapons of Mass Destruction, Stephen Pullinger and Gerrard Quille, published in Disarmament Diplomacy, Issue No. 74, December 2003

174 Q 44

175 Q 99 (Mr Isbister)

to countries in conflict zones.[176] Slovakia has a research and development capability for the production and modernisation of major weapons. Cyprus has been cited in the past by British defence industry as a location from which arms brokers operate.[177]

Standard of control in accession states

154. The Government has written that it considers the "administrative procedures" of the ten associated countries to be "in line with EU standards".[178] It has not, however, commented on the standard of their implementation of the EU Code of Conduct. The European Commission's 2003 reports on progress towards membership noted that a number of accession countries still needed to alter their legislation to allow for the effective implementation of EU sanctions, and also made the following comments:

— Czech Republic: "The implementation of the EU Code of Conduct for Arms Exports and the fight against unauthorised weapons transfers should be enhanced."

— Slovakia: "The implementation of the EU Code of Conduct for Arms Exports and the fight against unauthorised weapon transfers deserve continuing attention."

155. Saferworld has told us that "officials from a number of the accession countries … feel at a bit of a loss as to how they are supposed to apply the criteria" and that there are "issues of capacity" in the accession states, which are generally less wealthy. This can "impact in terms of resources they have available to put into export control" and "increase the economic pressures on them to issue a licence where discretion might be the better part of valour".[179] It has also been suggested in the media that "the control systems among the incoming EU nations are less developed than those of the 15 current members" and that "their admission on May 1 may create weak points in the free trade zone's borders".[180]

156. Since April 2003 the ten new member states have attended meetings of the Working Group on Conventional Arms Exports (COARM), the group that co-ordinates EU arms exports under the Common Foreign and Security Policy (CFSP), and they have also been provided with member states' Code of Conduct denial notification data for the last two calendar years. According to the Government, "this information and interactions with current member states will enable the accession countries to develop an understanding of how EU members regard specific arms export licence applications, and so to further converge their policies".[181] All of the EU accession states are also seeking membership of the international export control regimes.[182]

157. We pressed the Foreign Secretary on whether the accession states' controls were adequate. His response was less than totally reassuring:

176 See, for example, 'Arms' Length', *Prague Post*, 20 November 2003.

177 HC (2000–01) 445, Q 85

178 Appendix 13, q 1

179 Q 99 (Mr Isbister)

180 'EU Invitees Must Improve Export Controls', *Defense News*, 26 January 2004

181 Appendix 13, q 1

182 Q 45 (Mr Oakden). See paras 162–163.

> I am satisfied that as from 1 May the regime which these countries will operate under, and its enforcement, will be better than it has been in previous years in these countries. The very fact that they are joining the European Union is a way of raising their standards of law enforcement generally. Whether it is at the level which we would regard as wholly satisfactory is another question, but it is moving in the right direction, and you only have to look at some of the other former Soviet Union nations which are not joining the EU, so we do not have the same control over them, to see what the problems are.[183]

158. We hope that the acceding states have been able to rise to the challenge of effectively controlling strategic exports in accordance with the EU Code of Conduct. But it would hardly be surprising if some of them struggled to do so. Trade in strategic exports—dual-use goods in particular—with countries within the EU is less rigorously controlled than trade with other countries. In the case of many dual-use goods, there are no controls on trade within the EU; and trade in many other strategic goods within the EU is covered by open licences. **We recommend that the Government should assess closely whether the controls currently in place are adequate to ensure that exports to new EU member states—dual-use goods in particular—are not at risk of being re-exported under undesirable conditions.**

Outreach and support

159. Saferworld has told us that it is "quite disappointed by the level of support that has come from EU member states" and that the accession states themselves "are quite frustrated by what they regard as the lack of support from EU member states", with some stating that "they have more support from the US than they have had from the EU".[184] The defence press has also suggested that "efforts to improve invitees' export-control systems have received more rhetorical than substantive support from Brussels and the member countries".[185]

160. We have sought to find out what other steps the British Government has taken to help the acceding countries to understand their obligations under the Code of Conduct and to enforce effective export controls. The UK organised two seminars in Estonia and Slovakia at which current and accession EU member states had the opportunity to share experiences on the application of the licensing criteria in the EU Code of Conduct. As the Foreign Secretary told us, "it is not just what is on the paper it is about what approach individual officials should take when they are looking at arms applications".[186] As enforcement is a potentially serious concern, we were pleased to hear that Customs & Excise has been working closely with the countries.[187] However, as Saferworld rightly says, while two seminars "is more than a lot of other states have done … in terms of preparing a state for

183 Q 45

184 Q 99 (Mr Isbister)

185 'EU Invitees Must Improve Export Controls', *Defense News*, 26 January 2004

186 Q 44

187 Q 44

this whole instrument, two seminars to which one or two people who may be from different countries are going does not seem like an awful lot".[188]

161. **We conclude that it is important to the security of the European Union and elsewhere that all EU member states should have effective export controls. We therefore recommend that the Government should consider whether it could usefully make further contributions to helping the new member states to bring their export control systems into line with the EU system, particularly in terms of access to expert assistance and training.**

Membership of export control regimes

162. In the next section, we discuss the international export control regimes, but there are particular issues of concern surrounding membership of these regimes by the new EU member states. Of the new member states, only the Czech Republic, Hungary and Poland are currently members of all of the following regimes: the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers' Group and the Wassenaar Arrangement. All of the other new member states have now applied for membership of those regimes to which they do not already belong. However, their applications did not succeed in 2003. They appear to have been blocked for political reasons by one or more existing members of the regimes. There is no guarantee that these membership issues will be resolved in 2004.[189]

163. This raises two issues: one technical, one potentially of more concern. The EU Dual-Use Regulation assumes membership of the international export control regimes; in granting licences for dual-use goods and technology, member states must take into account "the obligations and commitments they have each accepted as a member of the relevant international non-proliferation regimes and export control arrangements". Many of the new member states will not have accepted these obligations and commitments. The issue of more potential concern is that member states not belonging to these regimes will not receive denial notifications and intelligence from other members of the regimes. Thus a supplier who has been refused an export licence by the US might seek to evade EU dual-use controls by routing any export from the EU via a member state which does not belong to the relevant international regime, on the basis that that state will not have received the relevant US denial notification. **We recommend that the Government should do all it can to encourage acceptance of all new EU member states as members of all of the international export control regimes. We further recommend that steps should be taken to ensure that EU member states not belonging to the regimes do not become weak points in the EU's control of dual-use goods and technology.**

188 Q 99 (Mr Isbister)

189 Appendix 22 (FCO)

6 Wider international arrangements

Existing international export control regimes

164. A number of informal arrangements exist for the international co-ordination of export controls. They all involve the exchange of information and they prepare agreed lists of controlled equipment and technology. They all operate by informal consensus. The regimes are as follows:

— **Australia Group:** chemical and biological weapons

— **Missile Technology Control Regime (MTCR):** missiles with a range of at least 300km

— **Nuclear Suppliers Group (NSG)** and **Zangger Committee:** nuclear and nuclear-related goods and technology

— **Wassenaar Arrangement:** conventional weapons and dual-use goods and technology

165. Membership of the groups is by no means worldwide. Longstanding EU member states, the USA and like-minded countries belong to all of the groups. The Russian Federation and Ukraine belong to all but the Australia Group. Belarus, Kazakhstan and Latvia belong only to the Nuclear Suppliers Group. China, Israel, India and Pakistan—major arms producers and exporters—belong to none of the groups.[190]

166. The existing multilateral export control groups—from the Australia Group to the Wassenaar Arrangement—are not legally binding, and they have no enforcement mechanisms. Their membership is also limited. We asked the Foreign Secretary what such multilateral arrangements can achieve, given that they are neither binding, nor truly international. He did not seek to defend the arrangements, and suggested that they could usefully be rationalised and that they did not receive the same level of attention from other Governments as was paid to them by the United Kingdom.[191]

167. The Government is to be congratulated for its instrumental role in securing consensus within the Wassenaar Agreement on specific information exchange on transfers of small arms and light weapons. The British Government has also proposed the introduction of a system of denial notifications and bilateral undercut consultations within the Wassenaar Arrangement, based on the arrangements within the EU. This, if implemented, would be a significant advance in the exchange of information between countries as diverse as Argentina and Ukraine. Agreement on the proposal has not yet been reached, however.[192] **We recommend that the Government should continue to press for the introduction of a denial notification system within the Wassenaar Arrangement.**

168. It is likely that many of the advantages of the regimes are contained less in their formal proceedings, than in the opportunities they provide to foster dialogue. The arrangements are genuinely valuable in that they encourage the exchange of information and best

190 China has applied for membership of the NSG, and has given positive indications about possible membership of the MTCR.

191 Q 54

192 Appendix 13, q 12

practice, and that they identify goods and technology that need to be controlled. Although we appreciate the difficulties that exist in achieving international co-operation in an area as sensitive as export controls, we are unconvinced, however, that the regimes are as effective as they might be.

169. Membership of the arrangements is too large for an effective consensus to be easily achieved, and progress depends on the national implementation of agreed measures: a slow and cumbersome process which is unlikely to keep pace with global trade patterns and emerging technologies. But looked at from another angle, membership is too small: it is questionable what an international consensus on responsible behaviour in the control of dual-use equipment, for example, can hope to achieve if China, India and Israel are not engaged in this process.

170. **We conclude that international arrangements on export control need to be made to work as channels through which major arms exporters can share information effectively on proliferation concerns. We further conclude that if this cannot be achieved, it may be necessary to rethink the current arrangements. Failure in this area would bode ill for an effective and truly international approach to counter-proliferation through export controls.**

Proposal for an Arms Trade Treaty

171. One proposal to strengthen the current arrangements on conventional weapons is the campaign for an international Arms Trade Treaty (ATT). This was launched by Amnesty International and Oxfam in October 2003, partly as a response to the weakness of current international controls. The NGOs propose to submit the draft ATT at the next UN meeting on small arms proliferation in 2006. The proliferation of conventional weapons, small arms in particular, is a real and serious threat to human security that needs to be addressed internationally. As the NGOs make clear in their campaign, "the uncontrolled proliferation and misuse of arms by government forces and armed groups takes a massive human toll in lost lives, lost livelihoods, and lost opportunities to escape poverty".[193]

172. The question is not whether this is a problem which needs addressing: clearly it does. The question is rather how to address it. It is not obvious that current mechanisms are sufficiently effective in reducing this proliferation.

173. The NGOs claim that the proposed treaty is based upon "existing responsibilities", and that it pulls together international agreements, such as the Geneva Conventions and the Ottawa Convention.[194] But it also goes rather further. For example, it would require states to incorporate into national law criteria against which any proposed transfer of arms should be permitted and it would require states to monitor closely what happens to arms once they have left national borders.[195]

193 Amnesty International and Oxfam International, Shattered Lives: The case for tough international arms control, p 4 (henceforth 'Shattered Lives')

194 Shattered Lives, p 75

195 Shattered Lives, p 75

174. The NGOs suggest that "even though some countries are opposed to an ATT, this should not prevent other states from forging ahead". They cite the example of the Ottawa Convention on anti-personnel landmines, which, although it has not been signed by every country in the world, has created "a new international norm" as a result of which "not a single country has openly traded anti-personnel landmines, far fewer governments are using anti-personnel landmines, and even some nonsignatories are broadly abiding by its principles".[196] Oxfam has underlined the "clear weakness in agreements that are only politically-binding" and the "risk that pushing for consensus will only bring a lowest common denominator result", and has urged the Government "to be more vocal in its support for a legally binding international Arms Trade Treaty, based on existing principles of international humanitarian law".[197]

175. The campaign has drawn widescale support in the humanitarian sector. However, support from states has been less forthcoming. As of February 2004, Brazil, Cambodia, Costa Rica, Finland, Macedonia, Mali and the Netherlands had expressed support for the Treaty, in principle at least.[198] The British Government has also made encouraging noises, and has stated that it "supports the goal of an international instrument on arms transfers" but argues that for it to be effective such a treaty "would have to enjoy the support of all major arms exporting countries".[199]

176. Our NGO witnesses told us that they were not "naïve enough" to think that international agreement on a treaty would "happen overnight", and were well aware that it would take "a huge effort to engage states like the United States, Russia and China".[200] But even taking a pragmatic view, this proposed treaty seems to have attracted the support of a very small minority of states, none of which are major arms exporters (apart, perhaps, from Brazil). Even if the text and precise content of such a document is always likely to be subject to negotiation, we are surprised that the idea of a proposed treaty has attracted so little support, even from those countries where small arms proliferation is a major problem. **We conclude that the proposed International Arms Trade Treaty has received disappointingly little international support.**

177. In his evidence to us, the Foreign Secretary welcomed the proposal for a treaty but expressed possible concern about how effective such a measure would be and what support it would attract on the international stage:

> It goes without saying that if I felt an arms control treaty would deal with many of the problems which you have raised and we could get it through, I would be in favour of it. After all, we have signed up to all sorts of instruments in terms of arms control and there is no argument there, in principle, between us, it is just whether this is going to work.[201]

196 Shattered Lives, p 76

197 Appendix 5, para 1

198 Oxfam policy update, February 2004; Q 46; Q 79

199 HC Deb 29 January 2004, c 513W

200 Q 79 (Mr Parker)

201 Q 46

178. The Foreign Secretary has told us that small arms are at the root of the problems that the NGOs wish to address and that while the United Kingdom has "a large defence industry", "small arms plays a tiny part in that". He also claimed that the United Kingdom is "well ahead of the proposals for the arms trade treaty". Mr Edward Oakden, Director of International Security in the FCO, took this argument further, stating that there was "a general agreement that the real countries that we need to be getting at are not the other countries of the European Union, they are not a problem, it is the countries which are the major exporters of small arms".[202]

179. This is a slightly tendentious argument. Even if it is true that many small arms in the developing world are domestically manufactured or sourced from countries with weaker controls, Western countries remain among the world's most important producers of small arms, and weapons produced in these countries do end up in the hands of undesirable end users, both in the United Kingdom and abroad.

180. Mr Oakden has also argued that countries such as the United Kingdom need to be cautious about moving too far ahead of the rest of the world, on the basis that "that actually makes it harder, very often, to bring either some of the developing countries on board because they feel that they are being made to sign up to somebody else's agenda, or, indeed, some of the big exporters of small arms". He told us that the Government was therefore trying "to create a movement from this that goes wider than the western consensus".[203]

181. We are particularly unimpressed by this argument, which seems to us to be a poor excuse for excessive caution. The United Kingdom would not have helped to achieve international agreement against the use of anti-personnel landmines by waiting for world opinion. We are simply not convinced that by showing more active support for such a treaty, western countries—especially those with an important defence industry, such as the United Kingdom—would be discouraging others from taking part.

182. We agree with our witness from Amnesty International that the United Kingdom "has a duty to show robust international leadership" in this area, as a Permanent Member of the UN Security Council and a major exporter of military equipment.[204] In 2005, the United Kingdom will take up the chairmanship of the G8, and, in the second half of the year, the rotating presidency of the EU. These will be opportunities for the Government to show this leadership.

183. **Small arms proliferation is a major and increasing threat to human security in many parts of the world. Given the limited progress that the proposal for an arms trade treaty has made, and the clear need for an international solution to this problem, we conclude that the Government must do everything it can to promote workable and effective measures to prevent further proliferation of small arms, including those exported from western countries. We recommend that the Government should use its position as a Permanent Member of the UN Security Council, its forthcoming chairmanship of the G8 and presidency of the European Union to further international**

202 Q 46

203 Q 46

204 Q 79 (Mr Parker)

consensus in this area. If the proposed treaty is not the right solution, another one needs to be found, and found urgently.

Export control issues in other international organisations

184. Other fora with wider agendas are also relevant to export controls, in particular: the United Nations (small arms and light weapons) and the G8 (weapons of mass destruction and man-portable air defence systems (MANPADS)).

185. On 28 April 2004 the UN Security Council adopted Resolution 1540 relating to the proliferation of weapons of mass destruction. This Resolution includes for the first time an obligation on states to "take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials". States are asked to present a report within six months on steps that they have taken or intend to take to implement the resolution.

186. This is the first time that a UN Security Council Resolution has imposed on states an obligation to operate "effective national export and trans-shipment controls" of any sort. **We conclude that UN Security Council Resolution 1540 is a welcome first step towards truly international coordination of export controls on nuclear, chemical and biological weapons and their means of their delivery. We recommend that the Government should seek to encourage implementation of the Resolution in states where such controls are weak, and that the Government should explain in its response to this Report what assistance it is prepared to offer to states lacking the legal and regulatory infrastructure, implementation experience and/or resources to enable them to fulfil the provisions of the Resolution.**

187. The British Government has played a leading role in seeking stronger international controls on small arms transfers through the UN Programme of Action on small arms and light weapons (UNPoA). We are pleased that the Government is optimistic about the success of this initiative, and hope that differences of opinion between states can be successfully resolved.

188. The G8 agreed at Evian in June 2003 to an Action Plan to enhance transport security and control of MANPADS.[205] In December 2003, the Wassenaar Arrangement agreed to Elements for Export Controls of MANPADS.[206] The essential impact of these documents on export controls is that MANPADS will be permitted for export only to foreign governments or their agents.

189. MANPADS are a dangerous weapon in the hands of terrorists, and controlling their export is vitally important. The wide availability of MANPADS is one of the factors currently putting our Armed Forces at risk in Iraq. **We conclude that international agreement to control man-portable air defence systems (MANPADS) is an important**

205 Enhance Transport Security and Control of Man-portable Air Defence Systems- MANPADS - A G8 Action Plan. Available from the official web site of the Evian Summit 2003, www.g8.fr

206 Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS). Available from the Wassenaar Arrangement web site, www.wassenaar.org

step in limiting the prospects of their use by terrorists and insurgents. We comment further below on the Government's position on controlling trade in MANPADS conducted from outside the United Kingdom.[207]

New arrangements

190. Given the weakness of existing international export control arrangements, it is perhaps unsurprising that the US Government has seen the need to institute the Proliferation Security Initiative (PSI), in an effort to limit proliferation and to provide a military counterpoint to existing strategic export controls. The aim of PSI is to interdict traffic in weapons of mass destruction. The initiative emerged in December 2002 after Spain and the United States found themselves unable to detain a ship bearing Scud missiles in the Arabian Sea, when Yemen declared that the missiles had been legally purchased from North Korea. The US and ten other states, including the United Kingdom, have agreed to share information on proliferation activities and to carry out military interdiction exercises.

191. According to the Foreign Secretary, "we need the Proliferation Security Initiative because although there are many countries which observe the high standards to which every other country in the world, bar a tiny handful, are committed, there are other countries which sign up to international instruments but do not enforce or, even if they wish to enforce, lack the capacity to do so". Countries subscribing to the initiative "seek to take action to enforce rules which the originating countries should have enforced themselves", particularly in respect of the transport of WMD.[208]

192. Nuclear weapon related material was intercepted under the PSI on its way to Libya in September 2003, and this may have contributed to that state's willingness to renounce its weapons programmes. However, such initiatives need to be treated with care: the legality of interdiction on the high seas is doubtful; and if interceptions appear to be unilateral and political, rather than meeting the needs of international security, this may undermine, rather than support, multilateral efforts to counter proliferation.

193. **We conclude that the Proliferation Security Initiative is an essential tool, but that its use should be limited to extreme and urgent circumstances. We recommend that care should be taken that its use does not undermine efforts to promote an effective multilateral approach to export controls. While it is true that current international agreements in this area are inadequate, we conclude that it is unlikely that a unilateral attempt to control other countries' exports for them by force would be successful in the long term in preserving international stability and preventing the proliferation of weapons of mass destruction.**

207 See paras 223–224.

208 Q 56

7 Enforcement in the UK

194. There are two basic measures of effectiveness in export control policy and administration. On the one hand, are undesirable and illegal exports being prevented? On the other, is British industry, which the Government wants to promote, subject to the minimum regulatory burden and the minimum delay?

Preventing undesirable exports: the criminal and the unintentional

195. Undesirable strategic exports fall into three categories: exports for which a licence is properly sought (the white market), exports for which a licence is sought, but obtained through corrupt practices or with some element of subterfuge about its end use (the grey market) and exports for which no licence is sought (the black market). Our inquiries tend to concentrate on the white market, and we look at decisions on the basis of value judgements as to whether a particular export is acceptable or not. We have some oversight of the Government's role in regulating the grey market: on occasion, it has emerged that a licence has been refused because an end-use certificate has been found to be a forgery, or because intelligence sources have indicated that the actual end use of an export is likely to differ from the stated end use. We have little or no oversight of the black market, because our remit is to look at strategic export *controls*, and because information about it is either lacking or highly sensitive. HM Customs & Excise are the front line organisation responsible for preventing illegal exports. We comment briefly on their effectiveness below.[209]

196. It is also worth noting that some exports may take place without a licence, not owing to criminal subterfuge, but because a company is simply unaware that a licence is required. The Defence Manufacturers' Association (DMA) has brought to our attention the extent to which the current export licensing system is misunderstood.[210] In January and February 2004, the DMA, together with Government, undertook a roadshow to brief firms around the UK on the new Export Control Act. According to the DMA,

> one of the clearest lessons to come out of the roadshow is the need for even more efforts to have to be made to spread awareness not just of the new legislation, but of the existing export control system as well, amongst UK companies, as there is still much confusion in many firms on fundamental aspects of the British export control system, and many common misconceptions.[211]

We recommend that the Government should seek actively to disseminate greater understanding of the export control system, to limit the possibility of companies inadvertently exporting or trading in controlled equipment or technology without a licence.

209 See paras 239–246.

210 Appendix 19; Appendix 25 (DMA)

211 Appendix 19

Bureaucracy and competitiveness

197. The administration of the export control system, led by the Export Control Organisation (ECO) in the Department of Trade and Industry (DTI) has in the past been unacceptably slow in delivering licensing decisions, missing its own targets by a considerable margin. We have criticised the Government for this on several occasions.[212]

198. A review of export licensing procedures throughout Government took place in 2003, known as the JEWEL (Joint Effective Working in Export Licensing) review. We discuss the results of this below.[213] It is perhaps too early to say to what extent this is delivering a more effective service to exporters, especially as a major expansion of the licensing system has taken place in the same month as publication of this Report, with the coming into force of secondary legislation under the Export Control Act. This new legislation will require licences to be sought and records to be kept in a range of circumstances where these were not previously required. As we concluded last year, the introduction of the new controls will be a major test of the efficiency of the licensing regime.[214] We make further comment below on this legislation and the burden that it will impose on business.[215]

199. We have heard complaints from industry that the British licensing system as a whole is less efficient and more bureaucratic than the systems of other European governments, and that British business suffers a cost handicap as a result of this, and sometimes loses contracts because of the length of time that the licensing process takes. The particular witness from whom most of these complaints came specialises in the export of non-conventional weapon detection equipment, which is particularly sensitive. We might therefore expect the Government to be careful about who is allowed to receive such equipment, and to take a little more time over licensing decisions in this sector. Nonetheless, the alleged discrepancy in licence turnaround time between the United Kingdom and other European Governments is startling.

200. In the course of our evidence, we have heard the following allegations from industry about the slowness of the British licensing process compared to others:

- while the British Government typically takes six to eight weeks to issue a licence, the German Government can indicate whether a licence will be approved in the course of a single telephone conversation;[216]

- in 2001, the OSCE cancelled a contract with a British company for peace-keeping equipment to be used in Macedonia due to the length of time that the licensing process was taking. French and Italian replacement suppliers were able to start delivering equipment within 36 hours.[217]

212 HC (2001–02) 718, paras 90–95; HC (2002–03) 474, paras 176–181

213 See paras 204–209.

214 HC (2002–03) 474, para 181

215 See paras 210–238.

216 Qq 143, 145 (Mr Otter)

217 Appendix 23 (DMA)

201. We have also heard of particular bureaucratic requirements faced by British companies which apparently are not in place in other European countries:

- German companies, unlike British companies, do not require licences to export goods temporarily for display at exhibitions overseas;[218]
- in France, some equipment requires a licence to be exported if it is painted green (for military use), but not if it is painted blue (for civilian use). Perhaps unsurprisingly, far more blue equipment is sold than green. In the United Kingdom the equipment requires a licence to be exported whatever colour it is painted;[219]
- the United Kingdom is one of the few EU countries in which a licence is required for the export of anti-riot shields.[220]

As the DMA notes in apparent frustration: "UK has just picked up and award from the EU for being the best country at implementing EU regulations - need we say more?"[221]

202. We have detected a tendency within industry in a number of EU member states to regard the national bureaucracy wherever the business is located as singularly burdensome, and to view regulatory systems elsewhere in the EU as havens of free enterprise. The DMA makes a similar observation, suggesting that industry views the export control systems of other countries "through rose-coloured spectacles". However, it goes on to suggest that "the French export control system" is "regarded, almost universally, as being extremely liberal and export-friendly".[222] During our recent visit to Paris, we heard from the French Government and from French industrialists about how restrictive and time-consuming their export control system is, in their view.

203. **We conclude that if the evidence given to us by industry is correct, then British exporters are losing business to European competitors either because the British export licensing process is unacceptably slow and bureaucratic or because the systems of other European countries are unacceptably lax. We recommend that the Government should examine industry's allegations closely, and should answer them in its response to this Report. We further recommend that the Government should ensure that any discrepancy is minimised between the time taken to grant an export licence in the United Kingdom and the time required to acquire a similar licence in other European countries; and that the Government should seek harmonisation across the EU of types of police equipment subject to export licensing requirements.**

Results of JEWEL review

204. The JEWEL review has resulted in a number of changes to the way in which export licence applications are processed. A "smart front end" is being trialled, under which

218 Q 118 (Mr Otter)

219 Q 125 (Mr Otter); Appendix 23 (DMA)

220 Appendix 23 (DMA)

221 Appendix 23 (DMA)

222 Appendix 25 (DMA)

uncontentious applications are fast-tracked. A computer base shared between the relevant Government Departments is being developed. New joint working procedures such as common staff training and a joint mission statement are being introduced. The interface with exporters is being improved. Finally, performance targets are being finessed.[223]

205. The design of the "smart front end" seems to strike a good balance, ensuring that the majority of uncontentious applications are processed more quickly, while still giving appropriate specialists the opportunity to review any case in full if they wish to do so.

206. We are surprised that a shared computer base was not put into place before now, for an area of government which so clearly requires the sharing of large quantities of information among a number of Departments. Our inquiries have revealed a number of errors (two in 2002 alone) caused by the use of a paper-based system. We note that the proposed IT base will only store and manage information classified RESTRICTED (the lowest level of classification). Some of the information associated with export licences will be classified at above this level. The inability to access this information electronically may limit the usefulness of this system. **We conclude that the introduction of a shared IT base for Government Departments involved in export licensing is long overdue, and we recommend that its development should be made a priority. We further recommend that consideration should be given to whether a system able to manage information above the lowest level of classification (RESTRICTED) would be more useful, given the information sharing needs of Government Departments in this field.**

207. The changes in performance targets are not radical. A previously internal target to process 95 per cent of all SIELs within 60 working days is to be published, along with the average time taken to process licences which have taken more than 20 days. **We conclude that changes in performance targets introduced as part of the JEWEL review may help to encourage those in Government involved in export licensing to apply some urgency to the processing of licence applications which have already missed the basic 20-day processing target.**

208. Performance against a number of targets has in fact already improved. In 2003, for the first time the Government met its target to process within 20 days 70 per cent of SIEL applications circulated to Departments other than the DTI. The number of grossly overdue cases has also been substantially reduced. One of our witnesses from industry congratulated the FCO in particular for "a marked improvement" in licence turnaround.[224]

209. The one area in which performance has continued to be unacceptable is in the processing of appeals. It seems that the target of 30 working days is rarely met. Of the 50 relevant appeals considered in 2002, only one met this target.[225] **We welcome the improvements made in processing export licence applications against published targets, and we particularly welcome the new emphasis on clearing the backlog of outstanding cases. We recommend, however, that the Government should seek to improve its performance on appeals as a matter of priority.**

223 Appendix 9

224 Q 110 (Mr Hayes)

225 *2002 Annual Report*, p 17

New controls under the Export Control Act

210. We considered last year the detail of the controls that the Government proposed to introduce under the Export Control Act. The controls on trade with embargoed destinations came into force in March; other controls under the Act came into force on 1 May.

211. We have long argued that controls on trafficking and brokering in arms need to have extra-territorial reach. At the same time we have been concerned to ensure that the regulatory impact of the new legislation does not impose an unreasonable burden on legitimate business. We took evidence in April from NGOs and representatives of industry during which both these issues were discussed.[226]

212. Both the Defence Manufacturers' Association and BAE Systems have commented favourably on our suggestion last year that the Government should "think outside the box of conventional export controls" by reconsidering "whether intangible technology is best controlled at the moment of export, or at the moment of transfer" and "whether brokering activities, which may not involve an export at all, might not be best controlled as in the USA, by licensing the people who carry out the activities, rather than the activities themselves".[227] The DMA has said that it considers it "to have been an immensely regrettable lost opportunity that the Government did not take advantage of the chance created by the perceived need to replace the UK's existing export control legislation to undertake a 'starting with a blank sheet' total 'blue sky' review of how the UK undertakes export controls to identify if there might be another, better and more efficient way in which this can be done" and has stated that "the Registration route is one which deserved greater consideration".[228] NGOs have also suggested controlling individuals, in addition to goods.[229] **Our suggestion that the Government should take a fresh look at the export control system as a whole has received support from both industry and NGOs. We recommend that the Government should take heed of this and not ignore the possibility that more radical reform of its export and trade control system might allow it to target more accurately those activities of most proliferation concern.**

Extra-territoriality

213. The Government's controls apply to British citizens operating abroad only in very limited circumstances, where they relate to trade in long-range missiles (LRMs) and torture equipment, or trade to an embargoed destination. Practicality is at the root of the Government's arguments against further extending extra-territorial controls:

- UK persons operating abroad could not be expected to know that they would need to apply for a licence from the United Kingdom.

226 Qq 74–167

227 HC (2002–03) 620, para 125; Appendix 4; Appendix 21 (BAE)

228 Appendix 4

229 Appendix 7 (Saferworld)

- It would be wrong to criminalise activity in another state that that state might properly be promoting.
- The controls would be unenforceable, unworkable or prohibitively expensive to administer.

214. In February, the Foreign Secretary again stressed the practicalities of the matter: "The only question is, is it going to work? It is not an issue of principle here whatsoever, we are all in favour of the toughest enforcement in this area."[230] When pressed, he told us that he had "always been sceptical about this issue of extra-territorial control and extra-territorial offences except in very specific circumstances", but he promised several times to look at the issue again.[231]

215. An extension of extra-territorial controls has also been opposed by the DMA on the grounds that it would be "a totally unprecedented arbitrary extension of the UK's jurisdictional controls":

> The exporting of defence equipment is not prohibited or illegal, but is controlled, sanctioned and licensed approved, by the relevant national Governments around the World … As the NGOs have stated in the past, under UK law: "*you need a licence to get married, drive, go fishing, watch TV, compete in boxing matches, practise medicine, run a raffle, sell alcohol, busk, own a shotgun, run a bookmakers and fly*" – but for which of the above licensable activities would a British person need a relevant UK licence if they wanted to undertake these actions entirely overseas?[232]

216. The DMA has also argued that while small arms proliferation is a major cause of concern, "it must again be recognized that any controls introduced will not just impact on the illicit trade, but also on legitimate trade, and, therefore, jurisdictional problems could arise in this", and concludes that it "fully support[s] the Government that multi-lateral action is undoubtedly the best way to proceed in this, and that a unilateral approach is futile".

217. But the DMA is opposed not only to an extension of extra-territorial controls as we and a number of NGOs have proposed, but also to the controls which the Government has in fact put in place. Indeed, as the detail has emerged of how the Government proposes to apply extra-territorial controls, the rationale for its approach has come to look increasingly weak. It has emerged that the controls on LRMs will also apply to unmanned aerial vehicles (UAVs), presumably on the basis that there are no sensible grounds for distinguishing between the two in terms of their effect.

218. BAE Systems has called for the removal of long-range missiles from those goods subject to extra-territorial control.[233] The DMA has argued that trade in UAVs and LRMs is not "of greatest concern" (unlike trade in torture equipment and trade with embargoed

230 Q 51

231 Qq 49, 51, 53

232 Appendix 4

233 Appendix 21

destinations) and also that controlling trade conducted overseas in such equipment will be futile:

> if one actually stands back and thinks about it, this inclusion is truly quite bizarre! The introduction of the T&B [trafficking and brokering] controls has arisen from reports of the activities of the likes of Miltech (Rwanda), Sandline (Sierra Leone), and some others, and the resultant natural pressure on HMG to be seen to be trying to do something about these illicit gun runners. We are unaware of any such notorious cases involving LRMs or UAVs or shady gun runners hanging around on street corners in Africa approaching passers by and saying "Psst...wanna to buy a Tomahawk Cruise Missile?" Yet the activity which is the subject of the very highest public profile and concern about the activities of illicit traffickers and brokers (ie small arms and light weapons) remains in the "controlled goods" category, whilst a sector which has no such track record (of which we are aware) gets put into the "restricted goods" category. Maybe HMG knows something that we don't! The inclusion of UAV technology is especially unfortunate as this has been clearly identified (including in the Government/Industry Aerospace Innovation Growth Team initiative) as being one of the key growth technologies for the future.[234]

219. The DMA is trying to have its cake and eat it, by arguing on the one hand that small arms should not be controlled because it is impossible to distinguish between legitimate and illegitimate trade in such weapons, and on the other hand that LRMs and UAVs should not be controlled because the real concern is small arms. But the issue about LRMs and UAVs seems to deserve further consideration.

220. LRMs and the technology associated with them are certainly a cause of concern, in the hands of a terrorist or a rogue state, because they enable force to be delivered to distant targets. But the fact is that there is legitimate trade in UAVs and LRMs, just as there is legitimate trade in small arms. The problems which the Government cites as an obstacle to controlling extra-territorial trade in small arms are just as relevant to trade in UAVs and LRMs. The Government has identified for extra-territorial control those categories of transaction which are, supposedly, "internationally condemned and abhorrent".[235] Yet a British citizen working for a foreign company seeking to supply UAVs to the British Armed Forces would require a British trade licence to do so. This is an obstacle to British citizens working for legitimate defence businesses overseas. As the DMA has pointed out,

> if an overseas company involved in the supply of long-range missiles (for instance) which employed a British person was to seek to export to another nation, and had its UK trade licence turned down, it is almost impossible to conceive that this firm will actually respect this decision, but far more likely that the British person involved will simply be side-lined and cut out of the loop with regard to this deal (possibly including dismissal from the company, if his continued employment is deemed to be too problematic), so that this deal can proceed without UK interference. Thus, the

234 Appendix 4

235 HC (2002–03) 620, Ev 18, Q 110

supplier will still supply the goods and the customer will still buy the goods, and nothing practical or positive to curb proliferation will have been achieved.[236]

221. **We conclude that in applying extra-territorial control to categories of transaction which are supposedly internationally recognised as undesirable, the Government has not only failed to target its legislation at those transactions which are of most concern—in particular the trafficking and brokering of small arms; it is also in fact meeting with precisely those problems which it claimed would make extra-territorial control of trade in small arms unenforceable.**

222. In our Report last year, we recommended that "the Government should seek to extend extraterritorial control to all trafficking and brokering which, if conducted in the UK, would not be granted a licence". This requires some further definition, as it might at first sight appear to be a circular argument. Clearly, it would *not* be acceptable for the Government to decide to prosecute on the basis of a *post facto* judgement that a particular instance of trafficking or brokering abroad would not have been granted a licence if conducted in the UK.

223. The aim of our recommendation was to encourage the Government to seek to identify more accurately those areas of genuine concern which could usefully be regulated even where they occur abroad. For example, it might be appropriate to subject trafficking and brokering in small arms (automatic weapons, in particular) to extra-territorial regulation where the end user of these weapons is not a national government or an established police force. As mentioned above, there has been agreement both at the G8 and within the Wassenaar Arrangement on the control of man-portable air defence systems (MANPADS) which would prevent their export to any end user other than a national government. The prospect of a terrorist using MANPADS against a civilian aeroplane is horrifying to contemplate.

224. **We recommend that the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern—in particular those weapons most likely to be used by terrorists or in civil wars. We recommend that trade in such weapons, including MANPADS, rocket-propelled grenades and automatic light weapons, should be subject to extra-territorial control where they are intended for end use by anyone other than a national government or its agent, and where the country from which the trade is being conducted or from which the export will take place does not itself have adequate trade or export controls consistent with the British Government's policy on arms exports. We further recommend that the Government in its response to this Report should explain more clearly how it can justify permitting British individuals and bodies to engage in arms exports outside the UK which if made from within the UK would not be permitted.**

Impact on industry

225. Many of industry's concerns about the legislation seem to have eased somewhat since we took evidence last year, with the DMA reporting that "for the most part companies now appear to be much more relaxed about the practicality of complying with the new regulations".[237] The DMA itself has stated reassuringly that while it still has "a number of concerns about the Government's proposals" "some (or even perhaps many?) of these … may have, at least in part, been met by the DTI". The DMA has told us that it "now believe[s] that much of [its] previously expressed concern about regulatory burden on Industry has now probably been eased, although not completely extinguished", while noting pragmatically that "only practical experience with the implementation of the new control regime will give us any truly accurate assessment of whether this is, indeed, the case".[238]

226. BAE Systems, echoing some of the DMA's comments to us last year, has complained that the time allowed to companies to implement procedures to meet the legislative requirements has been "barely adequate". The company has set out in its evidence the steps that it has taken to meet these requirements, and they do indeed appear extensive. As BAE comments, the cost of the exercise "will not be trivial", but is "unavoidable" if the company is "to meet the compliance requirements of the DTI … as well as [its] duty of care to company employees".[239] The Government's final regulatory impact assessment estimates the cost of training employees about the new controls at nearly £500,000 for a large company. We would be interested to see whether BAE's assessment of the costs it has incurred to meet the new controls matches the Government's projection—and indeed the assessment of any other British company.

227. We were pleased to learn that there has been, as we recommended last year,[240] "continuing liaison" between Government and industry, "intended to assist the DTI to pilot and refine its proposals for the practical administration of the new controls, and to address any Industry concerns or confusion on how the new controls will actually operate in practice".[241] **We conclude that close co-operation with the Government appears to have resolved some of industry's concerns about the regulatory impact of the introduction of the new controls.**

Controls on WMD and long-range missiles

228. High levels of concern persist, however, in those sectors on which greater controls are to be placed, trade in WMD detection equipment and long-range missiles in particular. We heard of these concerns very forcefully during our evidence from industry.

229. Smiths Detection, a company specialising in WMD detection equipment, has estimated that it will require in the region of 100,000 licences annually to conduct its

237 Appendix 19

238 Appendix 4

239 Appendix 21

240 HC (2002–03) 620, para 75

241 Appendix 4

business. Discussions with helpful officials at the DTI have not succeeded in bringing this total down to a manageable figure.[242] A single visit by an official to three countries apparently required 57 separate meeting reports to be filed.[243]

230. MBDA is a multinational company manufacturing long-range missiles, which was created in response to a Government initiative to consolidate. However, the effect of the new controls on MBDA will mean that a British national working for the company in one of its offices in Italy or France would need a British individual trade control licence for every contract that they were seeking to acquire. This will, according to the DMA, put MBDA at a competitive disadvantage to competitors who do not need to seek such licences. Another example given by the DMA concerns a contract, even one for the British MoD, where the British office needs to instruct its office in France to deliver components to its factory in Italy. This telephone call would also require a licence. [244] As we were told in evidence, companies have been advised by the DTI that under certain circumstances they will require a licence to enter into discussions with the MoD, or in the course of fulfilling their contractual obligations to the MoD. **We conclude that to require British companies to apply for a licence to enter into discussions with the British Ministry of Defence would be a manifest absurdity, which cannot have been the intention of those devising the legislation.**

231. Long-range missiles and WMD equipment are sectors of particular concern, which we would expect the British Government to be controlling more closely than, for example, trade in warships. But **we conclude that the new controls as they stand risk imposing an unacceptable bureaucratic burden on reputable companies which the Government should be seeking to support, albeit that they are operating in fields of potential concern. We recommend that the Government should, as a matter of urgency, take action to ensure that the bureaucratic burden of complying with the new controls for companies such as Smiths Detection and MBDA is reasonable, predictable and well understood.**

232. The DMA also continues to be concerned about "the issue of promoting awareness amongst those British nationals overseas who may be affected by the 'restricted goods' trade controls".[245] As it has previously noted, this will be "an especially difficult task" because of the extra-territorial nature of the controls and the fact that they will capture "peripheral activities" which would not otherwise be caught by export or trade controls. The DMA has observed somewhat sardonically that "we can only hope and pray that the DTI has already set out a truly effective awareness raising and training strategy to address this need, and the Government's duty of care to its citizens around the World".[246] **We recommend that the Government should explain in response to this Report what action it is taking to identify and inform British citizens abroad who may be caught by the new controls. We further recommend a degree of lenience where British citizens abroad are found to have inadvertently committed insignificant breaches of the new controls.**

242 Q 129 (Mr Otter)

243 Q 126 (Mr Otter)

244 Appendix 23 (DMA)

245 Appendix 19

246 Appendix 4

Application of controls to visiting foreign nationals

233. Foreign nationals operating from the United Kingdom will also be caught by the new controls. If a representative of an Indian company attends a British defence exhibition and agrees while there to supply equipment to an exhibitor from an Israeli company, both people can only do so legally under cover of a trade control licence. The DMA has written that industry is not sure how it will be possible to train people based overseas who are visiting the United Kingdom on the controls which will apply to them.[247] Nor is it clear how it will be possible to ensure that these people have complied with the controls, given that if the DTI asks to see the kind of audit information which it would normally require of a British company, this may look, in the words of the DMA, rather too much like "state-sponsored commercial espionage".[248] And there can presumably be no legal obligation on people abroad to supply information requested of them by the British Government. **We recommend that the Government should explain in its response to its Report what steps it is taking to ensure that foreign nationals visiting the United Kingdom understand their obligations under the new trade controls, and how it intends to investigate suspected breaches of these controls by visiting foreign nationals.**

Clarity

234. We heard last year of industry's concerns about lack of clarity in the proposals for new trade controls.[249] The Government estimated at the time that it would receive 100–250 individual trade licence applications annually.[250] The DMA, however, stated that this "greatly underestimates the number of licences which will have to be sought, not only by UK Industry, but also by overseas business visitors to the UK".[251] The Government's final regulatory impact assessment has greatly increased the estimated number of new individual trade licences that will be required initially, to between 900 and 1,500.[252] The number of new licences would have been a third higher, had it not been for the addition of India and Pakistan to the list of permitted destinations on the Open General Trade Control Licence.[253] The DMA has noted this fact with "some degree of self-justification" and has expressed its "hope that the new figures do not also prove to have been similarly significant under-estimates".[254]

235. There is still uncertainty in industry as to what the new legislation will require of them. The DMA has told us that

247 Appendix 23 (DMA)

248 Appendix 4

249 HC (2002–03) 620, para 72

250 Consultation document on draft secondary legislation under the Export Control Act 2002, Annex A: Partial Regulatory Impact Assessment, para 8.1, p A. 19

251 HC (2002–03) 620, Ev 53

252 *Final Regulatory Impact Assessment on the Export Control Orders*, p 15. Available from the Export Control Organisation website at www.dti.gov.uk/export.control

253 *Final Regulatory Impact Assessment on the Export Control Orders*, p 15. Trade is permitted under the licence between India and France, or between Pakistan and the USA, but not, for example, between Pakistan and Saudi Arabia, or between India and Israel.

254 Appendix 4

> The lack of consistent interpretation on some areas of the new regulations has resulted in unease being expressed by firms as to what might happen if or when these interpretations change again at some future stage. Companies need to know, with certainty, what the law is, if they are to be expected to abide by it.[255]

236. In particular the DMA has pointed to the question of whether organisers of trade fairs will themselves require a licence, where the DTI's original answer was subsequently reversed. Another area of concern is whether after-sales support will require a licence where the export licence for the goods concerned has expired. Written advice from the DTI on this point has not been forthcoming. The DMA has unfortunately concluded from such examples that companies must put "the most rigorous possible interpretation" on the legislation and should not rely on guidance from the DTI. Companies have also found it difficult to train their staff, without any certainty as to what this legislation actually means.[256]

237. This is new legislation, and there will be a bedding-in period during which a certain degree of uncertainty is to be expected. But **we recommend that the Government should take on board complaints from industry about inconsistency and uncertainty, and should seek to provide as consistent an interpretation as possible of what the new legislation means for business. Companies and individuals should not be penalised for inadvertent lack of compliance where the Government has been unclear or inconsistent about what the law means.**

Drafting

238. The DMA has identified several drafting problems which, it claims, could frustrate the apparent legislative aim of the secondary legislation:

- The legislation explicitly aims to control the electronic (intangible) transfer of software. However, software is defined for the purposes of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 as, "one or more 'programmes' or 'microprogrammes' fixed in a tangible medium of expression". If software must be fixed in a *tangible* medium of expression, how can the Order control its *intangible* transfer?

- Articles 8 and 9 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 seek to impose controls on the electronic and non-electronic "transfer" of software and technology in an "end-use" context, but, according to the DMA, would require a UK company wishing to hold technical discussions with the British Ministry of Defence on a WMD detection programme to have an export licence for such discussions, since the transfer would be from a person in the UK to a person in the UK, with reason to believe that the technology would be used outside the EU by our own Armed Forces; but would not control a disaffected UK person communicating whilst outside the EU in an "end-use" context envisaged by the Order beyond the reach of the legislation.

255 Appendix 19

256 Appendix 23 (DMA)

- Article 11 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 exempts from control "the exportation of any aircraft which is departing temporarily from the United Kingdom on trials". According to the DMA, this is probably intended to cover flights beginning and ending in the United Kingdom. But because this is not explicitly stated, it may be a loophole which could be exploited by illicit exporters.[257]

We are unable to comment on the accuracy of these claims, but some of them appear to have the backing of DTI officials. If true, they would seem to indicate drafting which needs to be corrected urgently. As we noted last year, "the notable procedural advantage of secondary legislation is that it can be made, amended and, if necessary, revoked, swiftly and decisively".[258] **We recommend that the Government should re-examine the drafting of the secondary legislation in the light of comments from industry, to ensure that the Orders have the intended legislative effect. If they do not, amending legislation should be urgently made and laid before Parliament.**

Role of Customs and Excise

239. HM Customs & Excise (HMC&E) is responsible for preventing the illicit export and transhipment of controlled goods. It is authorised to take action where breaches of export controls occur, including breaches of trade controls and intangible transfer controls. Serious breaches of export controls are subject to criminal prosecution. Following the Scott Inquiry, prosecutions carried out by HMC&E seeking to show that controls have been deliberately evaded (*mens rea*) are supervised by the Attorney General.

240. In its Annual Report for 1998–99, the Intelligence and Security Committee (ISC) stated that it was "concerned to be told that UK companies and individuals are still attempting to export material illegally from the UK to countries of concern". In the year in question the Security Service had contributed to the prevention of 20 attempts by companies and organisations to circumvent the Government's counter-proliferation policy. Although the ISC was told that "the UK export control policy is working and it is believed that no WMD related equipment or technology has been exported from the UK to a country of concern" the Committee stated that it was "concerned that too much faith is being placed in the ability of various control regimes and treaties, together with the effectiveness of UK and international policies, in preventing the proliferation of WMD". The view of the Foreign Office "that sanctions and control regimes are working" was "not backed up by the intelligence which the Agencies have provided". The ISC recommended "a more proactive approach" which "would require greater effort by the Agencies to track down and stop proliferators".[259]

241. In its Annual Report for 2002–03, the ISC found that "the basic situation has not changed significantly from that of four years ago. Most counter-proliferation work is done at official levels. A small number of UK companies are still trying to breach export

257 Q 130

258 HC (2002–03) 620, para 10

259 Intelligence and Security Committee, *Annual Report 1998–99*, Cm 4532, paras 63–66

restrictions but the UK authorities seem to be thwarting these efforts. However, world-wide, sanctions, even when effective, only slow proliferation".[260]

242. In this context, it is perhaps surprising how few recent prosecutions have been brought for breaches of export controls. Between January 2002 and October 2003, there was only one such prosecution, for exporting a quantity of aluminium to Pakistan without a licence, to which the defendant pleaded guilty. The charge did not involve seeking to prove deliberate evasion of export controls. During the same period, 13 new cases were adopted by specialist investigators, which would seem to indicate a large discrepancy between the number of cases investigated and those actually brought to prosecution.

243. Over this same period, HMC&E dealt with 456 cases of strategic goods, but most of these cases involved only technical breaches. Among the goods stopped during this period were 88 firearms, 17 firearms parts, 134,800 rounds of ammunition, two hand grenades, one mortar, one mortar shell and one artillery shell projectile—not an insignificant quantity of conventional weapons, but without knowing what goods HMC&E failed to stop, the true scale of illegal export will be impossible to assess.[261]

244. HMC&E investigations are intelligence-led, and as a result prosecutions may be difficult to bring.[262] HMC&E may be successful at disrupting illegal exports of controlled goods, even if its prosecution rate seems slight. Nonetheless, **we conclude that it is surprising how few prosecutions have been brought recently for breaches of export controls, given the concern expressed by the Intelligence and Security Committee that a small number of UK companies and individuals are trying to breach export restrictions. We recommend that the Government should explain in its response to this Report what efforts it is making to bring those who deliberately breach export restrictions to justice.**

Intangible transfers

245. As of 1 May 2004, HMC&E has become responsible for policing the country's virtual borders as well as its physical ones, with the introduction of controls on intangible transfers of military technology. We asked the Foreign Secretary how this would be achieved. He refused to answer in open session,[263] and even the information he has provided to us in confidence tells us little or nothing that is not available from open sources. **Given the quantity of communications in the ether and advances in encryption which make such communications difficult to interpret even if they are successfully intercepted, on the very limited evidence available to us, we conclude that it is likely to be very difficult indeed to bring successful prosecutions for illegal exports of technology by intangible means or to successfully disrupt such transfers.**

260 Intelligence and Security Committee, *Annual Report 2002–2003*, Cm 5837, para 78

261 Appendix 14

262 Q 4

263 Q 6–7

Capacity

246. We have not taken evidence on the capacity of HMC&E to investigate and prosecute breaches of export controls, but it is worthwhile remembering that without effective policing of the country's borders, all of the work carried out on export licensing elsewhere in Government serves little purpose. **We conclude that the Government must ensure that HMC&E and the Intelligence and Security Agencies are adequately resourced to detect and prevent the illegal export of controlled goods if the country's export control system is to function effectively as a tool in the fight against proliferation.**

8 Conclusion

247. **Limiting the proliferation of weapons, from small arms to biological agents, is one of the major political issues of our time. It is, quite literally, a matter of life and death. Export controls are only a part of the solution, but are a crucial part of it. To be reasonably effective, such controls must be applied internationally, and countries must have the skills and resources to identify and to stop illicit exports. But, as international drugs trafficking shows only too clearly, it is unrealistic to expect legislation and border controls to do more than slow proliferation.**

248. **Over the last five years, we have probably given more sustained and detailed attention to the Government's policy and administration in the area of export controls than any parliamentary select committee has previously given to any specific area of policy. But few areas of policy have so deserved to be subjected to the searchlight of parliamentary scrutiny. Decisions in this area can affect the national security of our country, the ability of industry to trade competitively, whether distant parts of the world live at peace or at war, whether individuals live or die.**

249. **Before we began our inquiries, this was an area of government best known for its secrecy. With the publication of Annual Reports on Strategic Export Controls, a little light has been visible from behind the closed door. But sometimes the impression of openness is misleading, and information has been published which has led commentators, quite reasonably, to the wrong conclusions.**

250. **Our task has been to ensure that secrecy is only maintained where it is genuinely justified. Secrecy engenders mistrust, and it is in the Government's interest to be as open as it can be in this area. As the Government has discovered, negative public comment will not be prevented by a lack of openness, or partial transparency. Our confidential investigations into the Government's decisions have suggested to us that the Government has little to be ashamed of. The prize of greater transparency is therefore one worth winning: the prize of public trust.**

Annex: Letter to the Foreign Secretary

Letter from the Chairman dated 23 March 2004 to Rt Hon Jack Straw MP, Secretary of State for Foreign and Commonwealth Affairs, on the Review of the EU Code of Conduct on Arms Exports

You helpfully remarked during our evidence session last month that you were "in the market for proposals" for change to the EU Code of Conduct on Arms Exports. I understand that an important discussion on the ongoing review of the Code will take place later this week, and I wanted to let you have some initial thoughts before this meeting takes place. I have sought to ensure that this letter reflects for the most part views that I believe my colleagues on the Committee would share, but I should stress that I have not had the chance to discuss it with them.

Transparency has been a central concern of the Committee. The Code does not currently place any obligations on Member States to publish information about their arms exports. Most Member States do publish some information, but it varies enormously from country to country both in content, and in how the information is compiled and presented. I strongly believe that there are grounds for including in the Code a commitment by Member States to publish information on arms exports. This should include information by category of equipment matched to country of destination, as in the British Government's Annual Reports. It would also be useful to have a commitment to seek convergence in terms of how this information is gathered, analysed and presented, so that meaningful comparisons can be made between different countries.

The status of the Code itself is an issue which may be considered in the course of the review. You suggested in your evidence to us that it was a Common Position of the European Council. In fact, it does not have this status, unlike, for example, the Common Position on Brokering. While I can understand your concerns about making the Code justiciable or subject to qualified majority voting, this would not be the case if its status were upgraded to that of a Common Position or Common Strategy, as it falls under the Common Foreign and Security Policy Pillar of the Treaties. Nor is it likely to become the case in the foreseeable future. Upgrading the status of the Code would send out a clear signal of the importance that Member States attach to it, without in fact changing its legal status in any practical way.

The Criteria themselves are widely regarded as successfully encapsulating the principles on which licensing decisions should be based. There are, however, a few areas in which tighter definition would be useful.

One factor which is not explicitly mentioned in the Code is law and order. As we know too well here in the United Kingdom, strategic exports, small arms in particular, can lead to increased levels of violent and other crime, which would not be considered to be an 'armed conflict' under the terms of Criterion 3. There is a case for making it explicit in the Code that equipment will not be permitted for export if there is a clear risk that it might make law and order more difficult to maintain. This would, of course, encompass terrorist acts.

Criterion 8 is the least satisfactorily defined of all the existing criteria I understand that there have been discussions within COARM on how the criterion should be interpreted, but it would be highly desirable to have a clearer definition on the face of the Code of what this criterion means. In my own opinion, consideration of sustainable development issues in this context should not be limited toonly the very poorest countries. Nor should it be limited to whether the cost of equipment is beyond the means of a purchasing Government. It is also important to look at the sustainable development impact of the equipment itself. Inexpensive small arms can have as great an impact on sustainable development as an expensive air traffic control system. This should be reflected in the defmiticri of this criterion.

I have a few much more minor suggestions about the other criteria.

Criterion 2 refers to 'internal repression', unusual terminology which is not reflected in international law. It is unclear if this criterion would encompass repression carried out beyond national borders.

It is unclear whether Criterion 4 would always encompass pursuing a territorial dispute by means of force, especially where the ownership of the territory in question was undetermined.

Under Criterion 6 it would be valuable to include explicitly full participation in the UN Register on Conventional Arms as a measure of a buyer country's commitment to arms control.

I also have a number of suggestions regarding the Operative Provisions of the Code.

The Code needs to be brought up to date to reflect the EU Common Position on Arms Brokering and to recognise the importance of controlling intangible transfers of the software and technology associated with items on the common list. In particular, the denial 'and undercut provisions of the Code should be explicitly extended to applications for brokering licences and, to the intangible transfer of technology. Operative Provision 3 of the Code refers to the "actual sale or physical export" of military equipment. This should be changed to include export by intangible means. A mechanism also needs to be found to link denial and undercut notifications for exports with equivalent notifications for brokering. For example, if a Member State issues a denial notification for a *brokering* licence application for the transfer of equipment to an end user, another Member State intending to issue an *export* licence for the same equipment to the same end user should be required to issue an undercut notification. A similar mechanism needs to be found to ensure that denial notifications for *intangible* export licence applications apply to subsequent applications for export licence applications for equivalent technology in *tangible* form, and vice versa.

The Code should include an obligation to gather and share information on the export of production equipment, to enable an overview at European level of the extent to which the proliferation of production equipment might be a cause for concern, and to enable measures to be taken. to limit this proliferation.

Operative Provision 3 should be strengthened to require a Member State intending to undercut a denial notification to consult first with all other Member States, not just to

consult with the Member State issuing the denial. This would ensure that any decision to undercut was taken on the basis of information available to all Member States. Member States should also be obliged to notify all other Member States of undercuts that they carry-out, and to give reasons for why they have decided to undercut.

Operative Provision 6 states that the Code will apply to dual-use goods "where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country". I would argue that concerns about the acquisition and sale of dual-use goods apply to non-state end users as well. There is presumably a case for extending this provision explicitly to civilians whose motivation for acquiring these goods might be suspect.

I hope that you find these thoughts a helpful contribution to the ongoing review of the Code.

Conclusions and recommendations

Co-operation with Government

1. We conclude that it is regrettable that we were not provided this year with information matching all refusals of licence applications to the reasons for their refusal and with the level of detail on appeals that we have been used to receiving. We trust that this information will be provided where we request it in the future, in accordance with past practice. (Paragraph 12)

2. We recommend that the Government should explain in its response to this Report why it considers that access to the documents requested by the Committee would harm the frankness and candour of internal discussions within Government, given that the documents we have asked to see are not internal discussion documents and do not express the points of view of officials, but rather are simply factual analysis and agreed guidance. (Paragraph 17)

Information and scrutiny

3. We recommend that the Government should explain in its response to this Report how it intends to publish information on licences which do not involve exports from the United Kingdom, including licences for trade between third countries and licences for the electronic transfer of technology to recipients within the United Kingdom. We further recommend that in the case of trade control licences, the Government should publish both the country of origin and the country of destination. (Paragraph 23)

4. We conclude that it is unfortunate that the format of the Annual Report makes a licence for a single end user based in a variety of countries look as if it is much more wide-ranging than in fact it is. (Paragraph 32)

5. We conclude that it would be in the Government's interest to publish more information on end use, because it would enable public debate on export controls to focus on those licensing decisions which are genuinely debatable, rather than to criticise the Government for decisions which appear highly contentious but which are in fact entirely sound. Given the strong support for greater transparency in this area shown not only by us, and not only by NGOs, but also by representatives of the British defence manufacturing industry, we recommend that that the Government should reassess its position that it cannot "go any further in publishing end-user information". (Paragraph 43)

6. We recommend that future supplementary information provided to us on licence decisions should include information on end use where this is requested, as without this information we cannot properly assess the Government's licensing decisions. (Paragraph 46)

7. We recommend that the Government should take a leading role in promoting a joint effort by EU member states and the Commission to establish equivalence between EC customs classification and the lists of controlled dual-use items. (Paragraph 48)

8. We recommend that the Government should help us to improve our retrospective scrutiny of export licence applications by publishing more timely licensing information than is currently the case, and by making it a systematic part of the administration of export controls to provide us in confidence with further information on these licensing decisions, including information on end use. We do not regard this as a substitute for a system of prior scrutiny, but it would be an improvement on the current situation. (Paragraph 52)

Scrutiny of licensing decisions and implementation of the criteria

9. We conclude that the Government's argument is credible that its more extensive application during 2002 of criteria relating to internal tensions abroad and the national security of the United Kingdom was caused by events in the wider world, rather than by a change in the Government's application of the consolidated criteria. (Paragraph 57)

10. We conclude that the Government should give further consideration to its interpretation of the Sustainable Development Criterion. (Paragraph 60)

11. We conclude that it is a welcome development that for the first time all four relevant Secretaries of State have put their names to the Government's Annual Report on Strategic Export Controls. (Paragraph 63)

12. We recommend clarification in response to this Report of whether denial notifications under the EU Code of Conduct are taken into consideration when the Government considers making sales and gifts against the Consolidated Criteria, and whether consultations on proposed Government sales and gifts would be initiated if a denial notification had been issued by an EU Member State for an essentially identical transaction. (Paragraph 67)

13. We recommend that the Government should clarify in its response to this Report under what circumstances transfers of military goods to overseas recipient governments are not reported, including clarification of the circumstances in which transfers would not be reported because of sensitivity on the part of overseas recipient governments or confidentiality undertakings. We further recommend that the Government should give an indication of the type, quantity and value of these unreported exports, preferably in public, but in confidence if absolutely necessary. (Paragraph 70)

14. We recommend that in its reply to this Report, the Government should also set out any circumstances of which the Committee has not expressly been made aware in which information on the type of equipment sold, gifted or otherwise transferred by the Government to other end users abroad does not appear in the Annual Report on Strategic Export Controls, either in the section on export licence decisions or in Tables 7 or 8 of the Annual Report. (Paragraph 71)

15. We recommend that where a Government official makes an announcement to the public or media about a proposed sale or gift of military equipment, the Government should inform us and the House at the same time. (Paragraph 77)

16. We recommend that the Government should continue to keep us informed on a regular basis of occasions on which Ministers promote specific defence sales. (Paragraph 78)

17. We conclude that, from the information we have seen, Government ministers appear to be promoting defence exports predominantly in circumstances which are unlikely to be contentious. (Paragraph 79)

End-use assurances: Indonesia

18. We conclude that there has been a serious lack of clarity in the Government's explanation to us of its rationale for allowing the Indonesian authorities to alter end-use undertakings regarding their use of British-built military equipment. (Paragraph 86)

19. We recommend that in its response to this Report, the Government should explain what steps it has taken to find and examine television footage of Indonesian armed forces' operations in Aceh, including local Indonesian television footage, in the course of monitoring the use of British-built military equipment in Aceh; and what the results of any such monitoring were. (Paragraph 96)

20. We can only conclude that we have seen no evidence that the Government has taken any action (other than talking to the Indonesian authorities) to investigate claims that British built military equipment has been used in violation of human rights or offensively in Aceh. This calls into question the importance of such assurances in the eyes of the Government. (Paragraph 97)

21. We conclude that without more legal or political backbone, end-use assurances are not worth the paper they are written on. (Paragraph 99)

22. We conclude that the Government's reassessment of how it conducts end-use monitoring is welcome. If end-use assurances or undertakings are to have any real value, the Government must be prepared to monitor the end use of the equipment concerned effectively and actively where the suggestion of misuse arises. There is little point in the Government seeking assurances on the end use of equipment if it is not prepared to conduct a thorough investigation when evidence emerges that those assurances may have been breached, or if it is not prepared to take punitive action when assurances have indeed been breached. (Paragraph 102)

European Union: Code of Conduct

23. We recommend that the Government should urge the presidency of the EU to consult as widely as possible on the future of the Code of Conduct on Arms Exports before decisions are taken in the context of the current review. (Paragraph 109)

24. We conclude that the Government's priorities for a review of the EU Code of Conduct are sound, if cautious. We recommend that the Government should seek to ensure that a new commitment is included in the Code of Conduct to publish information on arms exports. This should include information by category of equipment matched to country of destination, as in the British Government's Annual Reports. Convergence should also be sought in terms of how this information is gathered, analysed and presented, so that meaningful comparisons can be made between different countries. (Paragraph 111)

25. We recommend that the Government should consider whether raising the status of the Code to that of a Common Position under the Common Foreign and Security Policy would have benefits, in terms of the Code's profile within the EU and the importance that member states would be seen to attach to it. (Paragraph 112)

26. We recommend that a priority of the review of the Code of Conduct should be to seek to enhance existing systems of information exchange. (Paragraph 113)

27. We conclude that the Sustainable Development Criterion remains the least adequately defined of the EU Code Criteria. We recommend that the Government should seek to reach a mutual understanding with other member states of what the Criterion means in practice, and to refine its definition accordingly in the context of the ongoing review of the EU Code. (Paragraph 114)

28. We conclude that the publication of the User's Guide to the Code of Conduct is welcome as a guide to good practice for officials across the EU. (Paragraph 128)

European Union: Embargo on China

29. We conclude that it would seem hard from the litany of continuing abuses noted in the Government's Annual Report on Human Rights to make a strong case for lifting an arms embargo on China which was imposed in the first place because of human rights concerns. We recommend that in current circumstances the Government should resist calls to lift the arms embargo on China. (Paragraph 135)

30. We conclude that if the EU Code of Conduct has superseded the arms embargo on China, then it has presumably also superseded other EU arms embargoes as well, given that sales to any embargoed country could equally well be controlled under the EU Code. (Paragraph 136)

31. We recommend that the Government should encourage its EU partners to seek a clearer joint understanding of the purpose and scope of the embargo on China: not in order to lift it, but in order to define it more rigorously and more effectively. (Paragraph 138)

32. We conclude that a clearer definition of the terms of the arms embargo on China would allow British industry to compete more fairly for contracts in China with other EU member states. (Paragraph 140)

European Union: Role of the European Commission

33. We recommend that the Government should seek to encourage swift agreement to an acceptable Council Regulation on trade in equipment related to torture and capital punishment. (Paragraph 146)

34. We recommend that the Government should continue to resist the proposal that the European Commission should have a decision-making role on certain export licence applications for equipment related to torture and capital punishment. (Paragraph 148)

35. We recommend that the Government should encourage broad co-ordination between member states, the European Commission and the Council Secretariat on all issues relating to strategic export controls to ensure a strategic approach to counter-proliferation as well as to the prevention of human rights abuse. (Paragraph 150)

36. We recommend that the Government should approach the peer review process as an opportunity to share experiences with other countries, not just to give other countries the benefit of British experience. (Paragraph 152)

European Union: Enlargement

37. We recommend that the Government should assess closely whether the controls currently in place are adequate to ensure that exports to new EU member states—dual-use goods in particular—are not at risk of being re-exported under undesirable conditions. (Paragraph 158)

38. We conclude that it is important to the security of the European Union and elsewhere that all EU member states should have effective export controls. We therefore recommend that the Government should consider whether it could usefully make further contributions to helping the new member states to bring their export control systems into line with the EU system, particularly in terms of access to expert assistance and training. (Paragraph 161)

39. We recommend that the Government should do all it can to encourage acceptance of all new EU member states as members of all of the international export control regimes. We further recommend that steps should be taken to ensure that EU member states not belonging to the regimes do not become weak points in the EU's control of dual-use goods and technology. (Paragraph 163)

Wider international arrangements

40. We recommend that the Government should continue to press for the introduction of a denial notification system within the Wassenaar Arrangement. (Paragraph 167)

41. We conclude that international arrangements on export control need to be made to work as channels through which major arms exporters can share information effectively on proliferation concerns. We further conclude that if this cannot be

achieved, it may be necessary to rethink the current arrangements. Failure in this area would bode ill for an effective and truly international approach to counter-proliferation through export controls. (Paragraph 170)

42. We conclude that the proposed International Arms Trade Treaty has received disappointingly little international support. (Paragraph 176)

43. Small arms proliferation is a major and increasing threat to human security in many parts of the world. Given the limited progress that the proposal for an arms trade treaty has made, and the clear need for an international solution to this problem, we conclude that the Government must do everything it can to promote workable and effective measures to prevent further proliferation of small arms, including those exported from western countries. We recommend that the Government should use its position as a Permanent Member of the UN Security Council, its forthcoming chairmanship of the G8 and presidency of the European Union to further international consensus in this area. If the proposed treaty is not the right solution, another one needs to be found, and found urgently. (Paragraph 183)

44. We conclude that UN Security Council Resolution 1540 is a welcome first step towards truly international coordination of export controls on nuclear, chemical and biological weapons and their means of their delivery. We recommend that the Government should seek to encourage implementation of the Resolution in states where such controls are weak, and that the Government should explain in its response to this Report what assistance it is prepared to offer to states lacking the legal and regulatory infrastructure, implementation experience and/or resources to enable them to fulfil the provisions of the Resolution. (Paragraph 186)

45. We conclude that international agreement to control man-portable air defence systems (MANPADS) is an important step in limiting the prospects of their use by terrorists and insurgents. (Paragraph 189)

46. We conclude that the Proliferation Security Initiative is an essential tool, but that its use should be limited to extreme and urgent circumstances. We recommend that care should be taken that its use does not undermine efforts to promote an effective multilateral approach to export controls. While it is true that current international agreements in this area are inadequate, we conclude that it is unlikely that a unilateral attempt to control other countries' exports for them by force would be successful in the long term in preserving international stability and preventing the proliferation of weapons of mass destruction. (Paragraph 193)

Enforcement in the UK

47. We recommend that the Government should seek actively to disseminate greater understanding of the export control system, to limit the possibility of companies inadvertently exporting or trading in controlled equipment or technology without a licence. (Paragraph 196)

48. We conclude that if the evidence given to us by industry is correct, then British exporters are losing business to European competitors either because the British

export licensing process is unacceptably slow and bureaucratic or because the systems of other European countries are unacceptably lax. We recommend that the Government should examine industry's allegations closely, and should answer them in its response to this Report. We further recommend that the Government should ensure that any discrepancy is minimised between the time taken to grant an export licence in the United Kingdom and the time required to acquire a similar licence in other European countries; and that the Government should seek harmonisation across the EU of types of police equipment subject to export licensing requirements. (Paragraph 203)

49. We conclude that the introduction of a shared IT base for Government Departments involved in export licensing is long overdue, and we recommend that its development should be made a priority. We further recommend that consideration should be given to whether a system able to manage information above the lowest level of classification (RESTRICTED) would be more useful, given the information sharing needs of Government Departments in this field. (Paragraph 206)

50. We conclude that changes in performance targets introduced as part of the JEWEL review may help to encourage those in Government involved in export licensing to apply some urgency to the processing of licence applications which have already missed the basic 20-day processing target. (Paragraph 207)

51. We welcome the improvements made in processing export licence applications against published targets, and we particularly welcome the new emphasis on clearing the backlog of outstanding cases. We recommend, however, that the Government should seek to improve its performance on appeals as a matter of priority. (Paragraph 209)

New controls under the Export Control Act

52. Our suggestion that the Government should take a fresh look at the export control system as a whole has received support from both industry and NGOs. We recommend that the Government should take heed of this and not ignore the possibility that more radical reform of its export and trade control system might allow it to target more accurately those activities of most proliferation concern. (Paragraph 212)

53. We conclude that in applying extra-territorial control to categories of transaction which are supposedly internationally recognised as undesirable, the Government has not only failed to target its legislation at those transactions which are of most concern—in particular the trafficking and brokering of small arms; it is also in fact meeting with precisely those problems which it claimed would make extra-territorial control of trade in small arms unenforceable. (Paragraph 221)

54. We recommend that the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern—in particular those weapons most likely to be used by terrorists or in civil wars. We recommend that trade in such weapons, including MANPADS, rocket-propelled grenades and

automatic light weapons, should be subject to extra-territorial control where they are intended for end use by anyone other than a national government or its agent, and where the country from which the trade is being conducted or from which the export will take place does not itself have adequate trade or export controls consistent with the British Government's policy on arms exports. We further recommend that the Government in its response to this Report should explain more clearly how it can justify permitting British individuals and bodies to engage in arms exports outside the UK which if made from within the UK would not be permitted. (Paragraph 224)

55. We conclude that close co-operation with the Government appears to have resolved some of industry's concerns about the regulatory impact of the introduction of the new controls. (Paragraph 227)

56. We conclude that to require British companies to apply for a licence to enter into discussions with the British Ministry of Defence would be a manifest absurdity, which cannot have been the intention of those devising the legislation. (Paragraph 230)

57. We conclude that the new controls as they stand risk imposing an unacceptable bureaucratic burden on reputable companies which the Government should be seeking to support, albeit that they are operating in fields of potential concern. We recommend that the Government should, as a matter of urgency, take action to ensure that the bureaucratic burden of complying with the new controls for companies such as Smiths Detection and MBDA is reasonable, predictable and well understood. (Paragraph 231)

58. We recommend that the Government should explain in response to this Report what action it is taking to identify and inform British citizens abroad who may be caught by the new controls. We further recommend a degree of lenience where British citizens abroad are found to have inadvertently committed insignificant breaches of the new controls. (Paragraph 232)

59. We recommend that the Government should explain in its response to its Report what steps it is taking to ensure that foreign nationals visiting the United Kingdom understand their obligations under the new trade controls, and how it intends to investigate suspected breaches of these controls by visiting foreign nationals. (Paragraph 233)

60. We recommend that the Government should take on board complaints from industry about inconsistency and uncertainty, and should seek to provide as consistent an interpretation as possible of what the new legislation means for business. Companies and individuals should not be penalised for inadvertent lack of compliance where the Government has been unclear or inconsistent about what the law means. (Paragraph 237)

61. We recommend that the Government should re-examine the drafting of the secondary legislation in the light of comments from industry, to ensure that the Orders have the intended legislative effect. If they do not, amending legislation should be urgently made and laid before Parliament. (Paragraph 238)

Role of Customs and Excise

62. We conclude that it is surprising how few prosecutions have been brought recently for breaches of export controls, given the concern expressed by the Intelligence and Security Committee that a small number of UK companies and individuals are trying to breach export restrictions. We recommend that the Government should explain in its response to this Report what efforts it is making to bring those who deliberately breach export restrictions to justice. (Paragraph 244)

63. Given the quantity of communications in the ether and advances in encryption which make such communications difficult to interpret even if they are successfully intercepted, on the very limited evidence available to us, we conclude that it is likely to be very difficult indeed to bring successful prosecutions for illegal exports of technology by intangible means or to successfully disrupt such transfers. (Paragraph 245)

64. We conclude that the Government must ensure that HM Customs & Excise and the Intelligence and Security Agencies are adequately resourced to detect and prevent the illegal export of controlled goods if the country's export control system is to function effectively as a tool in the fight against proliferation. (Paragraph 246)

Conclusion

65. Limiting the proliferation of weapons, from small arms to biological agents, is one of the major political issues of our time. It is, quite literally, a matter of life and death. Export controls are only a part of the solution, but are a crucial part of it. To be reasonably effective, such controls must be applied internationally, and countries must have the skills and resources to identify and to stop illicit exports. But, as international drugs trafficking shows only too clearly, it is unrealistic to expect legislation and border controls to do more than slow proliferation. (Paragraph 247)

66. Over the last five years, we have probably given more sustained and detailed attention to the Government's policy and administration in the area of export controls than any parliamentary select committee has previously given to any specific area of policy. But few areas of policy have so deserved to be subjected to the searchlight of parliamentary scrutiny. Decisions in this area can affect the national security of our country, the ability of industry to trade competitively, whether distant parts of the world live at peace or at war, whether individuals live or die. (Paragraph 248)

67. Before we began our inquiries, this was an area of government best known for its secrecy. With the publication of Annual Reports on Strategic Export Controls, a little light has been visible from behind the closed door. But sometimes the impression of openness is misleading, and information has been published which has led commentators, quite reasonably, to the wrong conclusions. (Paragraph 249)

68. Our task has been to ensure that secrecy is only maintained where it is genuinely justified. Secrecy engenders mistrust, and it is in the Government's interest to be as open as it can be in this area. As the Government has discovered, negative public

comment will not be prevented by a lack of openness, or partial transparency. Our confidential investigations into the Government's decisions have suggested to us that the Government has little to be ashamed of. The prize of greater transparency is therefore one worth winning: the prize of public trust. (Paragraph 250)

Formal minutes

Wednesday 5 May 2004

The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

Defence Committee	*Foreign Affairs Committee*	*International Development Committee*	*Trade and Industry Committee*
Mr Crispin Blunt	Mr Fabian Hamilton	John Barrett	Mr Roger Berry
Mr Bruce George	Mr Andrew Mackay	Mr John Battle	Mr Nigel Evans
Rachel Squire	Mr John Maples	Mr Tony Colman	Mr Martin O'Neill
	Sir John Stanley	Mr Piara S Khabra	

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1)(d).

The Committees deliberated, pursuant to Standing Order No. 137A (1)(b).

Draft Report (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be considered concurrently, pursuant to Standing Order No. 137A (1)(c).

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 250 read and agreed to.

Annexes (Summary and Letter from the Chairman to the Foreign Secretary) agreed to.

DEFENCE COMMITTEE

The Foreign Affairs, International Development and Trade and Industry Committees withdrew.

Mr Bruce George, in the Chair

Mr Crispin Blunt Rachel Squire

Resolved, That the draft Report (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fourth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

FOREIGN AFFAIRS COMMITTEE

The Defence, International Development and Trade and Industry Committees withdrew.

In the absence of the Chairman, Sir John Stanley was called to the Chair

Mr Fabian Hamilton Mr John Maples

Resolved, That the draft Report (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Sixth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

INTERNATIONAL DEVELOPMENT COMMITTEE

The Defence, Foreign Affairs and Trade and Industry Committees withdrew.

In the absence of the Chairman, Mr John Battle was called to the Chair

John Barrett
Mr Tony Colman
Mr Piara S Khabra

Resolved, That the draft Report (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fifth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

TRADE AND INDUSTRY COMMITTEE

The Defence, Foreign Affairs and International Development Committees withdrew.

Mr Martin O'Neill, in the Chair

Mr Roger Berry
Mr Nigel Evans

Resolved, That the draft Report (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fourth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

Witnesses

Wednesday 25 February 2004

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Wednesday 21 April 2004

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Oral evidence

Taken before the Quadripartite Committee

on Wednesday 25 February 2004

Members present

Mr Roger Berry, in the Chair

Donald Anderson	Mr Nigel Evans
Tony Baldry	Mr Bruce George
Mr John Battle	Mr Fabian Hamilton
Mr Crispin Blunt	Mr Martin O'Neill
Ann Clwyd	Rachel Squire
Mr Tony Colman	Sir John Stanley
Mr Quentin Davies	Mr Peter Viggers

Witnesses: **Rt Hon Jack Straw**, a Member of the House, Secretary of State for Foreign and Commonwealth Affairs; **Mr Edward Oakden CMG**, Director, International Security, and **Mr David Landsman**, Head, Counter-Proliferation Department, Foreign and Commonwealth Office, examined.

Q1 Chairman: Foreign Secretary, welcome very warmly to the annual get together with the Quadripartite Committee. Perhaps first of all you would like to introduce the two colleagues by your side.
Mr Straw: Edward Oakden, who is Director, International Security, and David Landsman, who is Head of the Counter-Proliferation Department, and there are officials behind who are responsible day-by-day for the operation of our part of the arms control system.

Q2 Chairman: Can I start by thanking yourself and your colleagues for the replies to the questions. Inevitably we have to ask a significant number of questions each year when we scrutinise your Annual Report and we are very grateful for the replies we have received.
Mr Straw: May I thank you for that. I do a good deal of work on those and so do the two officials sitting side-by-side. The people behind and those back in the office have to do a phenomenal amount of work. Our duty is to do it but it is useful to note that it is appreciated and it has a value. I will pass it on to the officials concerned.

Q3 Chairman: Thank you very much. Foreign Secretary, in the Intelligence and Security Committee's Report last year they noted that "a small number of UK companies are still trying to breach export restrictions". Are you confident that those who try to breach export restrictions are actually prevented from doing so?
Mr Straw: I am confident that we are tightening up controls against them. By definition, you can never be completely confident about these things. There are people who make a great deal of money out of breaching arms control regimes not only in this country but elsewhere and/or who support a variety of failing states, states which do not observe international standards, and also in respect of terrorists and in respect of smaller arms criminal organisations as well. So in a sense it is a similar question to that of: is any government getting on top of crime? You think so but obviously you are never going to be sure of the denominator. We are certainly doing everything we can to tighten controls and, if I may, I would like to draw the Committee's attention to a written Ministerial Statement that I made this morning about countering proliferation of weapons of mass destruction. This is specific to WMD. I placed before the House a detailed statement about the steps that we are taking to deter, check and roll back WMD programmes in countries of concern. This builds on our experience, for example, in rolling back proliferation as we have been doing in respect—and I have been very actively involved in this—of Libya, Iran and the al-Qaeda network and much else besides. For example, in terms of the Proliferation Security Initiative we are seeking agreements in respect of the boarding of vessels. We have them in respect of the boarding of vessels where we think they are carrying drugs; we now need them where we think they are carrying prohibited weapons and we are seeking such agreements with 10 of the largest commercial flag states. We have got other proposals. There is the idea of a Security Council Resolution on counter-proliferation. It is interesting that counter-proliferation itself has not been discussed in the Security Council since 1992. We are now seeking a consensus on a Security Council Resolution and drafting is at an early stage. It is extraordinary to me; we have now got a very clear and tough Resolution 3073 on terrorism but not on counter-proliferation. We are seeking ways in which we can further strengthen the safeguards division of the International Atomic Energy Agency. I have seen and admired their work day-by-day and at close quarters, not least through my active involvement on both the Libyan and the Iranian fronts, but they do need strengthening. Then something which is of a particular and personal concern to me is the strengthening of the Biological and Toxin Weapons

Convention. Colleagues may be aware that there is a perfectly sound Convention on Biological and Toxin Weapons *per se* but there is no enforcement mechanism of the kind which applies to either nuclear weaponry or to chemical weapons, and we have been seeking an international consensus so there is in future a very clear enforcement safeguards mechanism for biological weapons.

Q4 Chairman: Going back to the Intelligence and Security Committee comment about there being a number of companies trying to breach export restrictions, are you surprised that Customs and Excise has brought only one prosecution over the last couple of years?
Mr Straw: Customs and Excise do a very good job and it has always been a key focus of theirs. They have to operate on the basis of, first of all, the information that is available to them and, secondly, and crucially within the British system, in terms of what evidence could be adducible in court. That is aside from the issue which the Home Secretary is raising for consultation, which is whether intercept evidence could be adducible in court. At the moment under Section 17 of the Investigatory Powers Act it is not at all. There are also, as Dr Berry you will be aware, general rules on evidence which mean that intelligence (which is the basis for a lot of this counter-proliferation enforcement activity) cannot be adduced in court either because it is not good evidence or because it would compromise the original source. In my judgment Customs do the best job they can but there is always room for improvement and we are in no sense complacent.

Q5 Chairman: Can I ask you a final question on the general issue of export controls. The new Export Control Act—
Mr Straw:—which I have before me for greater accuracy!

Q6 Chairman: Excellent! Of course that seeks to extend controls not just to technology transfers in tangible form but transfers in intangible form—computer files, *et cetera, et cetera*. Whose job is it going to be to check electronic communications leaving the country and how is it going to be possible to do this?
Mr Straw: I will be able to provide some more detail in closed session, if I may, about some of the methods that we use.

Q7 Chairman: We are always a bit reluctant to go into closed session unless we have to.
Mr Straw: You may be but I am a bit reluctant to give too much information, thank you very much. If you want these people caught then it is a good idea if I do not give it to you in open session. It is very straightforward. A good deal of work goes on in that respect to counter all sort of threats to our international security. I am grateful to you for drawing attention to both the Act and also the statutory instruments that go with this because they do, as you say, seek to regulate not only goods but also the transfer of intangibles, and controlling that information is very, very important if you are countering WMD proliferation but also other proliferation as well. It is absolutely critical.

Q8 Chairman: That might be an example that we will come back to in confidential session.
Mr Straw: I think you should. I am very happy to answer it but you will forgive me for not going down this route of explanation in public session.
Chairman: Thank you. Fabian?

Q9 Mr Hamilton: Foreign Secretary, I wonder if I could move on to end-use conditions especially in relation to Indonesia. I understand that until August 2002 the Indonesian Government was bound by an undertaking not to deploy British-built military equipment to Aceh and to provide advance warning of any possible deployment. When you wrote to the Committee on 3 October 2002—and I do not expect you to remember the details of the letter—to inform us of the Indonesian Government's advance warning of its intent to deploy British-built armoured personnel carriers to Aceh, why did you not also tell us that the Government had agreed to do without such advance warnings in the future?
Mr Straw: I cannot answer that question offhand—I do not know if Mr Landsman or Mr Oakden can—and I would need to have details. You kindly conceded that I would not have an immediate recall of the original letter which is, after all, getting on for 18 months ago, Mr Hamilton. Let me say colleagues here round the table may or may not agree with the decisions which I and ministers make, but I have always sought to be completely open with the Committee and if I am going to do something which is controversial, still more so. I will have to provide a further explanation. Had I been warned in advance I could have given an answer. I simply do not know is the answer.

Q10 Chairman: For clarification could I just say, Foreign Secretary, you wrote to this Committee on 3 October 2002 not mentioning this change and it was not until we had a parliamentary answer from Mr Mike O'Brien that we were advised this change took place in August 2002. With respect, whoever drafted the letter of 1 October 2002 was probably aware of what had happened in August 2002. Our concern is that we only found out about this change from a written parliamentary answer substantially after the Government had made this decision.
Mr Straw: I will look into it. I have no interest in being anything but completely straightforward and open with this Committee. Sometimes by definition it has to be in confidential session. If that question had been one of the many I received before then I would have been happy to provide an answer today.

Q11 Mr Hamilton: I am sorry you did not receive advance notice of it. Can I look at the general position though because if any country agrees to end-use conditions and makes assurances to us and then breaches them how do we actually police that?

Mr Straw: There is a general issue about policing end use which is difficult for all countries and the principal way you make judgments about end use is on the history of that country and the history of the arms supplier as well. You have to rely, as you do in many other areas, on judgments about past conduct being a good indication of judgments about future behaviour. In some cases where we have had undertakings and they have clearly been broken then that affects the decisions that we make. Colleagues will recall that two years ago it emerged that chassis which were British built, albeit 30 or 40 years ago, were being used by the Israeli Defence Force in the Occupied Territories. We had had some undertakings about them before, they were clearly not being followed, so we made a decision to discount any future undertakings, and so we do. We are seeking to strengthen as far as we can end use arrangements and Mr Landsman or Mr Oakden may like to add something to it.
Mr Oakden: It is an area that we have said we will look at doing more and at the last Committee hearing you mentioned the Blue Lantern exercise which the Americans have mounted. We have looked quite hard at what that procedure involves—

Q12 Chairman: Sorry to interrupt, I do not think we are talking about Blue Lantern. We are talking about when the Government has secured assurances from the government of a country to which arms are exported about the use to which those weapons would be put and whether or not advance warnings about the deployment of those weapons would be made, which used to be the case in Indonesia. That is the issue. I am interested to know why, for example, the Government no longer wants advance warning of deployment of these weapons when that was proclaimed as being a major undertaken given by the Indonesian Government until the policy changed in August 2002. Why did that policy change?
Mr Straw: As I say, I do not think, although I speak from recollection, that the background to Mr Hamilton's questioning is quite as dramatic as is being implied. If I had had notice I could have provided you with some detail about this but there we are, I will have to write to you.

Q13 Chairman: Foreign Secretary, I am trying to be helpful here, what is the current policy in relation to assurances provided by Indonesia?
Mr Straw: What is the current policy?
Mr Oakden: The Indonesian Government have given us repeated assurances that they will not use British-built equipment in a way which would infringe human rights obligations or in an aggressive way. We have repeatedly sought confirmation, and I can give you specific instances over the last year, to confirm that those assurances remain in effect and, on that basis, and I think this is probably the answer to Mr Hamilton's question, we do not think that the question of notice of advance deployment arises, in the sense that the Indonesians have already given us assurances that they will not use this British-built equipment in a way which would contravene the consolidated criteria.
Mr Straw: If they are not going to use it they are not going to use it so there would not be a question of them giving notification of using. It does not arise and I think that is the point we are making.

Q14 Chairman: With respect, it does arise. In Mike O'Brien's answer to a parliamentary question on 12 June last year he said: "Before August 2002 the Indonesian Government provided assurances that British-supplied military equipment would not be used in Aceh or anywhere else in Indonesia against civilians to prevent the exercise of their rights of free expression" *et cetera*. "The Indonesian Government added that if against expectations they were to contemplate the use of such equipment in Aceh at a later stage, they would inform the British Government in advance." At the time therefore the British Government were celebrating the policy, which was that we had the assurance they would not use equipment in these circumstances, but in addition there was a double arm lock; if they were to think about it then they would inform the British Government in advance.
Mr Straw: What is your question now? What is your anxiety?

Q15 Chairman: Firstly, that to suggest that the second condition is irrelevant now is incorrect. It clearly was not irrelevant to the Government not too long ago and it is really a question about the status of the assurances you received from the Indonesian Government.
Mr Straw: I will do my best to go into this. I am surprised that you did not think it appropriate to give me forewarning of such a detailed question, if I may say so, given the fact that I am subject to all sorts of really detailed questions on all sorts of subjects in advance. If I had had the information ahead of me I could have answered the questions on it. The arms control system covers a huge range of countries and of subjects. We do our best to digest all the briefing that we can but on a detailed issue like this where we have not had notice of the large number of letters that go backwards and forwards between the Committee it is a bit more difficult to give the answers that you are seeking here. If I had had the information in advance I would have done so. I promise you I will follow it up as quickly as I can. If you want to see me again in session I am happy to oblige. Until I have been able to look at the matter in the way in which I look at literally hundreds of issues you raise with me on other matters, I am sorry that I cannot give you a more detailed reply.
Chairman: We had advised your office that we were going to raise questions about Indonesia.

Q16 Mr Hamilton: I am sure you will know the answer to this, Foreign Secretary. Have any British officials or ministers visited Aceh at all in recent years?

Mr Straw: Officials have. I visited Indonesia. I certainly did not go to Aceh. I went there the year before last. I am told that officials have been.

Q17 Mr Hamilton: Would it be possible to let us know details of those visits in writing?
Mr Straw: Yes, of course, but not off the top of my head.
Mr Landsman: The most recent was in February this year, very recently.

Q18 Ann Clwyd: Foreign Secretary, as you know Indonesia has always been a controversial issue, particularly the export of arms to Indonesia. According to the most recent US State Department report on human rights in Indonesia they say: "Soldiers and police murdered, tortured, raped, beat and arbitrarily detained both civilians and members of separatist movements. These abuses were most apparent in Aceh . . . where members of an on-going separatist movement killed at least 898 persons . . . during the year. Human rights violations in Aceh were frequent and severe during the year." I think the broad question we are concerned about is what appears to be the rapidity with which the Government appears to view Indonesia as an eligible market for UK arms sales and I think that is a legitimate matter for debate. I think last time you came you said that you would look at the US system of end use monitoring. Mr Oakden did refer to it a moment ago. What conclusions have you reached about the possibility of formalising a British system of end use monitoring following your consideration of the US Department's Blue Lantern programme?
Mr Straw: Thank you for the question. It goes without saying that I share the concern about the reports of abuses of human rights in parts of Indonesia, and we apply the consolidated criteria with very great care, particularly with countries like Indonesia. We looked at this issue of end use monitoring to which Mr Oakden referred and which is called the Blue Lantern programme, as I understand it, and is run by the Office for Defense Trade Controls Compliance Department What they do is use indicators or warning flags to identify exports of potential concern. Under their system every US mission overseas is required to have a Blue Lantern point of contact. In some posts but not all it is the customs attaché or the defense attaché who carries out this programme. I wrote to members of this Committee and I hope you received the letter. I am advised that we already carry out the vast majority of the work of the Blue Lantern programme as part of our current programme and procedures. Although we have not badged it as a separate programme. Obviously the integrity of a system of export controls is very heavily dependent on being pretty certain about how they are going to be used in the end. If those procedures are defective then it renders the whole system defective. At the same time this is a problem as much faced by the US as by us. Since by definition you are selling to third countries, the degree of direct control you can have over those third countries or organisations within them is going to be more limited than if you are selling within your own country. What I said in my letter is that we are going to encourage relevant officials to make greater use of the facility that is already available to them to request end use monitoring on a case-by-case basis and to remind them of the indicators which would suggest such action. I will keep a close eye on this as well and I am sure it will be useful for the Committee to do so too. There is already quite a lot done on end use monitoring, including the particular case which I drew to the attention of the House of Commons two years ago, the case to which I have just referred, where it was our defence attaché in Tel Aviv who gained knowledge by really quite good detective work of the use of these armoured personnel carriers which were based on British chassis. That amounted to direct end-use monitoring and I then made it known to the Commons and to your Committee. There is already a lot but we are trying to upgrade it because you cannot just say, "This is Blue Lantern and we will put it into the UK". We have to build on the relevance of the way the Blue Lantern system operates for the UK.

Q19 Ann Clwyd: Could I quickly ask you would you then assert that we do have a regular system of end-use monitoring of arms that are exported from Britain?
Mr Straw: We have a system for it. The question is are we able to monitor the end use in every circumstance? The answer to that is no. Are we seeking to upgrade the monitoring we provide? The answer to that is yes.

Q20 Mr Hamilton: Can I briefly come back to Aceh for a second, Foreign Secretary, bearing in mind what you said earlier. I want to know how you react to the accusation that the Government is turning a blind eye to the breach of end-use assurances in Aceh?
Mr Straw: I would just say we are not turning a blind eye to anything. You will be aware that there is an application for judicial review in respect of arms licences to Indonesia so I am constrained in what I can say but we apply the consolidating criteria. We do not turn a blind eye to anything. Why should we?

Q21 Mr Viggers: Comprehensive monitoring is of course very difficult but there are occasional press stories indicating that there might be breaches. For instance on 24 June 2003 *The Guardian* quoted the senior military spokesman in Aceh who reportedly said that Scorpion armoured vehicles "will become a key part of our campaign to finish off the separatists. Maybe later the British Foreign Minister will have a fit." And *The Times* newspaper of 22 May 2003 quoted the Army's chief spokesman as saying about the British-built Hawk jets: "we have already paid, so there is no problem. We use fighters to defend our sovereignty." My question to you, Foreign Secretary, is does the Foreign and Commonwealth Office have in place a system of following the press, vetting the press and informing the local post and encouraging the local post to enquire as to the accuracy of the story?

Mr Straw: Yes is the answer and on the decision to approve licences in 2002 for Scorpion armoured vehicles and armoured personnel carriers, all the licences concerned were scrutinised against the consolidated criteria. We would not have issued a licence which was inconsistent with the criteria. Let me say this: the security forces have a legitimate right to adequate protection whilst carrying out their duties, as long as they operate in accordance with international human rights standards and humanitarian law. That is also consistent with the common criteria. As far as the approval of in this case Hawk spares following the declaration of martial law in Aceh in May 2003, let me say this again: all the licences were scrutinised against the consolidated criteria and the Indonesian Government has consistently confirmed their assurances that British-built military equipment would not be used offensively or in violation of human rights. In addition, the Indonesian Government has confirmed that there are no plans to use Hawk offensively in Aceh or in contravention of the assurances.

Mr Landsman: Might I just add to the Foreign Secretary's answer. There is no evidence that Scorpion has been used in Aceh in recent times. From our researches we have no confirmed evidence that any British-built military equipment has been used in any way contrary to the Indonesian assurances anywhere in the country in 2002 and 2003, and that all the high level contacts with senior Indonesian personalities have confirmed the assurances. They certainly have not said that the assurances that have been given do not apply.

Q22 Mr O'Neill: Can we move on to the EU Code of Conduct on arms exports. As I understand it, there are two mechanisms, the denial notifications, which are the means whereby you circulate refusals, and there are also the undercut notices, where another country may have refused to grant a licence but country B, as it were, decides that there are grounds to do so. I realise that these are not legally binding but it has been suggested that some potential customers play off one country against another. Could you perhaps give us an indication as to how effective these two mechanisms have been both as policy instruments and in practice?

Mr Straw: I came to this system pretty fresh when I became Foreign Secretary two and a half years ago and I think I had a healthy scepticism about whether or not this system, which is based on a political agreement (and it is not legally binding across the European Union but it is in many countries' domestic law) was going to be effective, but I have been pleasantly surprised by the extent of co-operation between European countries. I know there are stories about country X or country Y trying to pull the wool or go behind the rules, but I have yet to see evidence of that. Sometimes different judgments are made on similar applications. We may have decided to agree a licence whilst other countries have said they are not going to and they have sent a denial notification. Sometimes the reverse is the case and we have denied a licence and other EU countries have and a third EU country decides to issue a licence. On the whole, however, I think it works pretty well, although, as you may know, there is a review now taking place because the consolidated criteria are five years old. Certainly let me say—and I am not presuming anything in terms of your own opinion—I am not in favour of turning this into part of the acquis of the EU, part of EU law, where that could all end up being subject to QMV and adjudicated before the European Court of Justice. I think it is better that this is seen to be an instrument of common defence and foreign policy. I want to ask my officials here if they want to add anything.

Mr Landsman: I cannot give you a precise figure but we reckon there are about 15 or so undercuts per year across the board, not very many, and that would suggest perhaps a pretty considerable convergence in the interpretation which each Member State will have to give to the Code of Conduct and applying the criteria there on a case-by-case basis for each application.

Q23 Mr O'Neill: I think it is significant that the words "imprecise" and, in your case Secretary of State, "surprise" were used. I kind of get the feeling that there has not been a great deal of rigour applied. You say there might be 15. Is there any particular country which is more likely to undercut other people's denial notifications?

Mr Straw: In terms of undercutting we consulted other Member States 20 times last year and we undercut them five times. There is detailed information held on this and if we have not already provided it to the Committee we can seek to do so. As Mr Landsman has said, it is relatively low numbers. I think we would have to provide information in a confidential session because the denial notices and undercut notifications are confidential. One Member State does make information available about its denial notices, which is the Netherlands, but all the rest of us do not, for our own reasons. In terms of total numbers it is roughly proportionate to the size of the different countries' defence industries. You will be aware of that distribution.

Q24 Mr O'Neill: I understand that next year when we have the Presidency, the Code of Conduct will be up for review. I presume that you are already giving thought to that review. Can you give us any indication as to what you would regard as the priorities into which you would wish to group the various issues that will come within the composite?

Mr Straw: Let me say we are in the market for proposals.

Q25 Chairman: Excellent! We are in the market for helping.

Mr Straw: Thank you very much. Very good. You always have been, by the way. Let me give you some examples, if I may, and I give four. One is in respect of licensed production overseas and we suggest the inclusion of text on licensed production to the effect that Member States should carefully consider what

might happen to the finished products in licensed production agreements in which their exports or technology or components are the raw materials. We do this already but it is not fully spelt out within the terms of the common criteria. There are arms brokering licence denial notifications where a licence to broker strategically controlled goods is denied, and we want those to be subject to the same process as the export of export equipment currently is, so for example if someone is refused a licence to broker in the United Kingdom and then applies for a similar licence elsewhere, the other country would need to consult us before issuing it. That is very important. There are intangible technology transfers and the Export Control Act, to which you referred Chairman, is introducing controls on the export of military information and designs and we think it should also be reflected in the common criteria. Then there is the issue of transparency standards and, as you have kindly acknowledged in previous reports, our Annual Report on arms exports is by far and away the most comprehensive in the European Union. It is the most thorough and transparent system of arms control, I would suggest, in the world. We want to raise transparency standards by including in the Code a provision which obliges Member States to publish a publicly available report containing information about equipment exported and not just a breakdown of how many licences they issued for each destination because what is the case, coming back to the burden of your earlier question, is that whilst the criteria are common and I am satisfied about their application, it is also the case that for most of our EU partners they provide none of the information that we routinely provide to this Committee nor, I am certain, do my colleague foreign ministers, probably bar one or two, ever have to go through the processes which we have to go through in scrutinising the applications, not least because we know that if we do not do that (and it is our duty) there is interrogation before the Quad Committee to follow! This is all parliamentary accountability and it concentrates the mind and it is a good thing and one supports the other, so that our system is very transparent, and we want to see similar transparency elsewhere and then in a sense it would be easier to answer your first question.

Q26 Mr O'Neill: Can I ask one last question and that is within the review—and I can understand the point you make about the criteria—if you want to get the information, do you think there will be a need for some form of stiffening of the Code which is at the moment voluntary and which you have been at pains (and I have some sympathy with the view) to point out that we do not want to be cast in the role of "super" regulators in a European context or to be unduly litigious, but why should other people not go through the same pain and suffering that we are trying to inflict on you today?
Mr Straw: I am a well-known masochist anyway—

Q27 Mr O'Neill: Spread it around a bit. That is where the sadism comes in!

Mr Straw: You and I are old friends, Mr O'Neill, and you know I enjoy it! Let me say it is not voluntary. It is the result of a Common Position within the European Union (and that is a capital C, capital P) made within the relevant pillar of the Treaties, and a Common Position is binding, so, for example, we in a separate area (but it is a good illustration) agreed last week to a continuation of sanctions on Zimbabwe initially through a Common Position, some parts of which are put into force by regulations under other pillars in the Treaty but in a Common Position it is binding. That is absolutely right. I think colleagues here would be in favour of that. What I am not in favour of, however, is moving away from this area of foreign and defence policy being settled other than by unanimity and nor am I in favour of making this justiciable because that would then be drawn down the road of detailed regulations of the kind with which you are as familiar on your parent select committee. It is one thing to run the Single Market that way because you need them but this one is a matter of national sovereignty where we act collectively.
Mr Landsman: May I make a point of clarification. The review of the Code of Conduct has actually already started. Member States have been asked to send in their thoughts already. We envisage these being discussed in the EU over the coming months. At the moment we anticipate a final revision decision coming in the autumn. If that timetable is kept to then it is likely this issue will be completed before the UK Presidency.

Q28 Mr Evans: Following the Tiananmen Square massacre and the brutality and the awful deaths of young people that happened there, in June 1989 the EU introduced an arms embargo on China. 15 years have passed since that time and I understand the German Chancellor himself recently said that he was keen on lifting the arms embargo. What is the policy of Her Majesty's Government on that?
Mr Straw: The policy of the British Government is to support a review of the embargo but we have not come to any final view on the merits of lifting it until we have had a full consideration of its effects up to now, and that has been the position that we took at the December Council of the European Union which was on 12 or 13 December which is where it arose. It was very clear in terms of the conclusions which were reached (which were reached unanimously) and I am happy, Mr Evans, to provide you with those. It may be helpful, however, if I provide some background with respect to the embargo. It is not a full scope embargo. It is quite wide in scope but it is not a full scope embargo. Our late and much lamented colleague Derek Fatchett set out in a parliamentary answer on 3 June 1998 the UK's interpretation of it. We do not issue licences for the export of any items which contravene the interpretation and under our interpretation it covers lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles, specially designed components of the above, and ammunition, military aircraft and helicopters, vessels of war, armoured fighting vehicles and other

such weapon platforms and any vehicles which might be used for internal repression. There are other exports of controlled goods which are outwith the embargo but within the criteria. Sometimes there is some confusion about this. That explains why notwithstanding the embargo there are still some arms exports from the UK and other European countries which are permitted, subject to the criteria. One of the two issues that is raised as part of the review—and again I emphasise we have not come to anything like a final decision on this and we are consulting widely about it—concerns the decision to impose this arms embargo, taken, as you say Mr Evans, in the light of Tiananmen Square. We have to ask has the human rights situation moved on in a sufficiently satisfactory way since then? The second issue is at the time when the decision to impose the embargo was taken there were no consolidated criteria relating to arms exports. These criteria are now in place and there is substantial experience of their use in all European Union countries. Then the question is: to what extent is the arms embargo overtaken by this? To what extent would goods which are prohibited under the embargo be prohibited in any case under the common criteria? Those are the issues which we are seeking to examine with great care.

Q29 Mr Evans: Is it more human rights you are interested in as far as the review is concerned rather than proliferation or stability?
Mr Straw: As far as proliferation is concerned, there are other international instruments in place which we are obliged by law to observe, for example in respect of nuclear proliferation under the NPT. As you will be aware, China in any event is a nuclear state under the NPT and I can ask Mr Oakden to give you more information about that. We are looking at it in terms of what has changed in respect of human rights and what has changed in respect of arms control but also there are wider strategic questions as well so we are looking at it in the round and that is the way all members of the EU are looking at it.

Q30 Mr Evans: There are a number of other countries, and Uzbekistan springs to mind immediately, on the human rights front where we do not have an arms embargo there and we do against China. What is the difference there?
Mr Straw: The difference there I suggest is an historical one. To come back to the point, Tiananmen Square was an event which was shocking to the whole of the world and it was felt there ought to be an international reaction. Although, as I said at the time, we had legislation to enable us to impose such controls, as did some of the other European states, there were no consolidated criteria. Now what we do in respect of Uzbekistan is quite an interesting point; we apply the consolidated criteria. That is what we do in respect of a wide variety of other countries, including Indonesia. So far as I am aware, although sometimes people say there ought to be a full scale arms embargo with respect to country X and country Y, generally speaking there is acceptance that these are pretty robust. So that is one of the issues. As I say, the other issue is a wider strategic issue.

Q31 Mr Evans: I am wondering whether there is a timescale on the review?
Mr Straw: Not a specific timescale on the review. There were some who were asking that it be completed by next month but I do not think there is any chance of that because there are some very detailed issues to weigh up. Whether it is completed before the summer is an open question. Do you want to come back on the wider WMD proliferation issues?
Mr Oakden: What we are trying to do is to universalise particularly the additional protocols—and this does not apply so much to China as to countries of proliferation concern—so that you give the IAEA greater ability to inspect actively the countries of concern.

Q32 Mr Evans: Foreign Secretary, can I just raise one issue which we have been written to as a Committee about from a company in the North West of England, not in my constituency I hasten to add—
Mr Straw: Not in mine either?

Q33 Mr Evans: Not in yours. It relates to whether all our EU partners are playing the game on this. It is a company that was going for a contract on some equipment to supply the Chinese armed forces and we refused them permission to do so. It was a cockpit and aircraft exterior lighting system. We said no and basically a French company came in and won the contract. It is worth £20 million so you are talking about a substantial sum of money here for an export order. The company then relates other instances where the Germans have been getting contracts when we have been denied them, and the Belgians also. I am just wondering what confidence do we have that whilst we tend to stick to the rules of what we sign up to how can we be sure that other countries are not interpreting the rules somewhat differently and getting away with stuff?
Mr Straw: I am aware of the complaint, I assume it is from the same company although I will go into it in detail in closed session if that is okay. Without mentioning it, which we can only do in closed session, I cannot be absolutely certain that we are talking about the same thing.

Q34 Chairman: It is the company you were advised of before the session. We are talking about the same company, I assure you.
Mr Straw: I have an explanation I have to give to you in confidence. Of course we are concerned about any such suggestions and I say to other colleagues around the table they are not just from companies in the North West but from around the UK. You asked me whether I can be certain that other countries are applying the criteria. I have confidence that they are. You can never be absolutely certain about this. You cannot even under our system be certain and you will recall a few years ago in my constituency we were the

subject of a most outrageous deception and corruption by a British government official who was diverting ammunition contracts from a UK company in my constituency to others abroad and taking money for this. Foxley; you may remember the case. Even within the British system it is possible for there to be examples of corruption and that caused the loss of perhaps 300 or 400 jobs in my constituency. What happened there was preposterous and it led to his conviction, as you will recall. One cannot be absolutely certain about this but the more we work with our European Union colleagues the more I feel comfortable about it. To go back to a question I was asked by Mr O'Neill, the proposals which we are making for strengthening the common criteria should enable me to give you a better and more certain answer on these subjects in future.

Q35 Mr Evans: And rigorous policing of it because clearly that is going to protect our interests?
Mr Straw: It goes without saying that my first duty on this is to apply these criteria but, like every other member of the Commons, I also have a very keen interest in the health of British manufacturing and I am assiduous in following up any suggestions that British manufacturers, whether in this field or the non-controlled goods field, are being worsted by other countries not playing by the rules.

Q36 Rachel Squire: Foreign Secretary, given the review of the EU arms embargo against China, will that review look at not only possibly weakening and removing it but also strengthening it and in respect not only of completed equipment but also components? That leads me on to my next question. You will be aware, I am sure, of the publicity that has been given today to the publication of this report by Oxfam on the Control of Arms Campaign in the UK about the sale of components to countries where there is currently an embargo on arms equipment, as there is with China. How do you justify the fact that the British Government exports substantial quantities of parts and components for combat aircraft and other military equipment to China, sometimes under open licence?
Mr Straw: On your first question, Ms Squire, the review looking into whether the arms embargo in respect of China should be lifted or modified to make it lighter, there has been no suggestion from any Member States of the European Union that it should be reviewed with the idea of strengthening it, so the result of the review will either be a status quo or it would be some lightening of it or its lifting altogether. That is the decision that was made. On your second point, it really comes back to what I said a few moments ago—and there may have been a misunderstanding about the nature of the embargo in respect of China—it is not and it never has been a complete ban on all controlled goods. The details are well-known, they have been on the record since 1989 but, more particularly, there were spelt out to Parliament in June 1998 by our late colleague, Derek Fatchett and they cover the things as I have described. Any other exports are subject to the consolidated criteria and we apply those criteria in respect of any applications for exports to China in the same way as we apply them in respect of any other applications. So I refute entirely that suggestion—and to be kind to Oxfam I think it is based on a misunderstanding about the nature of the embargo regime for that country.

Q37 Chairman: Can I pursue that briefly, if I may. The scope of the EU embargo, as you say, Foreign Secretary, was not defined. If I can give credit to the UK Government, the UK Government has defined precisely what it means by the embargo against China whereas I do not think any other EU country has been quite so specific, so congratulations on that one.
Mr Straw: Thank you very much, but that was our colleague who did that.

Q38 Chairman: However, the UK Government has decided, presumably for reasons of human rights considerations or regional stability or proliferation or whatever, that licences will not be granted for the export of military aircraft, that is on the list that you mentioned, but you do grant licences for significant components of military aircraft. Maybe I am as foolish as Oxfam, I do not know, but I cannot understand if the Government's policy is that they should not have military aircraft, for good reasons, but it is all right, however, if they get the components to make them.
Mr Straw: I suggest no one is foolish, Mr Berry—not you or Oxfam. Nor am I suggesting you are less than well informed, so let us be clear about that. You may have a different opinion from me but you are entitled to it; that is your job. I come back to the nature of the embargo and the nature of the criteria. The embargo is about, as I read it, complete equipment. There is a difference sometimes (and we can come on to this, I am sure, in other respects) between whether you provide the whole of an aircraft, for example, and there is a difference when it comes to measuring things up on the criteria, and whether you provide a fire control system for that aircraft by way of spare part. I happen to think that if they have got the aircraft already and they can buy the fire control systems from somewhere else, since a fire control system is not an aggressive piece of equipment itself then you have to do what the criteria requires you to do which may not be mechanical but to apply judgments on a case-by-case and common-sense basis. My judgment in cases of that kind is to say "Well, I judge this on whether a fire control system should be sold, albeit subject to controls and not on whether I am selling the whole aircraft", because what we are doing is agreeing to the sale of a fire control system or, for example, in respect of ejector seats to aircraft which already exist. I would need to have specific examples, and we may need to go into this in detail in the private session, about sales to China which are particularly worrying you; I do not have the details in front of me.

Q39 Chairman: It is the general principle, Foreign Secretary. The Government, quite reasonably, says that the purpose of the criteria is that they should be applied to weapons and weapon systems and to the components, and that the criteria apply equally to components and the weapons. In this case the Government has a policy—it is a government policy—that we will not grant licences for the export of military aircraft to China but we will happily grant licences for the export of all sorts of components, not just harmless fire equipment and stuff but important parts of machinery. It is partly this components issue that the Committee has raised, as you know, ever since we started meeting. I do not understand the logic of simply saying, "You should not have a licence to export the final weapon, but we are perfectly happy to grant licences to export components". What is the rationale for that?
Mr Straw: I am afraid we will have to agree to disagree about that. Mr Landsman is saying that the embargo is there to prevent China acquiring new systems or equipment. That is, I understand, the purpose of the embargo. Components for existing systems are different and they are covered by the consolidated criteria. As far as I am concerned, there is a very obvious distinction as there is a world of difference between them. There is an issue of the balance of proportionality. You could argue—and some people may do so—that in respect of a country where we are concerned about their strategic record, or others which could get embroiled in respect of this, that we should not even supply the most obvious, dual-use items like common screws and bolts because they are going to be used to put together the kit to put together the final equipment.

Q40 Chairman: Not screws and bolts, with respect.
Mr Straw: If you accept that then you do accept there is a distinction—

Q41 Chairman: There is a logic problem here.
Mr Straw:—and a logical difference between the final equipment and the components that go to make it up. There just is. Obviously, for some things the issues are very similar where you are dealing with equipment which is plainly aggressive or can upgrade the aircraft. Where you are dealing with an awful lot of components then you have to judge it, as the criteria say, on a case-by-case basis, and a lot of the issues where I am asked for my decision on components come into this area, for example, where although the equipment into which they are going to be installed, for sure, has a purpose as a weapon or part of a weapons system, the equipment itself—an ejector seat or fire control system—does not have that purpose at all. Now, there is the other issue you raise, which is about incorporation. I know Ms Squire was concerned about this last year but I am happy to go into further detail about that. There is just a reality that the international defence industry has become more and more internationalised; the production lines are international now and they are not just national or local. That is one of the reasons why there has been an increase in the total number of licences for components, because increasingly British companies are supplying components to other companies. I think there is now only one completely UK-made military aircraft, which is the Hawk; all the others are now made in different parts of Europe or between Europe and the United States. So we are in this production line situation. The judgment I then had to make when I came to consider what became called the Incorporation Policy is whether we were making a strategic decision, effectively, to cease to play our part in those production lines where otherwise the production was consistent with the consolidated criteria. This may be an uncomfortable position for some people but the country has made a strategic decision on an all-party basis that we have a defence industry, that it needs to be controlled properly—as it is—but within that it has to prosper. If that is the case, then colleagues have got to accept that as circumstances change, and the increasing globalisation of production is one of the major changes in circumstances, then the way in which we have to deal with licences also has to change, although the criteria have not changed, nor the rigour with which we put them into force.

Q42 Rachel Squire: I think the Foreign Secretary may have advanced the issue because I was going to ask about the Government allowing the temporary export to China of a variety of training and combat aircraft demonstration models and mock-ups, saying this was for exhibition purposes. Am I right to conclude that that does indeed suggest that we are ensuring British companies will be well-placed to sell to the Chinese, perhaps, when, rather than if, the current embargo is lifted or relaxed?
Mr Straw: I have a feeling, Ms Squire, that these particular approvals predated the decision of the European Council to review the embargo. So I do not think there is any direct cause and effect there, but I can check on that. What, however, is the case is that there is plainly a difference between a licence for use in the particular country and a licence for exhibition where it is not for use in a country, and again we look at it on the basis of the consolidated criteria. I remember reading a note about this and I have been trying to find it in my extensive brief.

Q43 Chairman: Perhaps you could drop us a line on that one.
Mr Straw: I may even turn it up, but I have definitely seen it on the page.

Q44 Mr George: Secretary of State, on 4 May 10 new nations join the European Union. My questions, which are related, relate to how well these 10 new countries are going to fit into European practices and the European Code of Conduct. The impression I have from what the Government have said is that they are reasonably happy with the 10 countries' administrative procedures but I do not know if the Government—and we will find out in a moment—is satisfied with their implementation of the European Code of conduct or their ability or willingness to implement properly. The question then is, of these 10 new countries, none of them appear to have a very

strong tradition of export control. What have we been doing to ensure that these 10 new members of the European Union do not become the weakest link in the export control system, in terms of both the standards and enforcement?

Mr Straw: Mr George, it is an issue which we, as a Government, and I as Foreign Secretary, take very seriously. What we have been doing specifically is we have organised two seminars for accession states about the code's criteria and how they should operate, because it is not just what is on the paper it is about what approach individual officials should take when they are looking at arms applications. One took place in Estonia and the other in Slovakia. The seminars focused upon how concretely you need to take licensing decisions. Although the accession countries have been applying the criteria for a number of years as part of their accession arrangements, we thought it important to provide them with strategic information. There was also a session in the seminars on transparency, focusing on the information provided by almost all Member States in their annual reports, albeit that some of their annual reports are limited. There is also the issue of ensuring that all the EU accession states become members of the non-conventional weapons group regimes, like the Australia Group, the MTCR, the NSG, the Wassenaar and the Zangger groups. I was checking through this in preparation for this Committee hearing. The EU WMD action plan provides for the setting up of a task force to assist accession states on export controls and discussion with the EU regulation. 10 cluster groups of three countries per group have been set up. The UK is in two such groups; the first with Ireland and Malta, the second with Greece and Cyprus. Within each group a visit will be made to each country to discuss customs issues, transhipment, identification of goods in the regulation and technical control issues. Customs and Excise are working closely with these countries. There is then the Australia Group, which is a group—as you know, Mr George—of like-minded countries which aim to limit and frustrate the proliferation of biological and chemical weapons through the implementation of export controls. Five of the EU accession states are expected to join the Australia Group this year—they are: Malta, Slovenia, Latvia, Lithuania and Estonia—and we are supporting the applications. The other five are already members of the regime. In respect of the Missile Technology Control Regime, again, Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia are applying to join the MTCR and the other accession states are already members. These are going to be considered at a meeting in May. Then again, for the Nuclear Suppliers Group, Malta, Estonia and Lithuania have applied to join the regime, the other accession states are already members. The other two groups are not directly relevant, the Wassenaar and the Zangger. Just to give you an indication that we are concerned about the point you raise, ticking the box that you agree the criteria is only the first stage; you have got to make sure you apply it. So we are very concerned it is applied, both in respect of conventional and non-conventional weapons. We have a good relationship with the accession states, for all sorts of reasons of which you are aware, and we intend to continue to stay alongside them on this. Their arms industries, as with their size, varies a great deal.

Q45 Mr George: You are getting close to a related point on the peer review process. Are you satisfied it is working? It seems a bit like the whipping system in the House of Commons, where these wonderful people are able to coax, cajole, persuade and arm-twist. We are amongst the best of the countries in relation to the implementation of arms-control regimes. Are you really satisfied that this peer review control, peer review system is really working? It will take more than a few seminars. Again, the impression I have is that the Americans are rather better at it than we are. At the end of the day, on 5 May will you be able to say "Well, look, I think now we have made very significant and successful steps to getting these guys into the regime that we regard very highly"?

Mr Straw: I am going to ask Mr Oakden to answer your specific point, but let me make this clear point, that I am satisfied that as from 1 May the regime which these countries will operate under, and its enforcement, will be better than it has been in previous years in these countries. The very fact that they are joining the European Union is a way of raising their standards of law enforcement generally. Whether it is at the level which we would regard as wholly satisfactory is another question, but it is moving in the right direction, and you only have to look at some of the other former Soviet Union nations which are not joining the EU, so we do not have the same control over them, to see what the problems are.

Mr Oakden: It is a serious issue and I think it is recognised across all the accession states as being a serious issue. Clearly, for the larger states with bigger bureaucracies, implementing these detailed obligations is maybe less of a challenge than for some of the smaller ones. However, as the Foreign Secretary has just gone through, for each of the supplier regimes, including Wassenaar, all of the EU Member States are in the control regimes and all the accession states either are already or will be members. That has entailed a substantial effort, not just bureaucratically but in terms of the commitment of their officials to follow through what that actually means in practice. Clearly, it will be an on-going challenge but it is one that has quite a high priority.

Q46 Tony Baldry: Foreign Secretary, sometimes sitting here it seems a planet away from the impact of the irresponsible use of weapons on individuals elsewhere in the world. I was in Sierra Leone last week and amongst the things I was looking at were camps for amputees. The indictment for the UN Special Court for Sierra Leone makes chilling reading. We saw last weekend a massacre in Northern Uganda by the resistance army and the continuing abuses in the DRC. These are all innocent people out there who get killed, maimed

and injured by the irresponsible use of weapons. Last October Oxfam and Amnesty International launched a campaign for an international arms trade treaty "to prevent arms being exported to destinations where they are likely to be used to commit grave violations of international human rights and humanitarian law." One does not have to look far for instances of that and, of course, there is still a UN War Crimes Tribunal in Rwanda. I understand the Government's line on arms is that HMG "supports the goal of an international instrument on arms transfers, but argues that for it to be effective such a treaty would have to enjoy the support of all major arms exporting countries." So, on that, I would just like to ask two very simple questions: what do you consider to be the prospects of all major arms-exporting countries supporting an international arms trade treaty, and can you tell us which countries are reluctant to establish such a treaty? What are we doing to gain their support? Is this something we are passively sitting in Whitehall saying, "If the others do it we will do it"? Or is this something where you and colleagues are pro-actively suggesting to other major arms-exporting countries that we need to have a new international instrument to try and prevent future substantial violations of international human rights and humanitarian law?

Mr Straw: We are at an early stage but let me say I do welcome the proposals which have been made by Oxfam and others in respect of this, and their concern. The issue, however, and where you always have to make a judgment with these international draft instruments, is how effective they would be and whether it is going to be possible to gain support for them; in a sense, what diplomatic and other price would you have to pay? You asked me what countries have supported it up to now. I am aware of reports that Finland has offered support but it has offered support for the treaty's principles but not the text. The Netherlands have, I think, given support in rather similar terms, saying that (according to my information) they support agreements which strengthen the control on arms trade but they are not convinced an arms treaty is feasible yet. So we are having consultations on this. It goes without saying that if I felt an arms control treaty would deal with many of the problems which you have raised and we could get it through, I would be in favour of it. After all, we have signed up to all sorts of instruments in terms of arms control and there is no argument there, in principle, between us, it is just whether this is going to work. The examples that you use, I think, are quite interesting because you talk about Sierra Leone and Uganda, where there have been the most terrible massacres. Most of the loss of life and the damage in both of those conflicts has been caused through small arms. It happens, as you know, that we have a large defence industry and small arms plays a tiny part in that in the UK. We have made a lot of efforts better to control the trade in small arms. In respect of that, we are well ahead of the proposals for the arms trade treaty, but it has been very, very hard going. A lot of people make a lot of money out of small arms and they are also relatively easy to produce in unlicensed, uncontrolled premises. It is difficult. We have already got international treaties and instruments in respect of chemical, biological and nuclear weapons and I have issued proposals this morning better to enforce those regimes. We have got the Missile Technology Control Regime, of which we are members. There is no issue at all about what we want to do, it is just whether this is the right way of doing it. I remain open on it.

Mr Oakden: Can I just add one point? We have talked about this somewhat in the European Union. There is, I think, a general agreement that the real countries that we need to be getting at are not the other countries of the European Union, they are not a problem, it is the countries which are the major exporters of small arms. Our experience hitherto, including on all the work we are doing on small arms, is that if western countries, EU countries, get out in front and say "We want to do this" that actually makes it harder, very often, to bring either some of the developing countries on board because they feel that they are being made to sign up to somebody else's agenda, or, indeed, some of the big exporters of small arms. So what we are trying to do is, at this stage, talk through—and ministers have been involved already—with the NGOs exactly how best to go about this. Clearly, we will do what we can, both nationally and within the European Union, to try to create a movement from this that goes wider than the western consensus. When we have discussed this within the European Union that seems to be where the centre of gravity is about where we should be going forward on this treaty.

Q47 Tony Baldry: I think we would all welcome the restrictions on small arms exports to Africa. Indeed, the Prime Minister on 9 December of last year said in the House of Commons: "In respect of small arms we already prevent their sale into Africa, which is the single most important thing that we can do." However, when I look through the annual report on strategic export controls I note that the number of African countries receiving UK open export licences for small arms has increased from four in 1999 to 11 in 2002. This includes machine guns to Senegal, components for mortars to Cameroon, Angola and the Ivory Coast and Namibia, and grenade launchers to Tunisia. I can see that grenade launchers go a bit beyond small arms, or AK47s, but there seems to be a kind of disparity between what the Government is saying about small arms and Africa and what is actually happening.

Mr Straw: I have not got the details directly in front of me of those applications. By definition, I am happy to go into detail there. I do not think there is a disparity, Mr Baldry. I am happy to provide you with more detail. We are very, very careful about our arms exports anywhere, particularly to Africa, for reasons which are well understood.

Mr Landsman: If I can just add to that. On some of those we can obviously provide some more details, but some of those will be for the use of humanitarian agencies in certain circumstances or for UN peace-keeping forces.

Q48 Tony Baldry: I cannot imagine humanitarian agencies using heavy machine guns in Senegal, but I will be very interested to hear the details of that.
Mr Straw: There was some concern, not in respect of Africa but another country, about armoured vehicles which looked as though they were military vehicles but, in fact, they were for a well-known broadcasting organisation. We were about to be pilloried for providing armoured vehicles to a country which had a record which some questioned. We cannot give full details of these exports because they are confidential, but the armoured vehicles were for a well-known broadcasting company. So sometimes there is an explanation which may even satisfy this Committee.

Q49 Sir John Stanley: Foreign Secretary, I want to turn to the very key recommendation which was made unanimously by this Committee last year in our report HC 620. We said this: "We recommend that the Government should seek to extend extraterritorial control to all trafficking and brokering which if conducted in the UK would not be granted a licence." Sadly, this unanimous, all-party recommendation from these four Select Committees of the House has not been accepted by the Government. Indeed, in practical terms it has been rejected to the tune of 90% plus, because as you are well aware the only weapons to which the extraterritoriality provisions as far as trafficking and brokering is concerned that are currently being applied are to missiles in excess of 300 kilometres range and limited amounts of items which have a torture connotation, such as handcuffs. Everything in between is excluded. This, as you will be aware, was the major issue of policy which was the subject of the Committee's debate in Westminster Hall on 6 November. I must put it to you that in the contributions that were made by all those who took part from all parties the argumentation put forward by the Members of the Committee and other Members of the House who took part for the policy position of the Quadripartite Committee, I believe, the argument was won absolutely conclusively in relation to the—I thought—wholly unpersuasive and thoroughly inadequate defence of the Government's line that Mr Nigel Griffiths put forward. I know it is incredibly difficult for you, as Secretary of State, in front of a Committee to indicate that the Quadripartite Committee may have got the policy right whereas the Government has got it wrong, but that is what I invite you to respond to the Committee by saying. If you do not think this is a serious issue I am going to come to some very serious questions to you, Foreign Secretary. I put it to you, this is a serious life and death issue, to which I am going to come in a moment. I put it to you that the Government's policy is jeopardising life.
Mr Straw: Of course it is a serious issue, but I was smiling at what I thought was a witticism of your own but, there we are, maybe I made a mistake there. Of course these are issues of life and death by definition, but it is perfectly possible for colleagues to disagree about how you deal with these issues in an honourable way without it being implied that because we have come to one view about this discrete issue of extra-territoriality therefore we are less assiduous in terms of trying to protect people's lives than those who have come to the opposite view. On balance these are always judgments but I have to say that I have always been sceptical about this issue of extra-territorial control and extra-territorial offences except in very specific circumstances. We are members of various international instruments which make genocide, torture and so on, crimes which are try-able internationally, slightly different from extra-territorial jurisdiction but they are try-able internationally. Also we have very strongly resisted efforts by the United States to impose an extra-territorial jurisdiction on otherwise perfectly lawful activities, for example of United Kingdom businessmen, both operating here and in third countries. There are businessmen in this country, and your Party complains about this as much as mine, who are absolutely sound, who are not involved in any improper conduct, and yet are subject to all kinds of restrictions because on the basis of our law, not that of the United States, they happen to make decisions to trade with other countries to which the United States takes exception and there are various extra-territorial offences as well. This also arises in taxation. This is a subject of some difficulty for us and other European countries and the US. The US does have a system of extra-territorial controls, however we have not been made aware of one single successful prosecution which has been made under US extra-territorial brokering controls, for example. I am open to further information on this. It is not an ideological position I am taking, I am simply taking a position on the balance of the arguments; if the arguments change I am happy to change. In contrast, I am told that for over 25 years Germany has operated a system of brokering controls applying to activities done on German territory similar to the United Kingdom controls with regular prosecutions resulting in custodial sentences. That is our approach so far. I am very happy to look again at the debate that took place in Westminster Hall and the report. This is not an idle view we have come to. I appreciate the position of the Committee. It is much in my interests to agree with the Committee wherever I can, and I do, because why should I not, you have great expertise and you look at these things. I do not open your reports with the view that I am going to disagree with what you say, I open the reports with the view that I should agree with them whenever I can take the recommendations on board. It has not been possible here so far, as I say, but we are always open to argument.

Q50 Sir John Stanley: Foreign Secretary, at no point have I suggested idleness or any lack of assiduousness on your part. I am sure this is an honest difference of view and I, and I am sure other Members of the Committee, wish to persuade you that the Government has got the policy wrong. This is not an issue about British businessmen conducting themselves legally. The Quadripartite's position is quite clear: the extension of extra-territoriality that

we are seeking is in relation to trafficking and brokering which if conducted in the UK would not be granted a licence. I suggest you have to defend the position why should it be legitimate for a UK broker outside the territorial area of the UK to make a sale of a particular item to a particular country which if conducted inside the United Kingdom would require an export licence. It would seem to me, and to the rest of the Committee, that as far as people who are British citizens are concerned, and therefore liable to British law, the same boundaries of the business should apply whether they are operating inside the UK or not. Can I come to a specific weapon? Here we have an individual case where I must put it to you the Government has been put on to very, very clear notice of the risks that it is running. I put it to you also, Foreign Secretary, it is not an issue as to how many successful prosecutions there have been or not, the issue is whether the law in place is a law which will, as far as possible, do all that can be done in legal terms to protect the lives of British and, indeed, other people from the activities of British citizens. The case that I am referring to, which has been widely reported in the press, is the case of Mr Hemant Lakhani who, following clearly a very successful intelligence operation, as has been widely reported, and British Intelligence Services should be congratulated, was arrested in the United States—I stress Mr Hemant Lakhani is a British citizen—whilst he was allegedly trying to sell up to 50 Russian surface-to-air missiles. The question which I believe you and your colleagues in Government need to ask yourselves with the utmost seriousness is given the absolutely known risks from the proliferation of surface-to-air missiles today, and the media have been full of reports on British and other aircraft from such attacks, and we have already suffered the loss of several lives in Iraq from surface-to-air missiles, how can you defend the situation when you are clearly on notice of a British subject already having been subject to arrest on allegations of trying to procure Russian surface-to-air missiles of not including surface-to-air missiles in the extra-territoriality provisions that the Government has now passed into law?

Mr Straw: On the detailed point that you raise, Sir John, Mr Oakden can go into this in more detail in the closed session. I think you are asking about MANPADs and we already have tight controls on the export of these. It does not matter if they were a UK National or not, if they were engaged in the same activity in the UK they would *prima facie* be committing a criminal offence in the UK, so I am not entirely clear what point it is you are making. Of course we take these things seriously.

Q51 Sir John Stanley: Can I just put it very clearly. If this particular gentleman, as a British citizen, was engaged in the brokering of surface-to-air missiles outside the UK's territorial jurisdiction, that particular individual would not be the subject of the offences which you have laid down in the Secondary Legislation which the House has now passed. That is the legal position.

Mr Straw: Hang on. There are other provisions, for example the Terrorism Act, which do necessarily have extra-territorial effect. We can go into detail about the specific case in the closed session. Sir John, I am very happy to look again at this issue and your recommendation. The only question is, is it going to work? It is not an issue of principle here whatsoever, we are all in favour of the toughest enforcement in this area. There may be arguments about the judgments, and sometimes they can lead to sharp arguments, but there is no issue of principle. Let me say I have got form as long as your arm for introducing all sorts of further criminal offences on to the criminal calendar, principally as Home Secretary but also as Foreign Secretary, so that does not worry me at all, it only worries me is it going to work. I will promise you I will look at it again.

Chairman: I am very conscious of the time. Can we have quick questions and quick answers, please?

Q52 Sir John Stanley: You suggested, as did Mr Griffiths in replying to the debate, that this issue, this huge lacuna of everything between handcuffs and missiles with ranges in excess of 300 kilometres, was in some way going to be covered by the terrorism legislation. Mr Griffiths said: "The trafficking in shorter range missiles by terrorists, or for the purposes of terrorism, is covered in many circumstances by the anti-terrorism legislation which has extra-territorial effect". That is one of these ministerial statements which probably we have all been guilty of from time to time which is factually correct but inadvertently is actually profoundly misleading in the impression it conveys.

Mr Straw: You may be guilty of that, Sir John, but—

Q53 Sir John Stanley: I just want to finish my point. Why it is profoundly misleading is that this trade is not conducted by people who are clearly terrorists, absolutely not, it is conducted by middle men, people who are disguising very, very carefully their activities and doing their utmost to shield themselves from any association with terrorism. For that reason, and you as a lawyer will understand this, if you are going to make a prosecution you have got to do it on the basis of proving a connection with terrorism and I believe under those circumstances you will virtually never achieve it. If you are going to mount a prosecution on the fact of brokering, which is what the extra-territorial provision should extend to, you have got a much greater chance of succeeding with a prosecution and I ask you to consider that issue.

Mr Straw: I will look at it again.

Q54 Mr Blunt: Secretary of State, just to come back to the international arena. To quote from an American academic study, it says: "Having four regimes that appear to policymakers to be doing the same thing, regulating weapons-related technologies and items, has resulted in a lack of sustained high level political attention in almost all Member States, including the United States", I think with the honourable exception of this Committee. "In this

context one can understand the complaints from firms and their clients about confusing and overlapping regulations and the consequent introduction of piecemeal solutions by individual legislators. In most countries that we have studied, the issues appear so esoteric to national policymakers that few high level political resources are invested to rationalise the national export control system as a whole". Do you agree with that?
Mr Straw: I think it is a fair criticism, Mr Blunt. It is complicated. These systems have grown up on a bespoke basis. Personally, as I have already made clear, one of my great concerns—this is a personal concern—is about the lack of enforcement mechanisms for biological and toxic weapons. I published a Command Paper about this two years ago and have been arguing for it internationally. However, those who are opposed to a more substantial enforcement regime argue that if you go down this route you have then got a problem of interference with the pharmaceutical industry, for example, which is at the heart of the argument over biological weapons control. Then the issue is it is better to ring-fence biological weapons in order that at least you can have a reasonable regime in respect of chemical weapons and nuclear weapons. That is why these things have grown up. I do not defend these arrangements. It would be good if they could be rationalised and it would also be good if senior people at all levels in other governments paid the same kind of attention that I believe we do in the UK Government.

Q55 Mr Blunt: Does it not mean, as Mr Oakden said, talking with NGOs about how we might approach this at this stage is really not good enough? If we are going to get a single international control regime, now is the time to strike because now is the time that the full attention of the United States is engaged following 9/11.
Mr Straw: The US are engaged in a number of initiatives, including the ones which I talked about yesterday, and that was part of the purpose of President Bush's speech that he made on 11 February as I recall. They have taken a lead over things like the global partnership to clean up WMD, particularly in Russia and former Soviet countries, and much else besides, but if you take the issue of biological weapons, the control and enforcement regime, one of the countries which take a different view from us is the United States. It is on the record. There was an international conference about this towards the end of 2001. We sought to achieve at least a consensus that could continue the process of discussion but although the United States' Government is very committed indeed to counter-proliferation and generally to arms control, there are some of these issues, and BW is a good example, where their view of what is required is different from ours. Their view, in a nutshell, is that it is so difficult fully to enforce a BW regime that it may not be appropriate to try and we have a different view. You have to deal with these things on a case-by-case basis, I think.

Q56 Mr Blunt: I am conscious that we are pressed for time. Does the need for the Proliferation Security Initiative demonstrate the limitations of current arrangements and does that initiative not really demonstrate that we are now in effect carrying out other countries' export controls on WMD and missiles by proxy?
Mr Straw: We need the Proliferation Security Initiative because although there are many countries which observe the high standards to which every other country in the world, bar a tiny handful, are committed, there are other countries which sign up to international instruments but do not enforce or, even if they wish to enforce, lack the capacity to do so. Of course it is right, and in a sense this is a good example of us using extra-territorial arrangements in a practical way, that we should seek to take action to enforce rules which the originating countries should have enforced themselves. The best example, and I hope this is of some reassurance to Sir John, is the proposal in respect of the transport of WMD, their delivery systems and related materials, on commercial vessels on the high seas where we want agreement with the flag countries to be able to interdict and not just for drug purposes.

Q57 Mr Battle: Foreign Secretary, could I focus on arms exports to developing countries and perhaps try to make a modest but constructive proposal because, as we all know, the Export Credit Guarantee Department offers subsidised insurance cover for arms sales to actually encourage arms companies and recipient countries to take up arms sales that might not be otherwise economically viable and which might have a massive negative impact on their economies. I think we should welcome the Government's introduction of what is called the productive expenditure criteria for arms sales to all the HIPC countries, the highly indebted poor countries. Would an extension of that productive expenditure criteria to all the international development association countries, all the poor countries listed under the UN, not dissuade them from taking up arms and taking on more unsustainable debt and also release money for the alleviation of poverty? I would just suggest that as a practical suggestion, it would get widespread common support. What arguments could there possibly be against that modest extension?
Mr Straw: I am very happy to look at it is the answer, Mr Battle. I do not think you were suggesting that countries in that category should not have any kind of defence arrangements at all, because plainly they need them, but it has got to be proportionate. We are applying this criterion of proportionality pretty rigorously, as we have done in the refusal to which your attention has been drawn, and we can no doubt discuss that in closed session if you wish. I will certainly follow it up.

Q58 Mr Colman: Foreign Secretary, some very brief questions around what I understand to be the Government's intention to give two short take-off and landing aircraft to Nepal. First of all, you said that you wished to keep us as a Committee informed,

but in this case the decision to give these two aircraft emerged via the press in Nepal rather than through a statement to Parliament or even a letter to this Committee. Plainly by the look on your face you are concerned that this is so. The second point, while I still have your attention, is as we said last year in terms of the supply of helicopters, again this Committee did not oppose that, we were surprised that the money for these two aircraft should come from the global conflict prevention pool, and again we were surprised that these aircraft were supposedly there to prevent conflict. We were a bit surprised that this pool was used to fund it. First of all, could you perhaps assure us that this was a one-off and should such gifts occur in the future, and we support Nepal, you would inform us before the event rather than us hearing about it through the press? Secondly, would you again like to reconsider using the conflict prevention pool money?

Mr Straw: Mr Colman, we do not at the moment have a system of prior scrutiny. There is an argument in favour of that, but we have retrospective scrutiny, so it is appropriate that the committee is told once a licence has been issued, but not in advance. There is nothing particularly secret about this at all, but the reason I was looking puzzled was that I have written quite a number of letters about this and I thought perhaps one of them was to the committee but I have certainly written letters to colleagues who have followed this up on behalf of constituents. I think you said we need to support Nepal. We have had to take a strategic decision that the government of Nepal needs support, subject to some clear conditions, because of the very severe threat it faces from the Maoists. I do not say for a second that I regard the human rights record of the government of Nepal as satisfactory; in a number of respects it is not, but I also say that the human rights records of the Maoists is infinitely worse and the strategic consequences of us either supporting them or washing our hands of the issue would be very serious, so we have to make a difficult choice in an imperfect world and that is the choice that we have made. It is not an oxymoron for us to use the global Conflict Prevention Fund to support, for example, the operation of short take-off and landing aircraft because sometimes you have to prevent conflict and its scale by making use of military action; there is no other way. Again, it is an unpleasant world we live in but it is a world that we do live in. It may be helpful to provide the committee, Chairman, with information about these aircraft. They are twin-engined Islander aircraft with a normal carrying load of around seven persons, including the crew. They will be capable of conducting non-lethal activity such as search and rescue but are not combat aircraft and do not have a substantial military lift capability. The aircraft are used by some UK police forces for similar roles to that anticipated for these aircraft in Nepal, and we would arrange for an agreement between ourselves and the RNA that the aircraft would be strictly limited to a logistical, medical and humanitarian role, so I hope that is helpful. With respect to the two helicopters, they were gifted during 2002 for transportation and were not designed for offensive purposes. Their supply to the Royal Nepalese Army was on the condition that they were used solely for troop and equipment carrying, medical evacuation and humanitarian purposes. We stipulated that combat or attack roles were excluded to the lifetime of the aircraft, including the fitting of weapons, allowing soldiers to fire from doorways whilst airborne or the dropping or ordnance. It may, however, sadly be known that one of the two aircraft crashed on 3 April whilst on a re-supply task with one fatal casualty and a number of serious injuries, but that was not to do with the nature of the aircraft, I understand.

Q59 Chairman: Could not almost any arms sale be justified on the grounds that it is conflict prevention?

Mr Straw: No. You have got to make judgments here, Dr Berry. The Conflict Prevention Fund is not a pacifist programme. What we have done in Sierra Leone, which was raised earlier, has been very significant in preventing conflict not only in Sierra Leone but also elsewhere in West Africa. It does involve the use of arms.

Q60 Chairman: It was a good question though.

Mr Straw: But a better answer, if I may say so!

Q61 Mr Battle: If I could follow up the question of my colleague on the International Development Select Committee, Tony Baldry, this morning he and I met the Finnish minister who is responsible, interestingly, for trade and industry and development, in other words, development criteria are integrated into their trade and industry department, and in August 2002 our Secretary of State for Trade and Industry referred to criterion 8 of the Consolidated Criteria, suggesting that we should take account of the fiscal implications of the export of arms, small arms in particular, and light weapons. In assessing export licence applications, especially for small arms and light weapons, against criterion 8 of the Consolidated Criteria, how are possible human security impacts factored into the assessment so that there is a real development assessment built into the process?

Mr Oakden: I am very sorry. I am not sure I understand the question.

Mr Straw: I half understand the point of the question, Mr Battle.

Q62 Mr Battle: Under the Consolidated Criteria, article 8—

Mr Straw: We know all about that.

Q63 Mr Battle: It is fiscal, so it just assesses the money. What about the impact on the people in poor countries? Why is that not factored in? Would that make it clearer?

Mr Straw: I think it is inherently in article 8, is it not?

Q64 Mr Battle: So they are factored in?
Mr Straw: Yes.
Mr Oakden: Human rights are in criterion 2.
Mr Straw: These are not mutually exclusive. I think we need to follow this up in some more detail, but criterion 2 is in respect of human rights and fundamental—

Q65 Mr Battle: Criterion 8. You apply them all across the board?
Mr Straw: We apply them all together. Criterion 8 is an addition which has specific relevance in respect of developing countries, the HIPC and other countries on the OECD international aid list, but it does not mean that we ignore the other seven; far from it.

Q66 Ann Clwyd: Prior scrutiny: it has been around a long time and I have got a feeling that it has been kicked into the long grass, and I would have hoped that by now all government departments who are involved in this discussion might have come up with a proposal which would be mutually acceptable, maybe on a trial basis, but at least a proposal, because we have talked about this long enough and we should have come to a decision by now.
Mr Straw: I understand your concern here. It is a really difficult issue and the more one goes into it the more difficult it becomes. On many issues the reverse is the case. We have actively been looking within government at ways of enhancing retrospective scrutiny and my colleague Patricia Hewitt is due to write to me very shortly with proposals on this. I am sorry that the proposals are not before the committee and were not before the committee in advance of this hearing, but that is the current situation. A great deal of work has gone on inside government on this, let me say. Whether the result is regarded as satisfactory is another matter.

Q67 Ann Clwyd: The answer is no to that because this committee has discussed it long and hard. We have made proposals, counter proposals; we have had discussions with various secretaries of state, and I personally am fed up of talking about prior scrutiny and would like us to come to some arrangement which could be temporary, could be permanent, but at least a proposal that we can work from.
Mr Straw: For the time being the straightforward answer is that I do not hold out a prospect of that happening given the decisions which have been made across government. What we are aiming to do, however, is to enhance retrospective scrutiny; that is the official position. I also say, and I understand your concern here, that it does need to be borne in mind that this system that we have in the UK is a better, more effective, more thorough system than any in the world, and I include in that the United States. It really does do the job. Of course, it could be enhanced, and we are looking to that but, compared with most other country systems, it is certainly a Jaguar—the car, not the aircraft—and approaching a Rolls Royce.

Q68 Ann Clwyd: I think retrospective scrutiny, as you have illustrated this afternoon, is not satisfactory to this committee.
Mr Straw: You and I have discussed this and I have been reasonably open-minded about the issue of prior scrutiny, but you do then run into the undergrowth about constitutional arrangements, who is making the decisions, how that would operate and so on, whether it would lead to a blurring of lines. I just have to say to the committee that the fact that the criteria exist first of all, the fact that you exist, the fact that we now have legislation in place and that there is this annual outing for me before the committee and much else besides, really raises the standard of scrutiny, both by officials and by ministers, including myself. We all have to pay attention—quite right too, because that is what you are here for and what I am here for, but if this system did not exist I believe that there would inevitably be a lower standard applied to the decisions. As it is I think it is a pretty high standard.

Q69 Mr O'Neill: You will appreciate, Foreign Secretary, that it is rather frustrating for us because, as we get closer to the general election, we tend to find that the secretaries of state become more sympathetic to our position and then, as soon as the general election occurs, the fledgling secretaries of state and foreign secretaries come into office and they are immediately got at by their officials and so, for a period of about two and a half years, they walk around gagged and blindfolded, Guantanamo Bay-style, and they get some sense that there may be a world out there. This is the frustration we feel.
Mr Straw: It is not usually a description offered me, but in my case the record shows the reverse, I am afraid.

Q70 Mr O'Neill: You mean it has got worse?
Mr Straw: I would not put it as worse but, anyway, it is for you to go through the historical record on this. There will be movement, as Patricia's letter will show. It is not as much movement, I know, as the committee wants, but there we are. I am not sure my officials would say that I go around the Foreign Office being bound and gagged, dragging the leg irons of which Mr Chidgey would disapprove.

Q71 Chairman: After that scurrilous attack on the officials—
Mr Straw: Can I, Dr Berry, just before we finish, and entirely on a light note, say that I was noting yesterday that we are three days off 28 February 2004, which will be the 30th anniversary of an event in which Sir John and I both took part, namely, the election in Tonbridge and Malling, which he won and in which I came third.
Chairman: A brief right of reply.

Q72 Sir John Stanley: On the Foreign Secretary's comments, may I congratulate him on subsequently rising to a higher state in politics than I have ever managed to do.
Mr Straw: Thank you very much; that is very generous!

Q73 Chairman: Foreign Secretary, I am aware of the fact that time is rapidly running out and I know that colleagues have also got other engagements. If you are agreeable, there may have been one or two questions in confidential session and, if it will be all right, we will put those in writing and look forward to written replies, hopefully not contentious but some information may be confidential. If we could do it that way I would be grateful. Could I thank you very much, and your two officials—or slightly more than two officials, actually; the last count we made was 14.

Mr Straw: It is they who provided the encyclopaedia.

Chairman: Thank you very much again. We are very grateful for your time.

Wednesday 21 April 2004

Members present

Mr Roger Berry, in the Chair

Mr John Battle	Mr Nigel Evans
Mr Crispin Blunt	Mr Bruce George
Mr Quentin Davies	Mr Martin O'Neill

Witnesses: **Mr Roy Isbister,** Head of European Union and Export Controls Section, Saferworld; **Mr Ed Cairns,** Senior Policy Adviser, Oxfam; and **Mr Robert Parker,** Campaign Manager, Arms and Security, Amnesty International, examined.

Chairman: Good morning. Can I ask if any Members have any interests to declare?
Mr Blunt: I want to draw attention to my declaration in the Register which is that I am a consultant to AMS who are an integrated systems manufacturer.

Q74 Chairman: Thank you. We only have an hour. We are going to ask very brief and pithy questions, and if you could keep the responses brief and to the point we would appreciate it. We are under a bit of time pressure. Could you briefly introduce yourselves to the Committee?
Mr Parker: I am campaign manager at the United Kingdom section of Amnesty International.
Mr Cairns: I am senior policy adviser at Oxfam.
Mr Isbister: I am head of the export control and European Union section at Saferworld.

Q75 Chairman: Thank you, and thank you for your written submissions. They are very helpful indeed. Could I start with what I understand to be one of your key concerns which is increased proliferation, especially small arms but also proliferation more widely. Could you give us any specific examples of concerns you have about British exports leading to proliferation?
Mr Parker: As human rights and humanitarian organisations our primary concern is around the human cost of proliferation. We also work towards suggesting solutions for the causes of proliferation, and in terms of United Kingdom exports what we would point to is the increased use of open licensing and tying that with the transparency issue in that it is very difficult to get a grip on quite how much equipment is being exported from the United Kingdom under open licences. It is very difficult for us to give you examples of United Kingdom exports leading to proliferation when a glance at the annual report shows open licences to places such as Luxembourg—91 open licences—for all manner of equipment and we have no idea quite how much is going under those open licences. There is also a vast naval licence covering a huge range of equipment ranging from submarine parts through to general purpose machine guns which appears to have been granted to somewhere in the region of 40 countries but, again, with no indication of the amount of equipment going out under these licences it is very difficult to come to an informed opinion on United Kingdom exports leading to proliferation. Another area would be licensed production, so here we are talking about the proliferation of arms producers. There has been a steady increase over the past decade in production facilities set up abroad to produce anything from small arms and ammunition through to jet fighters. This leads to an increasing risk of diversion and a risk that licit trade will end up in the illicit market, and the United Kingdom is certainly one of the countries that sets up licensed production deals.
Mr Isbister: Following up on that, fundamentally the United Kingdom is one of the largest exporters in the world so it is bound to have an impact upon proliferation but I do not think any of us would paint the picture that the United Kingdom is the worst of the worse by any means. On the issue of the naval open licence and the 40 or so countries on it, some of the countries named on that licence include a number of African countries, Angola, Cameroon, Cote d'Ivoire, Nigeria, Senegal, and also Paraguay which is a landlocked country but which has a reputation as a point of diversion. It seems unlikely that everything on that licence is going to go to Paraguay but it does give permission for those exports, so I think that is very concerning. Regionally the United Kingdom seems to run a reasonably tight ship to Africa with one or two notable exceptions such as South Africa, but in South Asia, for example, with exports to India and Pakistan and also the Middle East where the United Kingdom is a very large exporter, these are both regions of instability so we naturally have concerns there.
Mr Cairns: I just want to flag something up about components, which I suspect you want to take separately. Having just come back from Israel and Palestine we have reason for concern that we all share that components for F16s to Israel two years ago may be the tip of a rather ugly iceberg about components going to Israel for F16s and Apaches and the missiles attached.

Q76 Chairman: Do you want to pursue that now, so we do not forget it?
Mr Cairns: Yes. I think it has been very notable that both your Committee and people like us are very much focused on what happened in July 2002, but if you look at the annual reports from 2000 onwards there have been licences for components not just for combat aircraft in Israel but also for combat helicopters and for air-to-surface missiles, which have been used in the recent assassinations and

against civilians as well. It is also the case that there are several companies, either United Kingdom companies or US companies with United Kingdom operations, that produce components for Apache helicopters and for the hellfire missile sites that they use. Now that does not mean that we know that those companies are being licensed to send those components to Israel but again, rather like Rob said, because of the still relative opaqueness of the reporting there is at least reason for concern that, while at the same time the Foreign Secretary is being very forceful about condemning the Israeli actions of using Apache helicopters to carry out assassinations, etc, it may well be the case that British components are going into those helicopters and going into missiles used. In the short term I would have thought the government should explain exactly in detail what those components are for Israel for combat helicopters, combat aircraft and air-to-surface missiles that have been supplied since 2000, and for the future I think it is a lesson for how we would want more transparent reporting in the 2003 report and beyond. At the moment, as I understand it, the government is saying it is going to provide more statistics for components but unless we have the detail of exactly what kind of components, the numbers, destination and the purpose, none of us are really ever going to be able to have enough information to tell whether, as in this example, Britain is supplying components for Israeli Apaches doing these things.

Q77 Chairman: We will come on to components later but finally can I ask about the post September 11 type situation? A number of people have argued that licensing decisions may well have changed as a result of the so-called war on terror. Have you got any specific examples of where you think licences have been granted in the United Kingdom that would not have been granted before 9/11?

Mr Isbister: The government has been very careful when questions have been raised to couch answers in terms of all licence applications being assessed against the consolidated criteria, and it is very difficult to get to the nub of this. All we have really been able to do, and again we are limited a bit by the quality of reporting, is to identify a number of countries which might be seen as allies in the war on terror where there has been a marked increase in the number of licences issued. From the Saferworld audit we can see a table of some of these, for example, Algeria, where there has been a significant increase between 2001 and 2002, Egypt, India, Indonesia, which has perhaps the most marked increase. In 2000 the value of SIELs issued to Indonesia was £2 million and there were no OIELs issued. In 2002 the value of SIELs issued was £41 million and the number of OIELs issued was 15. Morocco has seen a very large increase, so has Jordan and Oman. We cannot nail this down to being specifically related to the war on terror, but it is enough to raise questions which I think need slightly more detailed answers than we have received so far.

Mr Cairns: If we were looking for indications more recently obviously we would not be looking at licensing decisions but other indications, and one would be the media reports about the United Kingdom wanting the EU to lift its arms embargo on Libya, which is the kind of thing which would give us grave concern because it would look like essentially giving Libya a rather lethal carrot in reward for what is good which is their change of policy on WMD but if you look at Libya's role in supplying arms to such undesirable people as Charles Taylor in Liberia and the RUF in Sierra Leone that would raise grave concerns for us, and it looks far too like not a representation of current policy but the bad old days of the Cold War where arms were given as presents to undesirable allies.

Mr Davies: Before we move on, you have had three very long answers to your first question but I think the correct answer was one word—"No"—because although we have had lots of speculation, it seems to me there does not seem to be a single case of documented evidence that there has been an abuse involving British export control, or none at least to which our witnesses can draw attention.

Q78 Chairman: We have noted the answer. We do not want to get into debates with our witnesses obviously but do you have anything briefly to add to that?

Mr Isbister: There were a couple of statements. I do not have the details here but we can get them for you. Foreign Office Minister Ben Bradshaw made a comment early in 2002 that the government might have to reassess some of its export licensing decisions to countries like Sri Lanka, and there were another couple, in light of the—

Mr Davies: My point remains.

Chairman: The point has been made. If there is any further evidence you want to submit, feel free to do so as quickly as possible.

Q79 Mr Battle: Moving on to the Arms Trade Treaty, if I remember rightly in October 2003 Oxfam and Amnesty together published a report *Shattered Lives* which got a good launch; it launched the campaign for an international Arms Trade Treaty, it was launched in my city and I was there and there was a good response from the crowd, and there has been a good response and goodwill generally towards the report, but I think it is fair to say as well that support from governments has been less forthcoming—there have been expressions of goodwill but not much action. Could you remind me why we need an international Arms Trade Treaty and what prospects are there of that Treaty becoming reality, given the lack of support from governments?

Mr Parker: "If we do not sell it, someone else will" is a mantra often invoked as a reason to maintain exports about which concerns may have been raised. We look at it slightly differently, thinking if we do not sell it presumably for a good reason, possibly human rights grounds or sustainable development grounds, why should anyone else be able to? Essentially that is what the Arms Trade Treaty will

seek to do—introduce a level playing field so everyone is playing with the same set of rules—so if the United Kingdom or anyone else refuses a licence no one else should be able to pick that licence up. It will set limitations on the types of conventional arms transfers which are deemed acceptable and put in place an international legal framework within which legitimate arms trading can take place. It is not a new idea. Article 26 of the UN Charter states that in order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources the Security Council shall be responsible for formulating plans through the establishment of a system for the regulation of armaments. So it is not a new idea, it is around fifty years old, but there has been little action on it, as you say. Also, it is not just us calling for it; eighteen Nobel Peace Laureates have put their names behind the idea. We are not naive enough to think it will happen overnight, and you are right—we are encouraged by the responses from governments, particularly because they are coming from all world regions. We have had positive responses from Mali, Cambodia, Costa Rica, Brazil, the Netherlands, Sweden and others, some of whom have explicitly stated support for the idea of an Arms Trade Treaty; others have stated their support for efforts to establish legally binding international controls. In terms of how likely it is to happen, it cannot be denied that it will take a huge effort to engage states like the United States, Russia and China in such a project and this is where we think as a permanent member of the UN Security Council, and soon to be President of the G8 and the EU, and the second largest arms exporter in the world, the United Kingdom has a duty to show robust international leadership. We are not trying to tackle China and Russia in the formative months of the campaign. What we are trying to do is get progressive governments to agree with what we are calling for and want to start pushing the initiative to start working with their neighbours and promoting the idea.

Q80 Mr Battle: I think if I am right you are intending to submit another draft of the Arms Treaty on small arms proliferation in 2006 to the UN, so you have a bit of time to go before then, but we need action on this matter now, so what can be achieved through existing international mechanisms such as the UN small arms programme through the EU and, as you mention, the G8 now, not to mention international arms embargoes. Could we do more work there in the meantime, and where do we focus?

Mr Isbister: Yes. I would say that the United Kingdom should be operating through all these different fora and, as Rob mentioned, there are presidencies coming up, the G8 and the EU next year, so this should be an opportunity for the United Kingdom to demonstrate leadership there. There are a number of other initiatives that have been led by the United Kingdom like the Commission for Africa that should include an element or be looking at the issue of arms proliferation in Africa as part of its mandate. The Cabinet Office is working on a project on countries at risk of instability and this should be looking at the issue of arms proliferation. I do not think that the different initiatives have to be mutually exclusive. They should be working together and I would congratulate the United Kingdom government on the Transfer Control Initiative that they are leading which is designed to produce some ideas on guidelines on export controls on small arms and live weapons in time for the next biannual meeting of states in the UN small arms process.

Mr Cairns: The single most useful thing the United Kingdom could do specifically on the ATT urgently would be to make a high profile, top level Foreign Secretary or Prime Minister statement unambiguously that the United Kingdom is behind the ATT as a legally binding agreement, and wants it delivered sooner rather than later, ie by 2006. That would be an objective for this year.

Mr Parker: The campaign you mentioned also looks at the irresponsible use of weapons so we are looking at both the supply side and the demand side, because even if all arms exports stopped tomorrow—which is not what we are calling for, by the way—people are still armed and still facing armed violence on a daily basis, so the campaign is aiming to support the initiatives and efforts of community level organisations at reducing armed violence in their communities.

Q81 Mr Evans: On the issue of components and, instead of exporting the finished product, finishing and exporting parts of that product to other countries, what action do you think the government should be taking when it says that it looks at the same sort of licensing regime for parts as it does to whole products?

Mr Cairns: There are two answers and I will be succinct because basically our answers were in the *Lock, Stock and Barrel* report which we sent to all Committee members in February. Essentially the first answer is in more transparent reporting, and the example I used about the lack of clarity on Israel is a good example of that. To my knowledge, the progress the government has made since we published our report in February is that they said in an answer to a PQ by Barry Gardiner earlier this month that in future annual reports, from the 2003 one onwards, they would put in more statistics on incorporation, but we would say that is not enough. We would say you have to go down to the level of saying precisely what the components are, what are the numbers, what are the destinations and what is the purpose, so is it for incorporation or is it spare parts, and basically without that information, with respect, neither you, us or anybody else will have enough information to make judgments about whether the right thing is happening or not. That is crucial. Also, obviously there is a challenge of complexity but we do not accept that, when the Foreign Secretary set out different guidelines for incorporation in July 2002, which makes sense. If you are looking at the effect of components being added together to make a lethal weapon, ie human

suffering, we do not think there should be a different set of criteria for components and for whole weapons systems.

Q82 Mr Evans: Give me an example, then, on components whereby you believe the country has been able to access components in separate parts and then use them in an offensive way?
Mr Cairns: I will go back to the Israel example because I have recently come back from there and I think it is comparatively uncontroversial. We have all seen evidence of Israeli F16s being used to bomb civilian targets in the Occupied Territories, and just to be clear I condemn Palestinian bombings and killings just as much; I am not making a one-sided point but I saw the evidence of that a couple of weeks ago, and it is a fact that the United Kingdom components for those US F16s going to Israel are a vital part of it.
Mr Isbister: There are other examples as well. I think licences for Hawk components were issued for sale to Zimbabwe at a time where it is very hard to believe that whole Hawk aircraft would have been sold to Zimbabwe.

Q83 Mr Evans: Going on to the Hawk example, because as you know there is a deal being arranged with BAe and India where 24 of them will be produced in the United Kingdom but the rest of the order will be produced in India, what action do you think the government ought to be doing to ensure that parts manufactured elsewhere around the world under licence do not become part of the proliferation you are worried about?
Mr Parker: I spoke earlier about the proliferation of producers and the new Export Control Act which comes into force very soon will introduce some controls over further transfers of technical updates and intangible transfers and such like, but we still think the actual licensed production deal itself needs to be licensed so limits on production levels and onward export can be put in place right at the start. The US has those kind of controls—controls, re-exports and also production levels—so we think that the United Kingdom should be pushing to do likewise, possibly with its EU partners because as a collective the EU would have more clout in terms of insisting that any onward export of licensed production would have to be informed.

Q84 Mr Evans: How realistic is that with parts being manufactured in a number of places these days? It is the multinational reality of the situation that parts are produced all over the place. You look at Typhoon Eurofighter which are now produced in a number of countries. How realistic is it that Britain would be able to have certain controls on itself at the same time as these parts are still going to get to other third countries, because perhaps the restrictions are not exactly the same?
Mr Parker: I think we recognise those difficulties which is why we are encouraged that the Foreign Secretary is taking this forward at an EU level as well, but still the government has stopped short of saying that what would be required is a licensing requirement for the deal itself. So it would be difficult for the United Kingdom alone to do that but if it can be pushed forward in other international fora, such as at EU level, we think there might be more chance of it happening.
Mr Cairns: It is another argument for the ATT. We would all accept that none of these things are total solutions. If there is ever going to be a tough international level playing field it does mean that all governments are going to have to do the same, and the international ATT is ultimately really the only solution for that.

Q85 Mr Evans: You have spoken about larger components for F16s. On the small arms side, have you any evidence at all about proliferation on components being sold?
Mr Parker: One of the main companies that has come to our attention is Pakistan Ordnance Factories. Now Pakistan is trying to build a high tech industrial base through arms exports and becoming a regional arms exporter. It builds everything from rockets through to small arms and small arms ammunition and it was originally a United Kingdom firm, Royal Ordnance, which set up some of the production facilities in the first place in the 50s. Now there have been subsequent deals done and denied and basically we still think that parts and training are being provided to places like Pakistan Ordnance Factories where there is very little control of where they then export the weapons to.

Q86 Mr Evans: Have you any evidence on that?
Mr Parker: One of the examples in the memorandum we submitted last time we gave evidence was on a factory in Turkey, and a deal with Heckler & Koch. Now at the time Heckler & Koch was United Kingdom owned and now it is not, but at the time, the height of the East Timor crisis, the factory in Turkey exported 500 MP5 machine guns to Indonesia. Now, these machine guns are not going to go away. They fire 600 rounds a minute, and some of the same people who were involved in the crimes against humanity in East Timor are the same as the people running the operations in Aceh, so that is one example whereby a United Kingdom set-up deal for small arms resulted in proliferation and abuses.
Mr Cairns: Another example would be United Kingdom with Singapore, Singapore having one of the poorest records of where its arms then go on to, for instance Indonesia, and if you contrasted the report between 2000 and 2002 there is a quite sharp decline in the licences for the export of United Kingdom whole small arms to Singapore and an increase in the export in United Kingdom components to small arms. Again, we cannot prove where they go to but it does raise concern.

Q87 Chairman: In terms of the problem of making decisions about licence applications for components, how far down the supply chain is it realistic to go? Head-up display units for F16s are pretty clear. Those are components used in F16s and

we do not need a view about what decision should be made. That is a clear component used in an F16, but when you get to smaller and smaller components, dare I say, nuts and bolts and so on, where do you draw the line? Clearly you know the policy is meant to apply to both components and final military equipment, there is no question about the principle, but on the practice, how far down the supply chain is it possible to go to make decisions about components?

Mr Isbister: I would say that is a very difficult decision to make and if you set a rule then you are going to find lots of exceptions to that rule. This comes back to one of the key issues of transparency. If you can give more information about the components that you are sending overseas, then it becomes possible for outside observers such as yourself and ourselves to make an informed decision on whether it seems appropriate, so over time you are working out what is a legitimate level at which you are going to set these kinds of decisions.

Q88 Chairman: But is the problem not that you are only going to get this information on components if somebody has decided either it is dual use component or it is a component that will be used to manufacture military weapons? You do not get the information until somebody has decided where to draw some cut-off point really, so how would you approach and set that cut-off point at which the information needs to be supplied? Lots of very small manufactured items are exported from the United Kingdom every day, and goodness knows whether they should strictly require an export licence because in the future they might be used as a component for a military product. The principle of what the policy is about we all appreciate, but have you any further views about the practicality of policing component exports?

Mr Cairns: To be honest I do not think we have a clear answer to that and it is a difficulty which we all need to grapple with, but we would all agree that there are some things like triggers in small arms that are well above that threshold.

Q89 Mr O'Neill: On components you were asked for examples. You quoted Pakistan and you said because it has ambitions to have a high tech economy, a manufacturing economy, there is a prospect that they might be able to sell stuff, but you could not give us any examples. In the case of Turkey, you said there was a British owned company where British components might have been used but not definitely in the guns that were sent to Indonesia. As far as Singapore was concerned, you said that Singapore does not have very tight controls over re-exporting goods so they might end up in difficult places, but the sum total of that is down to 500 guns and even then it is not quite clear. You make one assertion and you make two vague conclusions, but does that add up to a case for what you are asking?

Mr Cairns: Are we not all in the same position that we none of us can make very firm conclusions on the basis of the information the government currently provides, and that is why I said that until we get to the level where the reports provided to you and the rest of us by the government get down to the detail of precise type, number, destination, purpose—spare parts or whatever, none of us will be able to answer that kind of question.

Mr Parker: The guns did go from Turkey to Indonesia at the height of the East Timor crisis. They were United Kingdom made guns under licence. Another example would be the Land Rover factory set up in Turkey which again shows the point that the Chairman was raising that 80% of the parts that make up the Land Rovers are civilian so do not require an export licence, but then the final Land Rover we had evidence was being used to commit violations in Kurdish villages and such like.

Q90 Mr George: It is still very weak evidence. The Defence Committee went to the Turkish company, MKEK; we have heard a great deal about it; it is an incredibly reputable company linked to all sorts of reputable international companies, very well organised with very close scrutiny through the licensing process which we asked about, and I would not want the impression given that any Turkish company is somehow, by definition, illicit or engaged in undesirable activities. All we are saying is you are three very reputable international organisations with links all around the world, with links with journalists who are investigative, and so far we are not hostile, we are just saying that the evidence is really a bit thin. You made some complimentary remarks towards the government but it seems to me almost anything that can be used for defensive or offensive purposes would fall within your purview and condemnation, and the bureaucratic nightmare that is going to be established if widgets that might be used in a Turkish tank somehow may be subject to a licensing process will make the task of looking after the real bad guys, of which there are many, absolutely impossible because the machinery is going to be chasing after things that might form part of hundreds of thousands of bits that go into a major piece of military equipment. So do you not think, unless you can find a little bit more evidence and focus more on major systems rather than the minutiae of subsystems, that yourselves and we are going to be chasing in directions which are not going to lead us to dealing effectively with the kind of people we almost all want to deal with.

Mr Isbister: I would say that is an argument for why the government should introduce a system of licensing of licensed production deals because then you are looking at the macro level and you are not focusing so much on the micro level. Then licensing of components that form part of that licence production deal become far more simple because you are looking at them in terms of "Here is the deal, this is the production level we have set, is this export consistent with the licensed production deal?" It would seem to me that if this is handled well this could make the whole system of licensing and dealing with components simpler.

Q91 Mr George: On trafficking and brokering, how effective do you believe the government's new controls under the Export Control Act would be as a response to the changing nature of the world's defence industries? Following that, have your concerns changed at all since you gave evidence to us a year ago?
Mr Isbister: We have gone over this before and I think our concerns are pretty much the same. Obviously the legislation has not entered into force yet but will very soon, so we have not had a chance to see how it works. We would still maintain the same arguments. If the government asked for evidence of past examples of where the new legislation would not work, and our response to that is it is very difficult to find because brokers at this stage have no reason to shift offshore to conduct their operations because they can do it legally in the United Kingdom. I think we would maintain those same arguments. I think there is a more detailed issue which as I understand has still to be settled which is "When is a deal a deal?" In evidence that the Secretary of State for Trade and Industry gave, at one point he was saying "Don't worry, the broker will be captured as soon as he picks up a phone." That was in the context of a rogue broker operating out of a hotel room, but later on when she was talking about what is going to happen to somebody working for a legitimate company who gets a request that they cannot help with but they can suggest contacting somebody else, she was saying "Don't worry, that's fine, that will not require a licence." It is not clear to us how you distinguish between those. The law does not seem to distinguish between them, and I know that the defence industry has concerns about this as well, and maybe when you speak to them you can go into that in more detail. In terms of the international environment and with the war on terror, however, this makes the need to crack down on the activities of brokers even more urgent, because for terrorist organisations we would anticipate that it will be through the use of brokers that they will be getting access to small arms, light weapons and MANPADs, etc.

Q92 Mr George: On the EU Code of Conduct on Arms Exports, do you have concerns about how different EU Member States interpret the EU Code of Conduct in their licensing decisions?
Mr Parker: Yes, we do.

Q93 Mr George: And I will come on later on newcomers.
Mr Parker: As the Foreign Secretary said when he was giving evidence to this Committee, and I am paraphrasing, you can read the EU Code of Conduct to allow you to sell everything to everybody or nothing to nobody, and so, as the first multilateral arms regime of this nature, it is hardly surprising that there have been difficulties with its scope and interpretation. When you look at some of the terminology and the criteria in detail, you can find it is not surprising why Member States interpret them differently. For example, Criterion 3 takes about two and a half lines to talk about the internal situation of a country. Now, how someone is supposed to come to an informed decision over whether or not to export to that country on that basis I do not know. There are three on-going internal conflicts in Indonesia yet the United Kingdom still exports military equipment there and, as this Committee has previously noted, if the situation between India and Pakistan does not invoke Criterion 4 about regional stability, then what does? There is also no accepted definition of things like internal repression, so states have to decide whether or not there is a clear risk that their exports will contribute to internal repression, and yet states choose a different definition. Some choose a narrow definition involving small arms and so on, but if you look at the example of China there may be a military arms embargo but states are still supplying electronic surveillance equipment and so on and Chinese authorities are using that technology to crack down on political dissidents. Similarly, in terms of internal repression, Amnesty has argued that because of its record of extra judicially executing more people than any other police force per capita, there is a clear risk that exporting hundreds of hand guns to the Jamaican constabulary may contribute to internal repression, yet the UK government has taken a different interpretation of that criteria. There is no working definition of sustainable development, but I will gladly defer to my Oxfam colleague to say more about that.
Mr Cairns: Briefly, there is a similarity and a difference. The similarity is that, to my knowledge, no EU country at all has rejected a licence on the basis of sustainable development six years after the Code was agreed, so it does not seem to be working. The difference though is that some governments take it more seriously so at least in the United Kingdom there is a list of 80 countries and on those in certain circumstances DfID is asked to comment on those licences, but still the proof is in the pudding and no licence has been turned down. For solutions there have to be far more precise and workable guidelines to help licensing authorities, and again the United Kingdom comes out of that quite well because DfID is leading a review within the EU to get that criteria out.

Q94 Mr George: In your submission you told us about the changes you would like to see in the review being undertaken on the EU Code of Conduct. You have mentioned some of your priorities. Do you all agree with the priorities, bearing in mind you might have a wish list but politics I am afraid does not always translate those into reality. Could you name a few of what you think the priority changes ought to be in addition to those that have been mentioned?
Mr Isbister: Yes. The criteria are key and part of that is because of expansion. Are you coming back to that?

Q95 Chairman: Yes.
Mr Isbister: I will not deal specifically with expansion now but the subject of criteria is one of the key issues. Annual reporting is another key issue and

that is particularly with the new countries; one of the United Kingdom's priorities is to make public annual reporting obligatory and we think that is very positive. They have also talked about certain minimum reporting standards, which again is a very positive move. Those minimum standards, of course, should not be minimal standards and we would like to see those contribute to a raising of the bar in annual reporting and not setting a very simple hurdle. Another area which is quite key is about other ways in which harmonisation of procedure and decision-making can be enhanced, and part of that would involve capacity building. There is a big issue with some of the smaller countries, new and existing EU Member States, who have a real capacity problem. They do not have a diplomatic presence on the ground so they often find making decisions about certain countries very difficult. There are information exchange mechanisms in place, and we think those could be significantly enhanced. There could be registers kept of brokers of concern; of instances of end-use of concern that everybody could access; there could be provision made for one of the small countries to ring up one of the big countries, France, the United Kingdom, etc, to ask for advice; there could even be assistance provided in-country by those states with diplomatic representation to those without. Those are some of the key issues that we would like to see addressed.

Q96 Mr George: If there is a league table of countries in terms of lassitude and the opposite in terms of arms exports, where would you put the United Kingdom? Friendship in terms of lassitude, or Beazer Homes league, or what?
Mr Isbister: I could not possibly say! One of the issues when we are asked for evidence is transparency. We cannot provide the evidence you are looking for because things might be happening, they might not be, but the evidence is not made available.

Q97 Mr George: But from the information you have are we more lax or less lax than others who export arms? Where are we? You must have colleagues like yourselves everywhere. How good are we? How bad are we in terms of our objective? That is a simple question. Even President Bush could answer that!
Mr Cairns: On Criterion 8, because at least we take it seriously even though I think it is worrying there is no evidence of a licence refused just to prove how serious we take it, the United Kingdom is clearly at the top end. It is not going to drop seven to go down to the third division.

Q98 Mr George: That is a poor response to a very simple question. You picked one criterion. On transparency there must be 10, 15 or 20, so maybe the next time you appear before us you can try to see—
Mr Cairns: I was thinking of the development criteria.
Chairman: The evidence that the Committee has had in the past confirms that the United Kingdom has never refused a licence on Criterion 8 but we have been advised that other EU countries have. Where that puts people in Bruce's league tables I do not know, but there is clear difference of practice.

Q99 Mr George: Perhaps you could do a little bit of research on that, and it would be helpful for yourselves. On newcomers, and I asked the same question of the Foreign Secretary, how worried are you about the ten new states coming into the EU very shortly, in terms of their standards of licensing and export controls?
Mr Isbister: I could maybe think of one other answer to your previous question. For the first time, in the last evidence session the Foreign Secretary gave we received information about undercuts, and I have never seen information on this before. The United Kingdom said they thought there were about 15 undercuts a year which is about 25% of consultations, and the United Kingdom itself issued a licence on five occasions out of the 20 where it initiated a consultation, which again was 25%, so on that basis the United Kingdom is coming in about average on the way it is interpreting criteria. On the new countries, just the fact that we are going to 25 countries instead of 15 clearly complicates matters, for example, on interpretations but I think there is an additional factor because some of those countries come from a very different tradition of export control. From discussions that we have had with officials from a number of the accession countries, those officials in some instances feel at a bit of a loss as to how they are supposed to apply the criteria. The Member States might have a difference of opinion, etc, but they seem to address it with more confidence that they know what they are doing. So I think there are significant issues there. There are issues of capacity in that these are states which are generally not as wealthy as the existing Member States, so in terms of exporting that can impact in two ways. It can impact in terms of resources they have available to put into export control and it can also increase the economic pressures on them to issue a licence where discretion might be the better part of valour. Another issue for the new members is that in terms of the support that has been given we are quite disappointed by the level of support that has come from EU Member States. The United Kingdom has held two seminars on the criteria, which on that issue is more than a lot of other states have done, but in terms of preparing a state for this whole instrument, two seminars attended by one or two people from each accession country does not seem like an awful lot and, again, the accession countries themselves are quite frustrated by what they regard as the lack of support from EU Member States. Some have even said they have more support from the US than they have had from the EU.

Q100 Chairman: Finally, on the EU arms embargo on China, there is some debate about whether or not it should be relaxed.
Mr Parker: Amnesty is not saying lift it or keep it. What we are saying is, having put it in place on the grounds of human rights and internal repression, these should be the benchmarks against which any

decision to lift it or keep it is taken. I will not go into the human rights situation in China because it has been very well documented. Suffice to say that the use of the death penalty is still widespread, with torture, unfair trials, repression in Tibet and elsewhere, and there has been no investigation into the events of 1989 crackdown which led to the imposition of the embargo—

Q101 Chairman: I understand that but very quickly, because of time, some would say that if we are talking about human rights concerns there is Saudi Arabia, and there is no EU arms embargo there. Talking about proliferation you mentioned Pakistan, and there is no EU arms embargo on exports to Pakistan. Some would say that China is being treated relatively harshly by the European Union in comparison with policies towards other countries that are human rights abusers.
Mr Isbister: Our response to that would be, and in our audit we mention it on a couple of occasions, that embargos could be used more widely. The answer to this is not to turn round and say that you lift the embargos that exist because in the league table of the recipients somebody is above somebody else, but you should ask whether there are other areas where maybe tighter restrictions should be put in place.

Q102 Mr Blunt: Can I ask about end-use monitoring? Before coming on to what the government's role might be, how effective do you think NGOs are at end-use monitoring and highlighting inappropriate use of weapons in countries around the world? The informal system?
Mr Cairns: We would not see ourselves as major players in that, for obvious security reasons. Because Oxfam has so many staff exposed in more than 100 countries it really would be very damaging for their personal security and the security of our programmes if we were seen by combatants in these conflicts as monitors, so we do not see ourselves as players in monitoring the end-use in that sense.

Q103 Mr Blunt: I understand that but I am asking about the informal effectiveness of a very large number of NGOs, particularly development NGOs, around the world in many of the trouble spots. How good are they at identifying, for example, the business in Indonesia and all these other examples about what weapons are being used by the resistance army in Uganda and all the rest, and at producing the intelligence for the media who then bring it to the world's attention that these abuses are taking place and where these arms are coming from. How effective is that informal system do you think, or is there a vast amount that is simply never seen?
Mr Parker: They are I think very effective at reporting humanitarian consequences but not at reporting what types of weaponry are being used, simply because the expertise does not exist necessarily out in the field to identify weaponry. On many occasions also people may be under fire so it is difficult to try and identify the vehicle or the type of weapon that is being used. We are trying to encourage the training of NGOs who work on the ground, when they visit the scene of a violation, to look around for evidence and pick it up and note down serial numbers and report back. We are also producing handbooks for journalists who go out to war zones and other human rights crisis zones to look at them with a critical eye, but the majority do not look at it like that.

Q104 Mr Blunt: I understand, but there is obviously a considerable amount of time to accumulate evidence. I was just asking whether you have an instinctive feel for whether the NGOs and the media are producing the evidence back to countries. My impression is that the United Kingdom is the subject of great sensitivity; one only has to look at the whole history of the existence of this Committee, the Scott inquiry, and the fact that these are matters of very significant concern in the press. I instinctively think that the United Kingdom informally, the NGOs and the media are quite good at this, it being an issue of significant public concern. Do you agree, or do you think that in a sense the informal monitoring system is missing quite a lot?
Mr Isbister: Some is done, and probably more could be done, but there is also a frustration about how information is used by government when it is produced. If you use Indonesia as an example—

Q105 Mr Blunt: That is not what I am asking. I am asking about getting this into the public domain and it being an issue of public interest and controversy. How good are the media and the NGOs, the non governmental elements, at raising public concern about this? I think you are quite good. Do you?
Mr Parker: It is too much of an ad hoc piecemeal approach to be able to say that it is good and I think what Roy was about to say was that when some of this evidence is produced it hardly ever gets you anywhere so it puts people off.

Q106 Mr Blunt: The government's principal argument against introducing a formalised system of monitoring such as the American Blue Lantern programme is that that does not really work. Do you think such a formalised system can be made to work and, if we have one, who should pay for it?
Mr Isbister: The second question is a good one! On the first one, I do not think it would ever be completely effective and I think that is a frustration as well, that the government builds a straw man of an end-use monitoring system that we are not talking about. We see it as one of the measures you would use to try and limit the amount of misuse of arms that goes on rather than stop it entirely. If you have a system in place you are likely to have more effect than if you do not, and if you look at the Blue Lantern system and the investigations they do, I think around about 25% of them per year turn up a negative response. Those cases are ones that would not have otherwise come to light, so then you can try and do something about them. Also, because you have the US taking this seriously, if you then lump in the United Kingdom introducing some kind of

similar system along with 24 other EU Member States, then you are starting to build up a far bigger stick with which to beat the misusers of arms, especially if you can turn this into a case of "If you misuse the weapons we are exporting then not only do you risk future export licences from us but from all our EU partners." And if you could do it, you should also get the US involved with this kind of process as well. So what I mean is that if the United Kingdom has a problem with end-use they pass that information on to all the other EU Member States and to the US.

Q107 Mr Blunt: I am asking you a process question really about how effective you think a formalised system would be. The government says that in the American system the evidence does not support that we should go down that route with such a formalised bureaucratic structure in the way they do it.
Mr Isbister: I would have thought it should take place because you will have an effect. You will not wipe out all problems, but you will have an effect. On the who-should-pay-for-it side of things, I cannot say I have really thought of that but I would have thought that if the state is taking responsibility for ensuring or doing its best to ensure that arms do not end up in the wrong hands, then the state should be willing to take on the costs involved with that.

Chairman: I think we will leave it there. Thank you very much indeed and thank you for your written evidence. We are always grateful and no doubt we shall meet again in the near future.

Witnesses: **Mr David Hayes,** Export Controls Compliance Manager, Rolls-Royce plc; **Mr Tim Otter,** Vice President, Business Development, Smiths Detection; **Mr David Balfour,** Director, SABRE Ballistics, and **Mrs Susan Griffiths,** Export Control Manager, MBDA UK Ltd, examined.

Q108 Chairman: Good morning. Welcome. Thank you for your written submissions which we appreciate very much. Mr Hayes, would you like to introduce your colleagues and yourself and then we will get down to business?
Mr Hayes: Thank you for the invitation, gentlemen. My colleagues are Mr David Balfour, a Director of SABRE Ballistics, an SME in the defence industry; Mr Tim Otter who is with NBC UK, the DMA's NBC Defence Interest Group and Vice President of Business Development working for Smiths Detection; Susan Griffiths, the Export Compliance Manager for MBDA particularly in relation to the restricted goods aspect of joint controls, and I am the Chair of the CBI Working Group on Export Controls, a member of the Exporting Licensing Group of the DMA and the Export Compliance Manager for Rolls-Royce.

Q109 Chairman: Thank you very much indeed. We will try and keep our questions brief and to the point and we would appreciate it if you could keep the answers similarly brief and to the point. Could I kick off with the Government's recent review of the export licence application system, the JEWEL review. How effective has that review been?
Mr Hayes: The review of the export licensing system and the improvements to the export licensing process?

Q110 Chairman: Yes.
Mr Hayes: From an industry perspective that has been quite effective particularly in respect of the FCO and the improvements that we have seen there in licence turnaround. There has been a marked improvement in licence turnaround in the FCO and they are to be congratulated.

Q111 Chairman: Have there been any other improvements apart from turnaround? I know that is pretty fundamental. Has that been the main benefit?
Mr Hayes: Yes.

Q112 Chairman: What can you tell us about why the number of appeals that companies are making against licensing decisions has increased substantially in recent years? Is this because outrageous decisions are being made by the controllers initially or is it more companies having a go?
Mr Hayes: I am not sure that it is an across the board increase in the sense that if you look at the particular countries you will see that the actual percentage in terms of appeals and refusals has remained fairly constant, it has increased slightly but it is a less marked increase. If you look at some of the actual processing, the figures for 1997 are one refusal for dual use out of 110 applications, and moving on to 2000, there were three refusals out of 194 applications, so it has gone up from 0.9 to 1.5%. By 2002 we get to 84 refusals, 67 of them military for 24 applications processed, that is 34% and it is particularly in relation to Israel. It is that sort of statistical glitch which is distorting the overall picture. Whilst there has been a small increase, I think the overall picture has been distorted by certain aspects of foreign policy.

Q113 Chairman: Industry presumably wants a high degree of predictability in the system; you need to know where you are. How close are you to feeling that you are getting that from the system now?
Mr Hayes: In some senses we are perhaps moving a little away from it. The Foreign Office had adopted a policy of having nominated contact points to which industry could refer if we were encountering difficulties with export licence applications being processed, but they are moving away from that position now and that is regrettable. Having said that, the general improvement in turnaround and their willingness to engage with industry in seminars

are to be welcomed, but the overall picture in relation to certain countries is one where the picture is becoming less rather than more certain.

Q114 Chairman: Can you give us examples of British companies that you feel have suffered unreasonably as a result of the bureaucracy of the system?
Mr Hayes: On that point I would refer to my colleague, Mr Otter, as he has got more examples than I have on that issue.
Mr Otter: There are a number of segments to the answer. Firstly, I have a member—and I am actually treading on difficult commercial ground here because there are a number of court cases that are still to be resolved—and that particular company, which was in financial difficulties anyway, it was a privately owned company, took one look at the emotional and administrative effort that was required to introduce the new export licence system and said it was not worth it. The two major shareholders have pulled their money out of the company and 50 people are now redundant as a result of that. If I was to give you a second segment, last week I was at an exhibition in Malaysia and I sat down with my German competitor—this was a direct company to company discussion—and we compared the German export licence regulations and the British export licence regulations as they would be in about a week's time and what I found is that our bureaucracy is so much greater than theirs, it is unbelievable. Their system is so much more simple to operate than ours will be.

Q115 Chairman: Is it the system that is different rather than the policy decisions?
Mr Otter: I think it is a bit of both.

Q116 Chairman: Mr Hayes, you referred to some countries where there are problems, delays, lack of predictability. You mentioned Israel as one such country. Could you name the other countries where industry has experienced particular difficulties or delays?
Mr Otter: Egypt, India, Pakistan, China.
Chairman: That is helpful. Thank you very much indeed.

Q117 Mr Davies: Mr Otter, you said something very significant, which was that the Germans have a more efficient or a lighter bureaucracy in dealing with this and although there may be no policy differences, the implication is that we have a cost handicap as a result of our system being more onerous. Is that what you are saying?
Mr Otter: Very much so.

Q118 Mr Davies: I would like to know specifically in which ways the German system differs because there may be lessons that we should be taking on board here.
Mr Otter: There is a simple one that springs to mind immediately. If I take equipment from my company to an exhibition overseas I need a temporary licence and very frequently it does not arrive in time so we are left with a plinth with no equipment on it. The Germans do not need a licence to go to an exhibition, all they need at the very most is some temporary documentation to take the equipment out of the country.

Q119 Mr Davies: That is one example. Have you any more?
Mr Otter: Some of the countries that we would not be allowed to export to they are exporting to.

Q120 Mr Davies: That is a policy difference. Any other procedural differences?
Mr Otter: The amount of forms and record keeping that you have to go through. Under the new regime our record keeping is much more onerous than theirs.

Q121 Mr Davies: Would you be willing to give us a brief written list of the salient differences between the two systems and some indication of the cost implications of that for British industry as against German competitors?
Mr Otter: Yes. The other one is the training that the new system has already brought into play. Our estimate as a company is that at a minimum just the initial training has added 2% to our overheads.

Q122 Mr Davies: When our new system was being reviewed by the Government last year did you make submissions suggesting that we adopt the German procedure?
Mr Otter: We made several suggestions over the whole period of this consultation suggesting a number of ways in which the implications of what was actually coming into force could be reduced.
Mr Hayes: I think another point that is worth adding there in terms of additional burden that is about to happen to the UK industry is Articles 8 and 9 of the new Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Amendment) Order places controls on the end use, on the transfer of software and technology by any means if that technology is for any relevant use, which includes NBC defence, and is intended for use outside the EU. The net result of that is that in future if someone in the NBC defence field wishes to talk about the technical aspects of a system with our own MoD on the basis that presumably our own MoD are not going to engage in the war within the EU, then they will need an export licence to talk to our own MoD. Conversely, the controls purport to apply to the activities of any UK person transferring data from a place outside the European Union, but if you look at the definition of transfer within the regulations, transfer applies to an activity which takes place in the UK. So it looks like we have missed the intended target and placed a burden on the industry for no gain.

Q123 Mr O'Neill: Mr Hayes, your company operates in a lot of countries. We have heard about the German example. Have you had any experience of the comparative difficulty there is in dealing with

the UK system as of next week as against any of your other operations in Canada or worldwide where you might be manufacturing and exporting?
Mr Hayes: Yes. It is difficult to comment on the practical impact of the new system because we are not actually living with it yet so a lot of that is expectation. Everyone accepts that currently probably the most burdensome export control system in the world is that of the United States and a US attorney colleague did make the comment that at least now the ITAR would not be the worst system. That was an American view, not mine.

Q124 Mr O'Neill: Small consolation!
Mr Otter: We have offices in the United States and my British colleagues in the United States are saying, now they have had the training, that the US regulations are a doddle compared to the UK regulations.

Q125 Mr Evans: Mr Otter, you mentioned that Germany exports to certain countries that we do not. What are those countries?
Mr Otter: Certainly Egypt, Israel and the French and it seems the Germans have a different approach to the way they classify—and I am specifically talking here about my own company's detection equipment—the equipment. If it is green it is military so it goes on the military list and it gets military licences and all the rest of it. If it is blue it is for civil defence, it is identical but it is blue, not requiring a licence.

Q126 Mr Evans: On the red tape that you talked about, which obviously generates additional expense for British companies, giving a competitive advantage to Germany and perhaps some other countries as well, are you able at any stage to work out exactly what that cost is to British industry? Are we losing any orders because of the competitive advantage to other countries?
Mr Otter: I think we have really got to try and implement the new system first to get a definite answer to that, but already, as I indicated earlier, just the training activity up to now has added 2% to our overheads, which is a huge amount and we strive to shave out 0.1 of a per cent against our overheads and to suddenly have 2% lumped in is considerable. We do not know how much activity we are going to have to be involved in in relation to the record keeping for instance. However, suffice it to say, my extremely well mannered and very well brought up lady secretary was heard to curse as fluently as I can when I came back from a trip to Malaysia, the Czech Republic and Slovakia last Friday and said, "Here are the visit reports. This is what you are going to have to do to comply with the recording requirements". There are something like 57 meeting reports that have now got to be entered into the system, someone has got to manage that system and someone has got to look at that database to make certain that I am complying with the various licences that are in place. It would be very difficult to quantify immediately, but my guess is we are already at a serious competitive disadvantage.

Q127 Mr Blunt: Two years ago you gave evidence to the Committee and you said that "For the most part companies now appear to be much more relaxed about the practicality of complying with the new regulations, although on the roadshow we did occasionally come across some who views differed from this generally positive line (including one company at the Exeter briefing who asked: 'Does the DTI realise the complete paralysis of all commercial activity here in the UK that will result from the imposition of these draconian controls by the British Government's thought police?')" You then said such views were in the minority. I get the sense from the evidence you are giving to us now, having had to come to grips with the detail that you are now going to have to implement in ten days' time, that that company would now represent the majority.
Mr Otter: I think somebody once said a week is a long time in politics. Two years is an eternity!

Q128 Mr Blunt: You had a number of concerns when you last came before us. Which of your concerns have been allayed and how much worse is the problem than you actually anticipated it would be a year ago? You have given us evidence that a 2% overhead is an extremely serious competitive disadvantage as is the unknown future burden of record keeping and all the rest. If we now have the worst system and a more bureaucratic system than the United States this would appear to be something of a disaster for an extremely important United Kingdom industry, would it not?
Mr Otter: It will be. The biggest shock to us, and it only really came to light in January when we held an NBC UK meeting and we invited the DTI to come along, the implementation team briefed us and we had done quite a lot of homework, is that Article 8.1 does now require us, if we do not have a contract in place, if we have a new technology, to acquire a licence from the DTI to talk to our own Ministry of Defence. I think that was the biggest single body shock. There are lots more that have come out of the woodwork as well.

Q129 Mr Blunt: You have identified the absolute absurdity of this if you follow the rules appropriately and presumably the MoD or the DTI will then say that is obviously a manifest absurdity and address it, I assume that would be the reaction of the Government. What I want to understand is just what the scale of the competitive disadvantage is to an industry that employs possibly hundreds of thousands of people in the United Kingdom that we are now imposing on them from 1 May?
Mr Hayes: I think you can divide the answer to that into two parts. Across the defence industry generally the impact is one of a need for training and most of industry has opted for a combination of computer-based training and classroom training, the classroom training probably lasting for one full day and for large numbers of employees. We thought at 1 November when we started to design the training we were designing against a known specification that the Government had provided us in the form of the legislation, but that is far from being the case, the

goalposts are moving constantly. The DTI is almost at individual meetings taking different interpretive lines on the new legislation. We now think we will need to put large numbers of employees through possibly up to five days of training so that they understand their obligations under this new legislation. That is across the general run of the defence industry. If you then move into the areas subject to more particular controls such as the restricted goods and MBDA, on the trade controls or into the NBC defence world of Mr Otter then the controls are all the more rigorous, there are more absurdities along the lines of needing a licence to talk to our own Government and the need is consequently greater in those areas. So there is that separation, but the burden is greater than we anticipated across the board because of the vagueness and the wavering interpretation.

Mr Otter: If you look at the list that Brinley (Salzmann of the DMA) has provided for the number of licence applications, it pans out to about 9,000. We reckon if we apply, just on my own company, the licensing regulations as they are written and with absolutely no deviation from that we will need in excess of 100,000 licences. The way that we have tried to overcome this is to engage with licence unit 3 and Mr David Whitehouse runs that and he has been extraordinarily helpful in trying to find a way through, but maybe we have reduced it from well in excess of 100,000 to about 90,000-odd licences and those are just figures I pluck from the air, it is of that order of magnitude. What we are actually saying is that one of the mechanisms that we thought we were going to be able to apply was to do a letter licence at the early stage of business negotiations to allow us to transfer information and technology backed up by the 680 application, but unfortunately close reading of that means you still need an individual 680 for each of the products, each of the countries and each of the customers in the country, so you still have the same number of pieces of paper involved. We just cannot seem to get that number down to a manageable number.

Q130 Mr Blunt: I am afraid I have not had five days training so I do not confess to understand the system you are trying to operate. What views do you have on how effective this new system will be in helping to curb undesirable trade in military equipment?

Mr Hayes: I would emphasise the attempt to impose controls on software which would appear to be defeated by the definition of transfer in terms of its extraterritoriality. It is also defeated by the definition of software because software is designed as being fixed in a tangible medium, therefore whatever you transfer intangibly by definition is not software. Article 11 of the Order actually introduces exemptions, "for nothing in Article 3 or 4 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the United Kingdom on trials". There is a similar provision for vessels. I can assume what the intent is, it is to allow aircraft to depart, to fly out of the territorial aerospace and to come back, but that is not what it says. There is not even a restriction on the parties to the transaction. Therefore, the trade controls, in theory, can be defeated by a broker who brings platforms, whole aircraft, whole vessels into the UK and they are subject to trade controls and then purports to export the same vehicles or vessels for trial temporarily. There is no definition of temporarily. There is no restriction on who the trials can be done by. Industry will, as legitimate industry does, play by the rules, but the aim of the legislation was to catch those whose intent is not to play by the rules.

Q131 Mr Blunt: You anticipate that from 1 May and already from the training you have had to go through our defence industry will be carrying a significantly competitive disadvantage compared with similar nations.

Mr Hayes: I would emphatically agree with that, yes.

Q132 Mr George: I presume the DMA is collating all of the evidence for transmission to central Government. Has it sent it yet or is it going to send it?

Mr Hayes: We will be sending it.

Q133 Mr George: May I ask if perhaps a copy of that could be sent to us because we do not want to wait until next year before action is taken if it is a twentieth as bad as he has been talking about, we should be reviewing it very quickly? Are you able to give us any examples of where the British Government's interpretation of the EU Code of Conduct and of embargoes has been stricter or more relaxed than that of other EU Member States? You have touched upon that. Have you anything further to add?

Mr Otter: It is difficult to say whether it is the interpretation of embargoes or whether it is policy, but it certainly also applies to the issue of people undercutting. I heard the NGOs talking about undercutting earlier on. I have member companies who have had licences for equipments in India and Pakistan turned down and the French have taken that business virtually by default and in some cases the length of time in granting the licence required meant that they lost that business. I do not know whether it is an interpretation of the EU embargoes or the EU policy or whether it is the British interpretation of that. There is a similar one with Belgium exporting to Israel. I used the example of what is licensable and what is not earlier on. I think virtually the whole of the EU is more liberal in its interpretation than the UK is. My own company has suffered as a result of refusals to Egypt and Israel being picked up by French, Finnish and German companies.

Q134 Mr George: So these are not hypothetical stories we keep being told about.

Mr Otter: These are real ones and they hurt.

Q135 Mr George: Has the DMA been collating information of this kind? Very often those who are not quite as obsessed about arms exports as others

and with the deficiencies of the system would say, "Oh, well, the French will always pick up the contract if we do not take it," that is a line that many people are obliged to argue. There is sufficient evidence to show that the undercutting is serious, which means that our system is being enforced more seriously and others should be catching up with us as opposed to ourselves dropping down to their level.
Mr Otter: Some of these only came to light yesterday because I actually chaired the meeting of our association yesterday.

Q136 Mr George: It would be immensely helpful to receive any evidence there might be. Can you tell us more about how different countries interpret the Code of Conduct when granting or denying licence applications? You have touched upon it. If there is more evidence that would be quite helpful to us.
Mr Otter: Sure.

Q137 Mr George: What amendments to the EU Code of Conduct would companies like to see as a result of the proposed review due to take place in 2005?
Mr Otter: Speaking purely for the NBC area and the defence industry against weapons of mass destruction, I would like the definition that includes detection and identification, equipment and handling equipment of weapons of mass destruction to be reviewed because you cannot defend against a weapon of mass destruction if you do not have the equipment that allows you to handle it or detect and identify it. Those are serious impositions on industry. The DTI are perfectly open to the fact that my own company, Smiths Detection, has been hit harder than any other company as a result of this.

Q138 Mr George: Why should that be the case? Yours is a purely defensive system, is it not?
Mr Otter: Yes, and we do detection identification equipment.

Q139 Mr George: Would there be similar cases in other areas of the DMA of changes that you would like to see that might be beneficial, Mr Hayes?
Mr Hayes: Overall I think the Code of Conduct works fairly well. We have discussed the differences in interpretation. I think anything that could be done to increase the standardisation of that interpretation would be a benefit and may lead to the achievement of perhaps a slightly more level playing field.

Q140 Mr George: Do you have any concerns about the new entrants coming in? Are their standards as lax as some people might admit? Will it be to your advantage if companies who fall outside of these controls will now be nominally inside? Will that be an advantage to British companies?
Mr Hayes: In terms of my own company, I do not think it will make a huge difference because we have no direct competitors in the accession countries anyway. In terms of broader industry, given that military goods are licensable between EU Member States anyway and there is no freedom of movement, I do not think the impact will be that material on defence goods. It will probably have more of an impact in the dual use sector where there will be freedom of movement to the accession countries.

Q141 Chairman: Are you aware of any examples where a competitor in the EU has been denied a licence but the British company has been granted one? We have talked about undercutting as being a one-way show. Is that the case? Do you know of any examples?
Mr Otter: I cannot think of one, there may be some, but generally speaking it takes so long for us to get a licence once an opportunity like that is identified that the opportunity is gone.
Mr Hayes: I am not sure we have any.

Q142 Mr Evans: How long does it take to get a licence?
Mr Otter: The worst case is two and a half years.

Q143 Mr Evans: Is there such a thing as an average?
Mr Otter: About six to eight weeks.

Q144 Mr Evans: Is that longer than our European Union neighbours?
Mr Otter: Much.

Q145 Mr Evans: What is theirs?
Mr Otter: Typically the Germans will do one at the turnaround of a phone call.

Q146 Mr Evans: Let us go on to the easier subject of China! We have heard some of the interpretations of the European Union. As you know, since June 1989 and with Tiananmen Square we have had the arms embargo except that they did not define the scope of it. It may be that we have defined it more broadly and more strictly than our European Union neighbours. Have you any examples of where we are not allowed to export certain items to China but our European Union competitors are?
Mr Otter: Specifically the Chinese have two big programmes where detection equipment for weapons of mass destruction is going to be required. The first is the clean-up of some 1.5 million munitions left behind by the Japanese at the end of World War II which were filled with a chemical warfare agent and the Japanese have got to clear that up. The second one is the Beijing Olympics where the thought of a weapon of mass destruction being used against a target like that is mind numbing, but it is a reality now. I gave photographic evidence to the Government some three or four years ago of French equipment being used by Chinese researchers and officers, whereas we were refused a licence to loan equipment for trials.

Q147 Mr Evans: You wanted to export certain items to the Beijing Olympics to help the detection but you have been refused.
Mr Otter: That specific example was to do with the demilitarisation of one and a quarter million old munitions with a chemical warfare agent fill. The

Beijing Olympics is a subject for discussion at the moment, but at the moment we cannot get 680s to allow us to go and talk to the Chinese.

Q148 Mr Evans: But you are aware that other countries are talking to them?
Mr Otter: I know the French and the Germans are there. I have shown photographic evidence of the French being there and lending their equipment.

Q149 Mr Evans: When you show them photographic evidence of this what do they say?
Mr Otter: One of the guys cynically said, "Could you get us a copy of the invoice?" They just said "What can we do?".

Q150 Mr Evans: Are there any other examples, Mr Hayes, which you are aware of?
Mr Hayes: No.

Q151 Mr Evans: Are you being encouraged to export to China in any way, shape or form?
Mr Otter: On the so-called China DeMil Programme, we are working very closely with DESO and the FCO in trying to help the Chinese deal with this situation. The problem still remains that to export into China we have got to go through the Japanese organisation that is going to be dealing with the munitions, so in fact what you have got to do is convince two governments that that is the equipment that should be used. It involves trips to Japan and to China rather than just to China. DESO are helping us a lot. We have got 680 clearances, but whether we will get the licences is another issue.

Q152 Mr Evans: Is it easier now to get the 680s?
Mr Otter: It was two years work to get the 680s through and even then we had to give certain guarantees that the equipment would be dramatically modified to prevent use in other circumstances.
Mr Evans: There again it may be useful if you could write to us with examples of the China differences because, as you know, the Foreign Secretary gave evidence to us not so long ago about the constant review that is going on and the review is going one-way, which is to relax rather than to restrain.

Q153 Mr Battle: Does the British Government's approach to the export of components for "incorporation"—and I think there were additional factors put in by the Foreign Secretary in July 2002—actually meet British industry's needs?
Mr Hayes: I think the Foreign Secretary's comments and the published policy on incorporation clarified the issue and I think there is a certain amount of misinterpretation occurring in relation to the export of components. By that I mean there is lots of exporting of components within the manufacturing process whereby a UK company might export components to a company overseas and that is simply for a manufacturing process to be carried out overseas and the components to be returned to the UK. It is still classed as a permanent export because the material that is returned is materially different from that which was exported so it does not show up as a temporary export, it shows up as a permanent export, but looked at from a pragmatic sense it was in fact a temporary export in the process of manufacturing a product.

Q154 Mr Evans: I am really trying to look at it from your angle because there is a lot of concern about the effects of the UK's ability to control final destinations. From the restructuring of your industry brought about by developments and the increasing use of "offset", for example, what kind of changes in the system would you like to see?
Mr Hayes: From the point of view of a multi-national company, something which would make life a lot easier is if we could share goods and technology with companies within our own supply chain under open licensing systems. We can do that in the bulk of the defence industry but it seems to be being ruled out for particular areas such as restricted goods and NBC defence. So again it is one of those issues which affects certain sectors of the industry more than others.

Q155 Mr Evans: I may be wrong, but the advice I received was that perhaps the only recent change to the export licences system deals specifically with production overseas by the introduction of a tick box on a licence application asking if the equipment for export is to be used in production facilities. Is industry generally content with what the Government is planning on approaching the issue of licence production overseas or is it too lax?
Mr Hayes: No, I do not think it is because licence production overseas necessarily involves the export of technology which is itself controlled quite separately. We will need a licence in order to export the technology, to facilitate the technology overseas. The fact that it was for production overseas would be considered in the licence application so it is already captured in the process. I think it is a point worth making and I know that I will be corrected if I am wrong here, but the issue of Heckler & Koch weapons was raised earlier. In actual fact I understand that the commitment with the Turkish company was entered into by Heckler & Koch prior to that company being owned by BAE Systems, so it was not British at the time that commitment was entered into.

Q156 Chairman: When it comes to arms export control policy end use is all that matters really, it is about where is this kit going, who is using it, for what purpose, in a sense that is the ultimate piece of information that really we need to know before licensing an application and presumably to check afterwards that the information on the licence application is correct. Do you have any suggestions about how end-use monitoring could be made more effective or perhaps equally effective with fewer burdens? What are your views about that fundamental issue? End use is all that matters when it comes to the policy presumably.

Mr Hayes: I would agree with the comments Mr Straw made in the previous session, that the UK Government does already carry out most of the activities of Blue Lantern, we just do not apply a label to it. End use varies across the industry. In some senses it is easier for some companies than others to determine what is a suspicious order and what is not. If you only deal with large international companies then you know your customer base and it is relatively easy to judge what you are doing. In the aerospace industry you know who operates what aircraft in what Air Force or what Navy and an order from someone who did not operate a particular aircraft for a part for that aircraft would automatically look odd. In other industries it is not quite so easy.

Q157 Chairman: Would you have any objection to the Government publishing information about end users of equipment that has been licensed?
Mr Otter: I think I would and the reason I would object to it would be a counter-terrorist application, although I think I would have had a different opinion prior to the Twin Towers in New York. Since then I think I have changed my view and I know a lot of my members have. If you are dealing with counter-terrorism and you are dealing with protection systems against a weapon of mass destruction what you are actually talking about is if a target is protected then that place ceases to be a target. If it has got detection equipment, filtration equipment then generally speaking you can manage the incident. If it has not then that place becomes a target. So if you are telling people where the equipment is and where it is not you are actually doing the target selection for the terrorist.

Q158 Chairman: So it is not a question of commercial confidentiality, it is about preventing that information from terrorists, is that the concern?
Mr Otter: I think it may also be the fact that there is commercial confidentiality as well.

Q159 Chairman: I thought it might be.
Mr Otter: From a purely counter-terrorist point of view that would be the line I would take.

Q160 Chairman: Would there be a problem if, for example, in the annual reports the Government were to identify end users as private individuals, the government, the police, whatever?
Mr Otter: Under the new system the licence will pick that up anyway.

Q161 Chairman: So it would not be a problem?
Mr Otter: Under the new system certainly in our field the licence would pick that up anyway because you would have to specify the end user.

Q162 Chairman: But all the information that you supply to secure a licence application is not published.
Mr Otter: I accept that.

Q163 Chairman: I come back to the point that in arms export control policy end use is everything, it is the be all and end all of the exercise otherwise it is futile.
Mr Otter: I think there would be a lot of countries who would be really rather upset if it was known what their security measures were.
Mr Balfour: May I cite an example? We have a project for a police force that will have to cope with the issues of an Olympic Games in the future and certainly we have secrecy clauses and even though it is back a little while, it comes back to their concerns about publicity, we have no problem with telling our Government but we have been asked not to reveal that as public knowledge.

Q164 Chairman: A general category like government or a private individual or police, this is not drawing attention to the problems of protecting the Beijing Olympics or whatever, would not a general category description of that kind be useful? At the moment it could be argued that because this is not in the public domain and because end use is all that matters our system is not as transparent as perhaps some other countries.
Mr Hayes: I think it may be of limited ability for the reasons that I referred to earlier. There is a growing tendency now in global manufacturing to go to low cost suppliers and if we export a casting that is part of a military system to a low cost supplier to carry out some work and they carry out the work and it comes back, that would be shown in the statistics as a permanent export of a military component to that country when the reality is something quite different. So it may actually distort rather than improve the picture.

Q165 Chairman: I certainly understand issues of commercial confidentiality. I do not know exactly where that bites but I appreciate the problem. I appreciate the problem that you do not want to send messages to people who should not receive them, but there is a particularly vulnerable target, I appreciate that. I come back to the point that the system is supposed to be about end use and it is supposed to be as transparent a system as is reasonable. Is there more information you think could be published that would give people information about end use without putting at risk the concerns that you have raised?
Mr Otter: Let me give you what I think is the better answer to the question you asked before. On a number of instances you get asked to supply small numbers of equipment for technical or operational trials. If that licence then said it is being released to the government in that country and your competitors, who you have perhaps outdone and got the order ahead of, then see that you are active in that country, they will then target that country or that organisation. When you have got the final contract, yes, great, you could probably publicise it, but if it is at the early trial stage and the release of equipment for trials and operational tests, I think there will be issues there.

Q166 Chairman: Mr Hayes, you referred to the Government's current policy on end-use monitoring. We have had some quite interesting discussions with Government on what this policy is and we have had a certain shift in emphasis over the years in the sense we are told there is more now than there used to be. Your comment was that it seemed to you a good system and you compared it to the Blue Lantern system in the States. What do you think the Government should do in relation to end-use monitoring?

Mr Hayes: Some of it they obviously do not disclose to exporters for obvious reasons.

Q167 Chairman: You said you thought the system was working well.

Mr Hayes: We do know from records that they use diplomatic staff in posts to check on end-use monitoring, they do check on particular end users in certain destinations, they carry out physical checks on addresses should they deem it necessary before licences are issued. That is just the activity we know they undertake.

Chairman: That is helpful. Do any of my colleagues have any further questions? If not, may I thank you particularly for your presence this morning; it has been extremely helpful to us and also for your written submissions and your on-going dialogue with this Committee. Thank you very much indeed.

Written evidence

Appendix 1: Memorandum from the Ministry of Defence

DEFENCE EXPORT SERVICES

1. The Committee has requested a Memorandum on the allegations in the *Guardian* newspaper of 13 June alleging bribery by the Defence Export Services Organisation of MoD. These are very grave allegations which are totally without foundation. The MoD recognises that the *Guardian* is opposed to Government policy on defence exports but regards it as irresponsible that it should conduct its campaign in this way.

2. The allegations centre on a paragraph in the MoD Contracts Manual published on the internet which required MoD contracts officers to refer to DESO all requests for payments of special commissions in Government-to-Government transactions. The *Guardian* assumes that special commissions equate to bribes, and the allegations of bribery rest in large part upon this false equation.

3. The procedure referred to in the Contracts Manual is in fact now obsolete. It dated from a time when the MoD was engaged directly in production and/or selling of defence items. This has not been the case since the privatisation of the Royal Ordnance Factories in 1987 and IMS Ltd, a Government-owned company, ceased trading in 1991 (apart from surplus equipment, some of which is disposed of directly).

4. While the procedure was in force, reference to DESO was required because this was the organisation in MoD with expertise in defence equipment sales. DESO staff dealing with these matters were instructed to observe the following explicit and careful principles:

(a) Public money should not be used for illegal or improper purposes;

(b) Officials should not engage in, or encourage, illegal or improper actions whether in their relations with UK or overseas firms;

(c) Direct employment of agents should be avoided so far as possible. If agents had to be employed then they should be reputable and the fee should not be excessive in relation to the lawful and proper work involved.

This instruction was amended when MoD ceased to be engaged directly in production or sale of new defence items. The Contracts Manual should have been amended at the same time, but in error it was not.

5. The *Guardian* has irresponsibly suggested, without any evidence or other reasonable cause, that this procedure was designed to facilitate payment of bribes. On the contrary, it can be seen that the procedure's purpose was to ensure legality and propriety in the handling of Government-to-Government contracts at that time. The *Guardian* also fails to mention that the same Contracts Manual, a few paragraphs on, required contracts officers to obtain legal advice in the case of any "unusual terms or conditions".

6. The Committee has asked particularly for answers to the following questions:

What is meant by the term "special commission", and what distinguishes such a commission from a bribe?

The term "special commission" seems to have been used inter-changeably in the past with the term "commission" to describe payments made to agents for services in support of exports overseas. A commission is a legitimate payment for such services; a bribe is a payment made in order to corruptly influence or obtain a decision.

What is the purpose of such commissions?

Examples of circumstances in which such commissions are paid.

For the reasons described above, MoD no longer employs agents nor pays commissions in its Government-to-Government defence export programmes.

How the payment of such commissions and DESO's activities more generally have been affected by the coming into force of Part 12 of the Anti-Terrorism, Crime and Security Act.

The Corruption Act of 1906 applied to acts committed in the UK. This position changed with the implementation of the Anti-Terrorism Crime and Security Act 2001 that provided extraterritorial reach in respect of acts of bribery by UK citizens overseas. It has, however, been the position for many years that, even prior to the introduction of the power in the 2001 Act, UK civil servants were already subject to extra territorial jurisdiction for criminal offences if all the elements of the offence were committed overseas. Section 31, sub-section (1) of the Criminal Justice Act of 1948 provides that where any British subject employed by HMG in the UK, when in a foreign country and acting in the course of his employment, commits an offence which if committed in England would be punishable on indictment, then that individual shall be guilty of an offence and subject to the same punishment as if that offence had been committed in England. The implication in the *Guardian* that the Government resisted changes to the law in order to enable official corruption to continue is thus totally false.

Whether DESO's advice on special commissions takes into account the likelihood of a licence being granted by the Government for the exports to which the commission is related.

As described above, DESO no longer provides advice on special commissions.

What the status is of document MCM 16.1, published on the Asset Management section of the MoD's website.

This document has now been amended to omit paragraph 19.

7. The *Guardian* article also quotes a number of statements attributed to Sir Donald Stokes in papers deposited in government files in the Public Records Office. These papers go back to 1965 when Sir Donald was conducting an enquiry into Government support for defence exports. Sir Donald was an industrialist, not a Government official nor was he representing Government views. The files provide no evidence for the *Guardian*'s allegation that bribery was subsequently adopted as the *modus operandi* of the then Defence Sales Organisation. Indeed the same run of files from the PRO shows that the promotional budget eventually proposed for DESO includes provision only for legitimate promotional activities; visits overseas by MoD staff, sponsored visits by overseas customers to the UK, hospitality and entertainment, trials and demonstrations of equipment, publicity and assistance towards training charges for overseas personnel attending courses in the UK.

8. The *Guardian* also refers to the appearance of a former Head of Defence Sales, Sir Lester Suffield, at an Old Bailey corruption trial in 1977 when he was asked about bribes paid in Iran to secure the sale of Chieftain tanks. We have attempted to obtain the transcript of this trial to check the details, but it is no longer available. But a similar allegation in the *New Statesman* of October 1980 was refuted by MoD at the time. And it is inherently unlikely that an official could admit to authorising bribery in open court and escape prosecution. The trial involved Colonel Randel, a former member of the Defence Sales Organisation, who was convicted of accepting bribes, but there was no question of any MoD involvement in Randel's criminal activity.

9. Finally, the *Guardian* refers to the appointment of the current Head of Defence Export Services, Mr Alan Garwood, and to a supposedly secret cash top up by "the arms firms themselves". Mr Alan Garwood, has been seconded from industry and receives a Civil Service salary within the Deputy Secretary pay band. Industry then pays an additional element which brings the salary to the level which the individual would otherwise receive in industry. This figure is agreed by the National Defence Industries Council. This approach was endorsed by the HCDC when it considered the arrangements for the employment of the previous HDES, Mr Tony Edwards (HCDC Second Report, Session 1998–99, The Appointment of the New Head of Defence Export Services) and there is, therefore, nothing "secret" about the present arrangements for Mr Garwood.

July 2003

Appendix 2: Memorandum from the Foreign and Commonwealth Office

I am writing about two requests for information from the Committee which the Government has been considering, and to follow up one issue from the Foreign Secretary's oral evidence session in February this year.

Firstly, the Government has decided not to provide further information about its economic analysis of the Tanzania air traffic control (ATC) licence application.

The Committee's letter of 27 March 2002 requested a summary of the Government's internal analysis of this application. The Government has looked very carefully at this issue. It has concluded that it would not be possible to provide the Committee with a meaningful and balanced summary of the analysis that protected the commercial confidence of other parties, and which did not at the same time risk harming the frankness and candour of internal discussion. Such information is exempt from disclosure under Exemptions 2 and 13 of the Code of Practice on Access to Government Information. As the Foreign Secretary explained in his letter to the Committee of 2 May this year, the Government considers that the Code of Practice does apply to the provision of information to Select Committees. I apologise for the lengthy delay in responding to the Committee's request.

Secondly, it has also been decided not to provide the Committee with the Criterion 8 paper requested in the Committee's letter of 18 November 2002. Again, to release this paper would risk harming the frankness and candour of internal discussion and, as such, it is exempt from disclosure under exemption 2 of the Code of Practice on Access to Government Information.

The Secretary of State for Trade and Industry's statement on 19 September 2002 (Official Report 19 September 2002 Col 309–311W) has already set out the considerations the Government will take into account when assessing the impact of a strategic export licence application on the proposed recipient country's sustainable development.

At the Foreign Secretary's oral evidence session, David Chidgey MP alleged that UK-produced oversized handcuffs were being exported to the US, where they were then transformed into leg-irons. He suggested that this showed UK export controls were failing. We have looked at the evidence he recently provided.

However, on the evidence provided, we are unable to confirm that UK-manufactured handcuffs are being used as a basis for leg-irons. Having checked our licensing records, we can confirm that, since we introduced the ban on the export of torture equipment, no licence has been issued for the export of oversized handcuffs from Hiatts to the United States. We therefore do not accept that there has been a failure of the UK export control legislation.

We carefully consider all export licences for oversized handcuffs. We would not issue a licence where there is a risk the goods will be used in contravention of the Consolidated Criteria or diverted under undesirable conditions. We have passed Mr Chidgey's evidence to HM Customs and Excise for them to investigate and have written to him informing him of this.

August 2003

Appendix 3: Memorandum from the Society of British Aerospace Companies

Thank you for the opportunity to make comments on the secondary legislation of the Export Control Act on behalf of the UK Aerospace Industry. We continue to support the principle of this legislation and welcome the introduction of a modernised export control system. We have not, of course, yet seen the final version of the Orders and these comments are based on earlier drafts, as well as extensive discussions with the DTI.

The SBAC has over 180 members, many of them small and medium-sized companies. Most will be affected in some degree by the new legislation. In our original submission to the Committee in March 2003, we drew attention *inter alia* to the need for clarity in the legislation, the need to reach a balance between effective controls and a successful export industry, avoidance of additional delay in the process, the impact of extending controls to intangible transfers of technology, the increased training requirement and the consequences of the legislation for the Farnborough International Airshow.

Regulation

On the basis of the draft guidance issued by DTI, industry is now more assured that the regulatory burden on companies while likely to increase, will not be too onerous. The DTI's intention to rely on Open General Licences to cover the majority of intangible and trade transactions is welcome, though industry will still be obliged to keep records in support of compliance. The DTI have stated that they intend to rely as far as possible on records kept for the company's own purposes (the "functional approach"). There is likely to be an initial period of uncertainty, until the exact nature of the original documentation necessary to secure compliance is determined. In this respect, the DTI's awareness seminars and its general communication to industry on the regulations will be crucial during the implementation period.

A particular area of concern for SBAC members is the new controls on Restricted Goods. These apply to Long Range Missiles with a range of more than 300 km and components. We have been informed that they will also apply to UAVs. This is extremely onerous, with extraterritorial provisions and application to ancillary activities such as publicity and transportation. This seems certain to affect collaborative programmes with close allies.

Training

This remains as our primary area of concern and it is difficult to see that the training requirement can be met by industry and the resources available in the DTI within the proposed implementation period of six months. We accept that the DTI will make every effort to ensure that companies are aware of the new regulations and their requirements. However, we draw a clear distinction between awareness and training. It must be understood that, whereas in the past the licensing requirement for physical exports could be met by a handful of specialists, the new controls potentially apply to a wide range of industry personnel who have never been affected by these issues before, including engineers and designers, commercial staff and marketing departments, and, in some cases, offshore subsidiaries.

The introduction of the new Export Control system therefore contains a one-off requirement to train a large number of people in their new responsibilities under the Act. In the future this can certainly be accomplished through good internal processes, standard induction and training schemes as well as regular refresher courses. In the short term, we have serious concerns about the level of preparedness in the industry at large that can be expected by May 2004. Conscious of our duty of care to employees exposed potentially to individual liability, industry does not underestimate the size and complexity of the formal training requirement that must be undertaken. We do not yet have visibility of the training packages that will be available from DTI and we are concerned that there are a limited number of specialists in this field to deliver the quality and volume of training required.

Our larger companies face the major problems. We are not convinced that the initial training requirement will be confined even to project engineers, but will in practice embrace a much wider population including foreign employees. For companies such as QinetiQ, Rolls-Royce and Thales, this means that between 5,000 and 10,000 people need training, implying a training commitment for each company in excess of six months.

BAE Systems has put their requirement at over 25,000 people, ie half their UK employees, requiring basic familiarisation alone. To train this number of people adequately will require at least 12 months, especially since it has not been possible to anticipate the final version of the regulations or the commencement date.

Industry will be working with DTI to ensure that training packages and assistance in training will be available to companies affected by the legislation. We have been assured that the DTI will be preparing more specific training plans, estimates of numbers to be trained and logistics schedules so that we can explore this issue together more objectively.

Implementation

We note the DTI's assurance that companies should not expect problems in transferring existing licences to be compliant by May 2004. However, it will be necessary for companies to apply soon for additional licences implying that they recognise the need for action and that the DTI will be able to process these applications. We will make every effort to advertise this and other aspects of the legislation to our members. It is vital, however, that the DTI has the capacity to process these applications. There will be additional costs associated with training and implementation. It is equally vital that the DTI's Compliance Unit has the resources to discuss and agree with companies an acceptable compliance regime based on the company's own records. We will continue to monitor the impact especially on small suppliers of the increased compliance requirement.

Farnborough Air Show

The DTI has sought to assure the SBAC that the impact of the new legislation on trade shows and exhibitions will be minimal. However, the global air-show circuit is increasingly competitive and the SBAC fears that the new legislation could still create a disincentive to sign major contracts in the UK and lessen the commercial attractiveness of Farnborough as a global business event. Nevertheless, we accept the DTI's view that the bulk of transactions or "networking" conducted at Exhibitions, such as Farnborough, will not be caught by the new legislation. We will work to ensure that, for example, registration packs will contain the necessary information for exhibitors and requirements for visitors to abide by UK law. We would certainly welcome the presence of a DTI "mobile licensing unit" during the Farnborough event to aid in compliance.

Working Together During the Implementation

Industry will seek to work closely with DTI during the implementation period. The SBAC and other trade associations are committed to assist in monitoring the practical aspects of implementation and the accumulation of case law following compliance visits. Industry is also prepared to work with DTI at a senior level to oversee the implementation phase. In particular, we would hope to develop a common understanding with the DTI of all potential interactions between the Act and broader industrial development issues, for example the implications for UAV development and wider international collaboration.

October 2003

Appendix 4: Memorandum from the Defence Manufacturers Association

We would like to thank the Committee for its letter of 22 October, seeking addition comments from witnesses on the Government's proposals for the Orders under the Export Control Act 2002. In your letter you stated that:

> *"In the light of the evidence that you submitted on the draft secondary legislation, the Committee would welcome your comments on the Government's response and on the secondary legislation itself. Have your concerns been met, in part or in full?"*

Despite that fact that most of the documents relating to the new regulations have still not been uploaded onto the DTI's website (as at 10.00 on Tuesday 4 November), as expected, I will still try to pass on what comments I can. What I have seen has not really been in a timescale to have allowed me to have adequate time to go through the documents properly and thoroughly, but I would like to pass on the following initial comments to the Committee on our current (limited) assessment of the new Secondary Legislation, etc.

We still have a number of concerns about the Government's proposals, as we understand them, but believe that some (or even perhaps many?) of these, as expressed in our previous submissions may have, at least in part, been met by the DTI. Given the DTI's interpretations of the new regulations, as outlined in the various supplementary guidance notes associated with the new Orders, and the scope of the new Open General Export Licences (OGELs) and the Open General Trade Control Licence (OGTCL) which the DTI is planning to issue, we now believe that much of our previously expressed concern about regulatory burden on Industry has now probably been eased, although not completely extinguished. However, only practical experience with the implementation of the new control regime will give us any truly accurate assessment of whether this is, indeed, the case.

I would like to submit the following comments, which are based around the Government's response to the Committee's Report, which I hope may be of some assistance to the Committee.

Recommendation One—Introduction: The Government states that there will be a review of the new legislation "within three years of the new controls coming into force", which means sometime before 1 May 2007. We would sincerely hope that, should clear evidence present itself to the Government before this time of any practical difficulties with the implementation of the new controls, the Government will be prepared to expedite this proposed review to seek to address any such problems that do arise.

Recommendation Three—General Considerations: For some reason the Government has failed to mention in its response to the Committee that the maximum penalty for deliberate evasion of the new regulations has been increased to up to 10 years in prison and/or an unlimited fine.

Recommendation Four—General Considerations: We consider it to have been an immensely regrettable lost opportunity that the Government did not take advantage of the chance created by the perceived need to replace the UK's existing export control legislation to undertake a "starting with a blank sheet" total "blue sky" review of how the UK undertakes export controls to identify if there might be another, better and more efficient way in which this can be done. We still believe that the Registration route is one which deserved greater consideration.

Recommendation Five—Arguments for further control: trafficking and brokering: We are a little confused by the Committee's suggestion in this recommendation: all licences are treated strictly on a case-by-case basis by the British Government, and, therefore, it is very difficult to have a system which only seeks to control deals which *"if conducted in the UK, would not be granted a licence"* [note: this same comment also goes for the wording in Recommendation 6]. We are also deeply concerned and confused by the Government's response which states that, with regard to "Restricted" Goods: *"licences will not normally be granted for any trade in these types of equipment"*—whilst this may, indeed, be true of "torture equipment" and the supply of military equipment to embargoed destinations, we seriously question whether this will also be true of long-range missiles and UAVs, and their component parts, and vast majority of trade in which is perfectly legitimate and responsible.

Recommendation Six—Arguments for further control: trafficking and brokering, We agree with the assertion of the Government in its response that the new controls should (at least in theory) catch much of the activity which everyone agrees must be controlled and curtailed . . . as well as considerable areas of perfectly legitimate commercial activity. We agree that there would be immense practical difficulties in trying to extend the extraterritorial controls which the Government is proposing to encompass other areas of technology. One of the issues which is frequently raised and which we do seriously believe needs to be addressed is that referred to on numerous occasions to argue in favour of greater extraterritoriality, which, we believe, is greatly over-simplified: this view contends that all an arms dealer has to do is get on a train or plane to Lille (or anywhere else overseas) and do the deal from there. This wholly fails to recognise that it is almost completely impossible to arrange a deal with one action—be it one phone call, one e-mail, one fax or one face-to-face meeting. Putting any deal together takes many actions, talks, discussions and negotiations with all parties involved, over a period of time. With trafficking and brokering deals at the very least a broker will have to negotiate contracts with both the supplier and the customer. Under the provisions of 4.3 of the proposed Trade Order (contained within the 30 January consultative document), the Act will catch the following:

> *"Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration—*
>
> (a) do any act; or
>
> (b) agree to do any act,
>
> *calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country."*

Thus, unless the individual involved was constantly flitting about overseas (picking up huge frequent flyer points!) to make sure that each and every single one of ALL of his actions associated with putting such a deal together (no matter how small and seemingly insignificant they might seem to be—eg arranging with the customer for a time and date on which to meet) were undertaken outside of the UK, he would still be caught. This would be impossibly inconvenient for them, and totally insupportable. There is a valid argument about British persons based permanently overseas, or who are currently based in the UK but will, as a result of the new regulations, seek to move their operations overseas, but the scenario raised by critics of such brokers merely flitting to and fro between the UK and somewhere overseas to do their business transactions is not a valid or realistic one.

We also totally support the Government's comments about jurisdictional difficulties—whilst the UK does have extraterritorial controls in some areas (eg paedophilia, drug smuggling, bribery and corruption), these are always in areas where this activity is quite clearly, and universally accepted as being, illegal and concerns total prohibitions on these activities. The exporting of defence equipment is not prohibited or illegal, but is controlled, sanctioned and licensed approved, by the relevant national Governments around the world. What proponents of extraterritoriality in export controls are urging is the adoption of a totally unprecedented arbitrary extension of the UK's jurisdictional controls. As the NGOs have stated in the past,

under UK law: *"you need a licence to get married, drive, go fishing, watch TV, compete in boxing matches, practise medicine, run a raffle, sell alcohol, busk, own a shotgun, run a bookmakers and fly"*—but for which of the above licensable activities would a British person need a relevant UK licence if they wanted to undertake these actions entirely overseas?

Recommendation Seven—Arguments for further control: trafficking and brokering: Whilst we would agree with the Committee that there probably is enough international consensus on the illicit trade in small arms, for the Government to have considered making these also "Restricted" Goods, it must again be recognised that any controls introduced will not just impact on the illicit trade, but also on legitimate trade, and, therefore, jurisdictional problems could arise in this. We fully support the Government that multi-lateral action is undoubtedly the best way to proceed in this, and that a unilateral approach is futile.

We are deeply concerned that the UK Government may not have been liaising with its overseas counterparts to get some form of undertaking from them to recognize and respect UK trade licensing decisions. In the past there have been some jurisdictional conflicts between countries over defence exports—this has arisen when a nation has sought to export technology or materiel which it has acquired from another nation to a third country. In such cases there is a binding contractual obligation on the first customer to seek permission from the original supplier before passing these technologies on to any third party. In the case of the new UK trade controls there appears to be absolutely NO contractual obligation of any kind on the Governments and suppliers in the other countries concerned to respect UK licensing decisions. Without such undertakings, UK licensing decisions will be toothless and ineffective in curbing proliferation. As a result, if an overseas company involved in the supply of long-range missiles (for instance) which employed a British person was to seek to export to another nation, and had its UK trade licence turned down, it is almost impossible to conceive that this firm will actually respect this decision, but far more likely that the British person involved will simply be side-lined and cut out of the loop with regard to this deal (possibly including dismissal from the company, if his continued employment is deemed to be too problematic), so that this deal can proceed without UK interference. Thus, the supplier will still supply the goods and the customer will still buy the goods, and nothing practical or positive to curb proliferation will have been achieved. For the new controls actually to be effective and have a practical impact on proliferation, the UK Government must seek to get other national Governments to undertake to recognize and respect its trade licensing decisions.

Recommendation Eight—Arguments for further control: trafficking and brokering: We very strongly query the tone and wording of the Government's response to the Committee. Whilst it is perfectly fair and accurate to say that trade in "torture equipment" and military materiel to embargoed destinations is: *"reprehensible in most countries and this trade could be reasonably identified in advance as that which would not generally be granted a licence in the UK",* we very seriously question whether this is, in fact, true in the case on long-range missiles, UAVs and their components. We also question why trade in such long-range missiles, UAVs and their components have been identified by the Government to be *"activities of greatest concern".* We believe that the inclusion of long-range missiles, UAVs and their components within "Restricted Goods", and the decision that the definition of these should not correlate with that of the Missile Technologies Control Regime (MTCR), which sets parameters based on range and payload, has been a decision taken at the instigation of some elements within Government. Yet, if one actually stands back and thinks about it, this inclusion is truly quite bizarre! The introduction of the T&B controls has arisen from reports of the activities of the likes of Miltech (Rwanda), Sandline (Sierra Leone), and some others, and the resultant natural pressure on HMG to be seen to be trying to do something about these illicit gun runners. We are unaware of any such notorious cases involving LRMs or UAVs or shady gun runners hanging around on street corners in Africa approaching passers by and saying "Psst . . . wanna to buy a Tomahawk Cruise Missile?" Yet the activity which is the subject of the very highest public profile and concern about the activities of illicit traffickers and brokers (ie small arms and light weapons) remains in the "controlled goods" category, whilst a sector which has no such track record (of which we are aware) gets put into the "restricted goods" category. Maybe HMG knows something that we don't! The inclusion of UAV technology is especially unfortunate as this has been clearly identified (including in the Government/Industry Aerospace Innovation Growth Team initiative) as being one of the key growth technologies for the future.

Recommendation Nine—Arguments for further control: trafficking and brokering: We have noted the concerns of the Committee, and others, with regard to the extension of the new regulations to catch various peripheral activities, such as transportation. We have also noted the Government's intentions to introduce controls affecting some of these activities in certain circumstances. This will raise another difficult matter, of course, which will be the DTI's own need to seek to bring the new controls to the attention of everyone who will be affected by them. This will be an especially difficult task given the fact that the new Trade Controls on "Restricted Goods" have an extraterritorial nature, and will apply to any "British person" (as defined by the DTI, and encompass such peripheral activities as:

— The provision of legal services (controlled and restricted goods)

— The provision of financial services (restricted goods only)

— The provision of insurance and reinsurance services (restricted goods only)

— Transportation services (restricted goods only)

— E-business portal websites (controlled and restricted goods)

— Offset (controlled and restricted goods)

— Consultancy services (controlled and restricted goods)

— General market and promotion services (restricted goods only)

— Advertising services (restricted goods only)

We can only hope and pray that the DTI has already set out a truly effective awareness raising and training strategy to address this need, and the Government's duty of care to its citizens around the World.

Recommendation Ten—Arguments for further control: Licensed production Overseas: We totally agree with the Committee's recommendation that there should be an assessment of the Secondary Legislation and its effectiveness in curbing undesirable overseas licensed production deals. In addition to the Government's own accurate comments on the potential impact of the new intangible transfer of technology controls on licensing production overseas, it should also be pointed out that the Trade Controls may also have an affect on this. To allow licensed production to take place some transfer of technology must occur, and this would be covered under the new Act, as the Government has asserted.

Recommendation Eleven—Arguments for further control: Licensed production Overseas: We understand that the Government is, indeed, seeking additional information from exporters on export licence application forms to address this.

Recommendation Twelve—Minimising the burden on business: We were very grateful that the Committee took such strong interest and note of the concerns that Industry had expressed on this, and that it sought to support these with the Government. I can confirm that, as the Government has stated, there has been continuing liaison with Industry. This liaison has been intended to assist the DTI to pilot and refine its proposals for the practical administration of the new controls, and to address any Industry concerns or confusion on how the new controls will actually operate in practice, by ensuring clarity of the Supplementary Guidance Notes. This liaison was merely concerned with the operational workability of the proposed new controls at the practical implementation level and was not, in any way whatsoever, involved in framing or advising on legislative policy.

Recommendation Nineteen—Minimising the burden on business: There has been much discussion with the DTI on the issue of the UK's licensing system, as opposed to that of other nations. For instance, under the US system, it is the nationality of the recipient of information which dictates licensing regardless of their geographical location, whilst in the UK system it is the geographical location, regardless of the nationality of the recipient. This direct dichotomy between these two systems does not necessarily bode well for smooth working between these egocentric licensing regimes.

Recommendation Twenty—Minimising the burden on business: We agree with the Committee that foreign visitors to the UK must be subject to British regulatory control. There will be very real practical difficulties for the Government in policing and enforcing the controls on foreign companies. Auditing the records of overseas companies who are affected by the UK's controls will, for one, pose a major practical difficulty. The sort of level of information which the DTI's auditors normally want to see from companies is going to encroach dangerously far too close to a definition of state-sponsored commercial espionage for the taste of many overseas firms. Clarification is needed from DTI on plans for compliance visits to overseas firms/individuals—who is going to undertake this, what are the resource implications, and will the same organisational mechanisms exist for such compliance visits as for those undertaken here in the UK? How is it proposed that the activities of UK nationals overseas will be audited? Given that individual employees may, whilst compliance officers are "checking their knowledge", inadvertently admit to having, equally inadvertently, violated the controls, why should they agree to such interviews or audits? What provisions will the DTI be making to ensure that overseas parties are offered adequate training in rating goods against UK controls (in their own language, of course)?

Recommendation Twenty-One—Minimising the burden on business: We welcome the Committee's recognition of the importance of UK trade fairs to British firms, and the potential danger that the new regulatory framework could act as a disincentive to overseas organizations to attend such events, which are crucial for the British SME community, in that they act as a cost-effective "shop window" to potential customers overseas. We can only hope that this does not prove to be the case, as a result of practical experience with the new regulations. Certainly we believe that the value and attraction of participating at events such as the Farnborough Airshow for those overseas firms involved in the production of "Restricted Goods", especially long-range missiles and UAVs, and their component parts, whose *"speculative marketing and advertising activities"* will be caught, will be hugely diminished unless they are happy to be subject to the UK's bureaucratic controls.

Recommendation Twenty-Two—Minimising the burden on business: Industry is still deeply concerned about how it is going to address the awareness raising and training issue with all staff affected by the new regulations within their companies. We cannot even begin to imagine how some other sectors who will be impacted by the new controls, and to whom export controls will all be totally new (eg Academia, Insurance and Advertising service providers) are going to begin addressing this issue. It must also be pointed out that the issue of regulatory burden does not only concern the effort involved in applying for additional licences, but also the record-keeping and compliance mechanisms associated with the new controls. Only practical

experience in the operation of the new controls, and liaison with the Compliance Unit staff who undertake the audits of companies will truly indicate how great a burden this will be for both Industry and Government.

Industry has repeatedly expressed great concern about the length of time that the Government has been intending to propose for the implementation period, during which firms will have to seek to introduce the necessary compliance mechanisms, undertake the essential staff awareness training and apply for the licences that they will need to have in place when the new regulations actually come into effect (on top of all of the extant workload which must continue as normal). We are deeply concerned as to whether all of this will actually be achievable by the stated 1 May implementation date, but the DMA and the Society of British Aerospace Companies (SBAC), in particular, have promised to work closely and constructively with the DTI, and other trade bodies, on doing the very best we possibly can to try to facilitate and achieve this. Nevertheless, this will be a very difficult target to meet.

We remember that Mr O'Neil, in particular, rigorously queried our expressed concerns on the possible level of additional bureaucratic burden resulting from the new control system, and repeatedly quoted the DTI's own figures that only some 400 new additional licences (representing an increase of only some 10% on 4,000 applications, he stated) would be needed per annum, as evidence of the extent of our exaggeration. Therefore, it is with some degree of self-justification that we note that the DTI's new Regulatory Impact Assessment now estimates that the likely number of additional new licences which will be needed per annum may be up to c.2,500 (representing a 22% increase on 11,000 applications), thus indicating that the DTI, itself, now admits that the previous figures produced, which Mr O'Neil had quoted to contradict our contentions, were out by some 625%! We can only hope that the new figures do not also prove to have been similarly significant under-estimates.

Recommendation Twenty-Three—Minimising the burden on business: Again we note the Government's assertions about the expeditious introduction of the new controls on the supply of military goods to embargoed destinations, and query how, exactly, the Government is going to undertake the necessary awareness raising and training of all those British persons around the World who may, potentially, be affected by these new regulations.

Recommendation Twenty-Six—Other considerations: We would add that US re-export concerns, under that country's "deemed export" provisions, could make it highly problematic for any Parliamentarians or Committee Members who are either foreign or dual nationals from being allowed sight of any technical information on an item of US military technology for which a licence (either export or trade) has been applied for. In such circumstances someone would have to apply for an export licence from the US Government for this technical information to be allowed to be passed on to that foreign or dual national, whoever they may be. These US controls also have a very interesting potential impact on the employment of non-UK nationals within the British Government departments (DTI, MoD, FCO, DfID, etc) who may have sight of such US-sourced technical information in support of a relevant licence application!

Recommendation Twenty-Seven—Other considerations: We fully support the Government's stance on penalties, which the Committee has also endorsed.

Recommendation Thirty-One—Other considerations: Whilst we have not yet had adequate time to peruse the new Orders thoroughly, we do note that the Government's assurances that *"The scope of the Orders has not changed"* needs to be carefully examined, as it might be slightly disingenuous. For instance, we note that, under 4.5d of the Trade Order, *"reinsurance services"* are now mentioned as being exempted from the controls on controlled goods, which means that they will be caught under the controls on restricted goods. Similarly the inclusion of long-range UAVs, and their components, alongside long-range missiles, as items on the list of restricted goods did not really raise itself in the 30th January consultative document. We will need to spend some time very carefully perusing the new Orders to identify other amendments which have been made.

We hope that the above additional comments may be of interest to the Committee.

November 2003

Appendix 5: Memorandum from Oxfam

Introduction

Oxfam is very pleased to offer its views on the Government's recent response to the QSC Report into proposals for secondary legislation under the Export Control Act.

The need for the UK to take on a leadership role

1. We fully support the Government's view that the most effective way of regulating the arms trade is through multilateral agreements. In this respect we strongly welcome the UK's work in a variety of fora, including; the European Union, the Lancaster House process, the Wassennaar arrangement, the OSCE, and through the UN system. But there is a clear weakness in agreements that are only politically-binding and

a risk that pushing for consensus will only bring a lowest common denominator result. Thus we urge the Government to be more vocal in its support for a legally binding international Arms Trade Treaty, based on existing principles of international humanitarian law.

2. Any multilateral arms export control agreements on arms transfer issues will require robust and comprehensive national implementation, monitoring and enforcement. In our view, the Export Control Act and its accompanying secondary legislation should provide such a vehicle. It is therefore extremely disappointing that the Government has chosen not to introduce full extraterritorial controls on brokers and traffickers.

The need for extra-territorial controls on trafficking and brokering

3. Oxfam believes that the Government's failure to honor its 2001 Manifesto commitment to regulate brokers and traffickers "wherever they are located" will leave open a serious loophole that will serve to perpetuate armed conflict, human rights violations and poverty around the globe. As the world's second largest arms exporting nation, the UK has an obligation to have some of the world's toughest export controls. By failing to close this loophole in its current arms export control regime, UK companies and individuals will continue to profit from the misery of others.

4. We do not accept the Government's confidence that its new proposals will stop most of the circumstances in which arms are transferred to areas of conflict or rogue states. To apply extraterritorial controls for brokering in conventional weapons only to destinations subject to arms embargos does not reflect the realities of the modern illicit arms trade. Unscrupulous arms dealers are well aware of the legislation and national controls that exist and are highly skilled at plying weaknesses in regulations, exploiting loopholes and hiding the true destination of their supplies.

5. A recent case reported in the UK press puts sharp focus to our concerns. In last month's *Sunday Times*, an investigative journalist, posing as a security officer for a Private Military Company, managed to broker an offer for the supply of Surface to Air missiles—a devastating weapon in the hands of terrorists and rogue forces—from two companies, one based in the UK, the other in Slovakia. The deal was put together from a hotel in Spain and the stated destination was highly sensitive but not subject to a formal arms embargo. The journalist made no attempt to hide his dubious credentials and had in his possession a forged "blank" End-User Certificate which was faxed to both companies and on the basis of this document the offer was made.

6. Under the Secondary Legislation, arranging the deal from overseas would clearly bypass UK controls, but in our view this is precisely the kind of brokered arms deal that the Government would wish to stop from taking place. Clearly neither the journalist nor the Slovakian company making the offer for the missiles would be covered by the legislation, but it is also possible that the UK company would also evade controls. Current exclusions relating to marketing and promotion activity could have enabled the UK company to broker the deal as long as the licensable part of the deal (ie the formal paperwork associated with obtaining an export license) was conducted outside the UK. We believe that it is fairly standard practice for a broker to have good personal contacts with the exporting government and companies in the countries from which they wish to purchase arms and conduct business in these countries on a regular basis. From now on, all the broker will have to do to evade export controls is to conduct licensable activity from his hotel or office in these countries and we predict that this is exactly what will happen in the future.

7. It should be noted that no UK broker or transportation agent has yet been prosecuted for breaches of UN arms embargoes despite several documented cases involving UK companies or citizens in recent years. The lack of an adequate licensing, enforcement, monitoring and registering arrangements has made it far too difficult for prosecution agencies to prove that a UK company or individual was knowingly involved in an embargo breaking operation.

8. Case history over recent years has shown us that brokering is done through a variety of methods, including the use of diversion routes, offshore operating offices, false or misleading paperwork, using a labyrinth of companies or exploiting the vagaries of differing national jurisdictions. Very few embargo-busting operations therefore involve a direct and obvious transaction between the licensing country and the embargoed destination.

9. By failing to introduce comprehensive controls on all brokering activity there will be ambiguities and difficulties involved in defining precisely what is legal and what is not within the export control system. As a result Oxfam believes that there will be little prospect in bringing these companies and individuals to account for their activities.

The need to address transporters

10. Oxfam also believes that the Government has failed to take account of the role that transporters play in the delivery of arms to conflict zones. In the last five years, Oxfam has reported at least 10 UK transportation companies involved in arms deliveries that have contributed to tremendous human suffering in Africa and elsewhere. Regulation of air transport is currently one of the weakest links in the arm supply chain and yet the industry often plays a critical role in the clandestine delivery of arms. It should be noted

that in January 2000 the Government named Victor Bout in Parliament as an "odious" key international arms dealer responsible for supplying arms to the world's worst conflict zones and urging greater national and international action to curb his activities. Victor Bout's pivotal role on the supply of arms is through the many transportation companies he controls. It is ironic that at the time the UK lobbied the United Arab Emirates to better regulate Bout's transportation businesses operating out of Sharja, when current controls over transporters operating in the UK have been expressly excluded from the secondary legislation. Oxfam believes that measures in place to regulate transporters are wholly ineffective and has little confidence that the new legislation will make any significant impact in curbing the activity of British transportation agents involved in the supply of arms to conflict zones.

The real costs involved

11. The Government has argued that if full extraterritorial controls were applied to brokers and transporters that undue burden would be placed on the licensing system and would be likely to criminalise legitimate business by UK defence companies overseas. In May this year, as part of the submission of the UK Working Group on Arms, we wrote that it must be "possible for the Government to frame a law which is sufficiently intelligent to strike a sensible balance between the interests of legitimate brokers and the requirement to control less scrupulous individuals".

12. For example, compare the relatively meager costs that would be needed to improve capacity within the export control regime to the operating costs for the Defence Export Services Organisation (DESO)—the main Government agency for arms export promotion—which since 1998 has cost an average of £13 million per year to run. It is also worth noting that in the last four years the US, UK and France earned more income from arms exports to Africa, Asia, the Middle East and Latin America than they provided in aid.

13. In our view, these implementation costs must also be weighed against the enormous costs that are associated with the impact of unregulated arms transfers to conflict and human rights crisis zones. These costs include the destruction of lives and livelihoods, emergency humanitarian response, international peacekeeping operations (possibly involving the use of UK troops), IDP's and refugees and post conflict reconstruction.

Review

14. Due to the serious concerns outlined above, it is clearly inadequate to wait for three years for a review of the Government's secondary legislation. We urge the Government to undertake the review within one year and utilize the opportunity to amend or modify the legislation to fully and completely control traffickers, brokers and transportation agents within the scope of UK export controls.

November 2003

Appendix 6: Memorandum from the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries. Recognising that its aims will not be achieved overnight, CAAT often focuses on those aspects of the trade which are most immediately destructive.

2. CAAT hoped that the new Export Control Act, and in particular the detailed secondary legislation under it, would address some of the greatest concerns about the trade in military equipment. At each stage in the process towards the Act and its implementation these hopes have been dashed; finally, by the Government's response to your Committees' report.

3. CAAT welcomes the opportunity to comment on its chief concerns regarding the expected secondary legislation.

Trafficking and Brokering

4. In 2001 it had appeared that the Labour government recognised that arms brokers carried on their work irrespective of national boundaries and had promised to control their activities wherever they were located. Now, to the immense disappointment of many and with potentially appalling consequences for those living in the world's trouble spots, the Government has reneged on this promise.

5. As so often seems to be the case, the Government's good intentions to restrict and control the arms trade come to nought when military companies lobby to be allowed to continue their activities without additional regulation. CAAT notes that in this case the Government has explicitly said, when rejecting your Committees' recommendation to apply controls to all trafficking and brokering, that it "would be likely to criminalise legitimate business by UK defence companies overseas carried out according to the laws of the appropriate country."

6. The Government says that it "remains convinced that the most effective way of preventing the illicit trade in small arms is through multi-lateral action". However, tough unilateral controls on the export of any kind of military equipment (not necessarily small arms) does not preclude multi-lateral action. Rather it, and especially when taken by one of the world's major exporters, begins to build a new and more restrictive consensus for restrictive export controls.

Arms Exhibition

7. CAAT is pleased that the Government has recognised that the activities taking place at trade fairs (seemingly the new euphemism for arms exhibitions) are not "in themselves special" and that Trade Control Licences will be issued. It is to be hoped, however, that any special administrative procedures put in place to deal with the expected surge in demand at the time of such exhibitions will not result in a licensing process that is in any way more permissive than usual.

Conclusions

8. The whole process over the reform of the strategic export control legislation has been educative. Hopes after the arms-to-Iraq scandal that the UK government (of whatever complexion) might really address the issue have been dealt blow after blow. Huge amounts of work by civil servants, parliamentarians (particularly your Committee) and non-governmental organisations have resulted in a system that is largely unchanged.

9. There have been some advances. The system is more transparent than before, some brokerage issues have been addressed and the trade in "intangibles" has been brought within the system. There are even written export criteria, though actual exports licensed since they were announced, time and again appear to render them meaningless. Fundamentally, the scale, destinations and type of military equipment exported has not changed.

10. It would appear that all the attempts at a strict export regime will fail whilst the Government has two conflicting roles—of controlling military exports and of promoting them. The belief in the need for a strong military industry—despite growing evidence that it is good neither for the UK economy nor for UK employment—undermines the attempts to control exports. The close relationship between military industry and the Government needs to be seriously questioned if the misery and suffering caused by the arms trade is to be ended.

November 2003

Appendix 7: Memorandum from Saferworld

This briefing covers a number of key areas:

— Export Control Act Secondary Legislation

Brokering

Transporters

Licensed production overseas

— End-use

— Export control

— Prior parliamentary scrutiny

Export Control Act—Secondary Legislation proposals

Brokering

Saferworld regrets that despite an election manifesto commitment, the Government has rejected calls from the Quadripartite Committee to introduce full extraterritorial controls on arms brokering.

Criminalising legitimate activities

The Government response states:

> *"The new controls will criminalise anyone trading, without a licence, in military equipment from the UK or a UK person anywhere trading in "Restricted Goods" and in arms to embargoed destinations. This latter control should capture many of the circumstances in which arms are transferred to areas of conflict or rogue states." (6)*[1] *(Emphasis added)*

[1] "The Government's proposals for secondary legislation under the Export Control Act"—Government response to the Quadripartite CM59/5988 October 2003.

This argument reveals the limited scope of the Government's ambition. It is not enough to design legislation to capture "many of the circumstances" comprehensive controls are needed. Indeed, the secondary legislation will not capture "many" of the circumstances in which arms are to transferred to areas of conflict or rogue states. The new controls would not prevent UK arms brokers overseas transferring machine guns and helicopters to the Lords Resistance Army in Uganda, FARC rebels in Colombia or the war torn Ivory Coast. It will also be legal for British dealers to supply surface-to-air missiles to governments that have been accused of sponsoring terrorism such as Lebanon, Saudi Arabia and Syria. There continues to be a real risk that arms brokers will carry out activities overseas in order to side step the legislation.

The need for such powers to be extended to non-embargoed destinations was demonstrated in an article in the Observer of 27 April 2003. It was reported that Essex-based arms-dealer, Mick Ranger, who "runs a lucrative arms brokerage with operations in Bulgaria, Cyprus, Nigeria, Australia, South Africa and Vietnam" was prepared to organise the transfer of 200 rifles from Bulgaria to Syria, despite the fact it was "clear the weapons might be used in Iraq."[2] However, Mick Ranger "would not agree to any deal where Iraq was mentioned in official documents."[3] The Observer contacted Mick Ranger in Bulgaria, and although it is not clear from the article where the arrangements were made, the possibility of deals such as these being organised from offshore and thus escaping UK jurisdiction is clear. A succession of reports on sanction-busting by UN expert panels have shown how arms brokers evade arms embargoes by supplying weapons through neighbouring countries. But British arms brokers overseas will not need to apply for a licence to transfer weapons to a country neighbouring an embargoed destination. Such a loophole clearly undermines one of the main rationales behind the current proposals, ie that UK persons should not be able to broker arms to embargoed destinations.

Conflict of jurisdiction

> *"it would also be likely to lead to conflict of jurisdiction where other countries take a different view to us on individual cases, and to enforcement difficulties and administrative overload." (6)*

The Government is already proposing to assert extraterritorial controls on the brokering of arms of certain torture equipment and of arms to destinations subject to a national embargo. In both of these cases there is no international consensus.

The concern of dual criminality (the argument that prosecutions in cases of extraterritorial jurisdiction only occur where the crime is also an offence where the activity takes place) has been over-ridden by the Government on a number of occasions, notably the extraterritorial controls on corruption in the Anti-Terrorism Crime and Security Act 2002.

— Does the Government believe that it will be easier to obtain a prosecution for corrupt payments to foreign officials made overseas than for the unauthorised trafficking in conventional weapons to a non-embargoed destination?

When will a UK broker be controlled?

The Government have not clarified when the activities of a UK broker will be controlled. Members of the electorate who have written to the Government on this point have had replies which stress that "UK controls will apply where any part of the activity takes place in the UK, for example a single phone call, email or a fax" (emphasis in the original). In her evidence to the Quadripartite Committee, Patricia Hewitt similarly referred to "controls . . . where any part of the transaction, including an email, fax [or] phone call, . . . takes place within the UK."[4]

However, the Secretary of State in response to a question regarding "a company being able to enter into a provisional agreement relating to the sale of equipment that it owns in one overseas country to another overseas country before actually acquiring the licence", replied that a licence would only be required when a "commitment" was "entered" into.[5] Moreover, controls are "expressly disapplied" to those who are providing only marketing and promotion services, and "responding to an initial enquiry from a potential buyer as to whether a company or person might be able to assist in the purchase of equipment from a third country, would not require a licence, provided no commitments were entered into."[6] On this basis it would seem that only certain types of email, fax or phone call will trigger a licensing requirement, and there is clearly the risk that UK regulations could be avoided by carrying out the "marketing and promoting" in the UK while "brokering" the deal offshore.

In order to avoid this potential loophole, the most straightforward and effective approach would be to licence all arms transfers brokers by UK persons regardless of their whereabouts. If all transfers are regulated, the control of negotiations becomes redundant.

[2] Anthony Barnett, "Exposed: global dealer in death," *The Observer,* 27 April 2003.
[3] *Ibid.*
[4] Minutes of Evidence to the Quadripartite Select Committee 3 April 2003, qu 9.
[5] *Ibid,* qu 49.
[6] Government Consultation document on the Secondary Legislation para 4.27, underlining in original.

Activities of other countries

The Government response states that:

> *"We alone cannot realistically hope to control all exports of military goods arranged and undertaken wholly within other states. To attempt to do so would expose the futility of a unilateral approach and undermine the credibility of our strategic export control regime as a whole."(7)*

The UK Government's refusal to extend extraterritorial controls is also out of step with recent and current legislative developments in other European countries. Legislation in Finland and Poland now provides for full extraterritorial control over their respective nationals, while a similar law is about to enter into force in Belgium, Austria, the Netherlands, Norway and Sweden all require their residents to apply for licences when brokering arms between third countries, regardless of where the brokering activities are carried out. A similar proposal, supported by all the main political parties, is currently before the French Senate. And a number of other EU member states are now looking at updating or introducing laws on arms brokers. Under the US system, all US nationals wherever located, plus foreign nationals residing in the US, are required to register and obtain licences for all brokering deals.

— Does the Government believe that the US and other extraterritorial systems lack credibility?

— When many European countries are introducing comprehensive extraterritorial controls on arms brokers, why is the UK not going as far?

Resources

> *"Extending extraterritorial controls would spread our licensing and enforcement resources ever more thinly, distracting our efforts from enforcing controls on the activities of greatest concern."(8)*

The Government have calculated that the additional costs of the new controls sould be £750,000 to £1,050,000 in the first year and £520,000 to £820,000 per year afterwards. These amounts are small in terms of public expenditure.

With the current international security environment, with increased concern of the activities of terrorist organisations, it is crucial that the Government allocates the necessary resources to ensure that the brokering of arms is effectively regulated.

In the wake of the tragic shootings in Birmingham at the start of the year, the Government announced its intention to allocate significant resources to prevent the illicit trafficking of weapons into the UK. According to the police, this will require enhancing police, customs and intelligence systems and links with law enforcement agencies in the regions from which the weapons are sourced and through which they pass, primarily Eastern Europe and the Balkans. The NCIS UK threat assessment 2002 states "there appears to have been an increase in firearms traced to Central and Eastern European countries ."[7] These are the same regions that are the main sources of arms transferred to conflict zones by UK arms brokers. This provides for considerable potential law-enforcement synergies: the same information exchange and co-operation systems that will need to be established to prevent illicit arms entering the UK will also be of use in enforcing new controls on UK arms brokers operating overseas.

— What does the Government estimate would be the extra cost of introducing full extra-territorial controls?

— Is this extra cost not justified in the current international security environment?

TRANSPORTATION

Saferworld is disappointed that the Government will not be extending controls over UK transportation agents.

> *"To extend the controls, further would mean regulating an overwhelming amount of legitimate freight traffic without adding any further control over the undesirable activity of legitimate arms dealers."(9)*

The nature of the international transportation industry is complicated; included within it are a wide variety of actors, from freight forwarders to pilots, from large-scale national carriers to individuals flying their one plane below radar range in Africa or sailing their one vessel under a flag of convenience (FOC). According to the International Federation of Transport Workers (ITF), certain governments "do not see registration as a means of imposing sovereignty and control over their flag shipping [but instead] as a service that can be sold to foreign ship owners wishing to escape the financial, safety and social consequences of registration under their own national flags."[8]

[7] NCIS UK threat assessment 2002.

[8] Statement of David Henkel, 2nd Vice Chairman of the Seafarers, Fisheries and Inland Navigation Section of the ITF, before the US House Armed Services Committee Special Oversight Panel on the Merchant Marine Vessel Operations under "Flags of Convenience" and National Security Implications, 13 June 2002, http://www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/02-06-13heindel.html.

The Washington Post, in December 2002, reported that "US intelligence officials have identified approximately 15 cargo freighters around the world that they believe are controlled by al Qaeda or could be used by the terrorist network to ferry operatives, bombs, money or commodities over the high seas"[9] It is anticipated that most or all of these vessels would be flying FOCs. The ITF, in evidence to the US Government, stated that "Bin Laden's covert shipping interests were first revealed during the trial of suspected bombers of the U.S. embassies in Kenya and Tanzania in 1998. A rusting freighter was found to have delivered supplies for the bombers to the port of Mombassa, Kenya."[10]

Controlling the people moving the goods is in some ways more straightforward than controlling brokers: in addition to evidence by audit trait, there is the physical evidence that comes with the activity. For example, in the case of air transportation, transporters must arrange for permission for over-flight and landing rights, and they must file flight plans with the International Civil Aviation Organisation. Aircraft are tracked to ensure they follow their projected routes, and this information is available to governments (however it should be noted that in areas without effective air traffic control systems, eg much of Africa, diversion from official flight plans is a relatively simple task). Most examples that have come to light in the last decade of UK persons being involved in questionable brokered arms shipments have related to their role in the shipping, rather than the arranging, of the transfer.

Licensed Production Overseas

It is welcome that the Government intends to seek additional information from exporters about the intention of use in a licensed production facility, but this does not address many of the concerns.

Saferworld believes that licensed production agreements themselves should be licensed by the UK Government. Crucially, the LPO licence could contain certain post-export conditions. In particular, it should establish production ceilings and end-use(r) restrictions, with an explicit commitment to re-evaluate all licences for exports of controlled goods and technology to that recipient if undertakings are not honoured. A further advantage to licensing the LPO deal could be to streamline and simplify the licensing process, and to provide greater certainty to business.

Saferworld is convinced that such an arrangement could prove beneficial to all concerned. As well as providing for the maximum feasible level of control over LPO, it would assist the Government in focussing its resources on the most difficult licensing decisions (a principle to which the Government has repeatedly expressed itself committed). It would also provide an increased level of certainty and, if carefully managed, a reduced administrative burden to industry.

End Use

The secondary legislation sets out clearly the power that licences issued under the Export Control Act 2002 may be amended, suspended or revoked. This is welcome, however despite the 1997 Labour Manifesto commitment to "strengthen the monitoring of the end-use of defence exports to prevent diversion to third countries and to ensure that exported equipment is used only on the conditions under which the export licence has been granted", Saferworld is concerned that the Government has failed to introduce an effective end-use monitoring system.

In the last year a number of reports have surfaced regarding the diversion of military equipment from third countries into Iraq. India, Jordan, Ukraine, the UAE and Yemen, all countries to which the Government authorised weapons sales in 2001, were all suspected of being links in the Iraqi military-equipment supply-chain. In February, it emerged that UK forces had found UK-made equipment in an Iraqi weapons-store outside Basra, and MoD sources were reported to have said "the find highlighted the threat from the burgeoning black market arms trade across the Middle East."[11]

Despite the obvious concerns surrounding this situation, the Government has declared itself satisfied that existing pre-licensing checks are sufficient to prevent diversion or unauthorised export, and refuses to institute a system of end-use monitoring to ensure that in cases where there are grounds for concern, UK personnel should have the right to conduct post-export checks on the use to which UK-sourced arms are put. The UK Government has argued that it does not "consider that it is either practical or useful to monitor the end-use of all military goods exported from the UK." It has made this point on a number of occasions, however most observers have never called for such a system.

In the US, several formal end-use monitoring systems have been put in place, eg the State Department's Blue Lantern programme. Under this programme, 54 (or 25%) of the 218 post-export checks carried out in 2000 produced a "negative response".[12] This "hit rate" would suggest that a system of end-use monitoring,

[9] John Mintz, "15 Freighters Believed to Be Linked To Al Qaeda; US Fears Terrorists at Sea; Tracking Ships is Difficult," *Washington Post,* 31 December 2002.

[10] David Henkel, *op cit*.

[11] Gethin Chamberlain and Dan McDougall, "British manufacturers weapons linked to hidden cache of missiles," *The Scotsman,* 24 March 2003.

[12] Note that these 218 cases were not randomly chosen. Investigations are carried out based on a system of "red flags"—where particular exports raise concerns under certain criteria, follow-up is required.

prioritised to those countries and for those transfers where there is the greatest danger of diversion or misuse, could be a very useful addition to the UK export control regime. As is the case in the US, targeting the use of limited resources against a matrix of likely risk factors, for example where there is a history of diversion, should be undertaken by the UK Government. It is welcome that following the Foreign Secretary's evidence to the Quadripartite Committee in March 2003, the Government has undertaken to look into the Blue Lantern system further.

— Following the Government's commitment to look at the US system of end-use further—what progress has been made?

Export Control Policy Concerns

Saferworld's forthcoming Audit of the Governments 2002 Annual Report on Strategic export controls[13], highlights concerns over potential breaches of the consolidated criteria in arms export licences granted to over 40 countries. This is compounded by the concern that since September 11 2001, there appears to have been a weakening of export control policy, and an increase in support to countries that are seen as on-side on the war on terrorism.

Country concerns

There has been a twenty-fold increase in the value of arms sales licensed to Indonesia over the past two years. Last year the value of licences granted was £41 million (2001 £15.5 million) (2000 £2 million). Yet the 2003 FCO Human Rights report states: *"Indonesia's human rights record continues to give some cause for concern"* (p 41)

Licences granted to Indonesia last year included components for military training aircraft, munitions launching equipment, tanks, armoured personnel carriers. Furthermore, open export licences were granted for equipment including armoured all wheel drive vehicles. This is of particular concern as earlier this year the Government faced controversy over the use of British made Scorpion tanks in Aceh. The value of arms sales to Saudi Arabia have continued to cause concern. Last year the value of licences granted was £29 million (2001 £20.5 million). Individual export licenses granted for equipment including rocket launching equipment and assault rifles, general purpose machine guns. The FCO Human Rights report states that there are: "deep concerns about Saudi Arabia's failure to implement basic human rights norms". There have been some newspaper reports that there are plans for some more large sales to Saudi.

Exports of concern were also licensed to: Colombia—licences for toxic chemical precursors, technology for the production of toxins, technology for the use of combat aircraft, components for—torpedoes, surface to air missile launching equipment, heavy machine guns, combat aircraft, small calibre artillery; India—export licenses granted for equipment including components for anti-aircraft guns, ballistic test equipment, electron beam guns, fast attack craft, frigates, gun laying equipment, military helicopters. Open export licences were granted for equipment including components for combat aircraft, combat helicopters, military transport aircraft, military training aircraft, military aero-engines and small arms ammunition; Pakistan—individual export licenses granted for equipment including components for—air to air missiles, combat helicopters, frigates. Open export licences were granted for equipment including small arms ammunition; Morocco—Individual export licenses granted for equipment including sub-machine guns, combat helicopters, small arms ammunition.

Prior Parliamentary Scrutiny

The Quadripartite Committee have long called for the introduction of Prior Parliamentary Scrutiny. The exports of concern listed above highlight the need for MPs to have the power to scrutinise export licence applications. The Government have stated that the Prior Parliamentary Scrutiny would:

> *"not be right into principle, and could not be made to work in practice without having a materially adverse impact on the efficiency and effectiveness of the export licensing process without causes significant damage to the competitiveness of UK exports."*

Saferworld supports the introduction of Prior Parliamentary Scrutiny and has made a number of submissions[14] that address the concerns that the Government has raised. Legal advice sought by NGOs has confirmed that despite the Government's argument to the contrary, there is no constitutional impediment that would prevent Parliament from legislating to give itself a role in scrutinising arms export licences.

[13] UK Strategic Export Controls Annual Report 2002, July 2003 Cm 5818. Saferworld Audit due to be published later this year.

[14] *See* Prior Parliamentary Scrutiny *(UK Working Group on Arms letter to the Quadripartite Committee, 24 April 2002)* Prior Parliamentary Scrutiny *(UK Working Group on Arms submission to the Quadripartite Committee, December 2001)* House of Commons Defence Committee Seventh Report Committees' Inquiry into the Draft Export Control and Non-Proliferation Bill *(May 2001, UK Working Group on Arms, Evidence Session, 25 April 2001)* Refining Proposals for a System of Prior Parliamentary Scrutiny of Arms Exports, January 2001.

"We do not accept the arguments of principle raised by the Government against our predecessors proposals for prior scrutiny. . . . We recommend that the Government . . . come forward with proposals for a system of prior parliamentary scrutiny of export licence applications by a select committee, or committees, of this House."[15]

— What steps have been taken by the Government to respond to the Committee's recommendation to introduce a system of prior parliamentary scrutiny?

November 2003

Appendix 8: Letter from Mr Tim Otter, NBC UK, to the Clerk of the Committee

Thank you for your letter of 22 October 2003. I write, as I gave evidence, in my capacity as both a representative of Smiths Detection and as Chairman of NBC UK, the trade interest group of the NBC Defence Industry within the DMA.

The central point of my evidence was that proliferators do not apply for licences. I do not believe that any of the legislation is going to change this situation. It will merely prove to be a considerable burden on industry; some estimates have placed this burden for training alone as high as £2.4 billion in the first year with a follow on cost of £1.2 billion per year thereafter. Once the bureaucratic costs are considered the impact will be far greater.

My second point concerns support to UK forces deployed overseas. I note with interest and gratitude that open licences would be granted to allow support to continue to UK forces on operations. I do believe that this needs careful consideration because there are many elements of the force that may not actually be committed to the operation but are involved in the support of it and the structure of this licence therefore needs considerable thought and consultation. The licence also needs to be opened some months in advance of the troops being committed to the operation to allow industry to respond in time. However, this does not address the fundamental problem of coalition warfare and UK forces involvement in it. Coalition operations are the modern and preferred deployment option for British forces. Unless our allies are granted the same rights as the UK to receive equipment and product support, there will be a serious risk of British forces, our allies and the indigenous population coming to unnecessary, and preventable, harm.

Not considered in the evidence that I gave was the issue of open individual and open general licences for NBC defence products, especially those involved in detection and identification. The additional burden that having to apply for licences in each instance will impose on industry will be dramatic. I know some committee members and government officials believe that this is not the case; however I suspect they have not had to apply for licences whist at the same time trying to fend off angry allied governments and overseas prime contractors, whereas my members have.

I hope that this is of use to the committee in its deliberations. There are many other points that we would wish to bring to the committee's attention and are we working with the DTI to try to resolve these. However, it is our contention that the new regulations, as currently perceived to be the case, will prove to be a burden that has not been thought through. If it has, insufficient attention has been paid to its impact on the UK well being and that of its industry and armed forces. In the meantime the proliferators will continue to proliferate with little or no impact on them from this regulatory regime.

November 2003

Appendix 9: Memorandum from the Director of the Export Control Organisation, Department of Trade and Industry

Administration of the Export Licensing System

I wanted to bring you up to date on various aspects of the administration of the export licensing system which I know are of interest to the Committees. Full details will be given as usual in the 2003 Annual Report in due course but Ministers thought you might find it helpful to have some preliminary information at this stage.

First I can report that in 2003 the Government processed 76.3% of SIEL applications within 20 working days, against the target of 70%. This is an improvement on performance in previous years, eg the 59% achieved in 2002. We also reduced the number of cases in the system which are older than six months, from 21 at the end of 2002 to seven at the end of last year. Performance on processing appeals within the 30 day target has continued to be disappointing and we are looking at ways of streamlining this system as a priority.

[15] Defence, Foreign Affairs, International Development and Trade and Industry Committees: Annual Report for 2002, licensing policy and prior parliamentary scrutiny July 2002. HC 718.

Second as you know officials have been reviewing ways of improving cooperation between the various Government departments involved in the licensing process so as to deliver collectively a more efficient service to exporters consistent with achieving the Government's policy aims through the licensing system. The "Jewel" review recognised that while performance had been improving as a result of management effort there were systemic issues which needed to be addressed if performance was to be maintained, particularly as the scope of controls is broadened with the introduction of the Export Control Act 2002. Ministers have therefore accepted to introduce changes which can be summarised as follows:

— a proposed change in the business process with the introduction of a "smart front end" (SFE) which will provide a quicker service to exporters and also make the system more robust by concentrating specialist advice on certain applications. All incoming applications are subject to the usual checks by DTI but in addition now pass through a filter mechanism which sorts them into those which are suitable for consideration by the SFE—ie, the more straightforward cases—and those which should be sent to the full range of FCO and MoD advisers in the normal way. The SFE consists of an inter-departmental committee of officials from DTI, FCO and MoD which meets daily to review cases which the filter has shown to be suitable for accelerated decision. The SFE decides whether to provisionally approve or refuse the application or refer it for full circulation to MoD and FCO. The SFE's provisional decisions are circulated to FCO and MoD whose specialist advisers have up to five days to request to review the case in full if they so wish, as a quality control check. Similarly, provisional refusals are reviewed by the normal weekly refusals meeting. Applications which are sent DfID to consider against Criterion 8 will continue to be circulated to them in the normal way and not considered by the SFE;

— the SFE will undergo a six-month trial period starting 12 January during which we shall monitor closely its operation closely to ensure it is working as expected. At the end of the trial we shall assess its effectiveness. I should make clear that it is not the Government's intention to reduce the effective level of scrutiny of applications. The SFE is designed handle those cases where the judgement of its members can be substituted for that of the full range of advisers in FCO and MoD;

— a project to develop a shared IT base. This will begin with a shared file store, SPIRE, accessible by the relevant Government Departments through the GSI Depending on the outcome of this first phase, further IT integration could be gradually developed as specific needs are identified and as resources allow. SPIRE will store and manage export applications and supporting information up to RESTRICTED level. This will eliminate, for documents on SPIRE, the current practice of employing couriers to deliver by physical means information from DTI to OGDs and tackle the problems associated with transferring data from one type of media to another and between different systems. It will allow common access to centrally held case files, which is not the case at present, and make it easier for advisors to refer to previous related decisions. It will also be the primary shared repository for documentation in support of developing a cross-departmental working culture including training and development; joint communications and performance management;

— new joint-working procedures such as common staff induction and training programmes, joint performance review meetings at official level and cross-departmental channels of communication to create a shared culture and de facto "single export licensing community". As part of this programme, a joint mission statement "promoting global security through strategic export controls, facilitating responsible exports" has been devised, together with guiding principles which focus on transparency and customer service (see Annex);

— a series of measures to improve the interface with exporters. An initial survey of exporters shows that they want not only a rapid turnaround of applications but also better information about our legislation, procedures, reasons for refusal, the likelihood of getting a licence and on what timescale. A series of measures are being taken forward, such as the production of a DVD/CD Rom on export control, improvements to the website, a customer survey and feedback form and establishment of an export control advisory committee;

— a new published performance target that we shall aim to process 95% of all standard-type licence applications within 60 working days. This will sit alongside the current target of processing 70% of applications within 20 working days and give an incentive to process the more difficult cases which go beyond 20 days in a reasonable time. We shall also publish the average time taken to process licences which have taken more than 20 days (so as to create an incentive to take progressively less of the next 40 days).

We are starting to implement these measures now and expect to have made significant progress on them by the end of this year.

Finally I wanted to set out the position on the implementation of the Export Control Act 2002, which the Committees identified as a major test of the efficiency of the licensing regime. The main pieces of secondary legislation, ie the Export of Goods, Transfer of Technology and Provision of Technical Assistance Order and the Trade in Goods (Control) Order were laid before Parliament on 31 October and will come into force on 1 May, together with the substantive provisions of the Export Control Act 2002. We are also preparing the third piece of secondary legislation concerning trade in goods to embargoed destinations with a view to

laying this before Parliament shortly. Copies of the legislation, guidance prepared by DTI and also of associated Open General Licences (in particular the Open General Trade Control Licence) were posted on the ECO website in early November.

Industry will therefore have had an extended period to prepare for the new controls in the light of the detailed implementing legislation. During this transitional period officials are continuing to work closely with industry representatives to raise awareness of the controls. DTI has hosted a series of seminars on the controls and will also participate in regional seminars being organised by the DMA and SBAC this month and next. DTI has sent a notice about the controls to those companies registered with us for update information and we are enclosing fliers with all new licences and ratings issued. We shall issue a second notice later this month and are searching our databases to identify any exporters who may not have been contacted previously. In addition ECO officials are meeting direct with certain companies and sectors to go through the controls in detail with them. Ministers undertook in the House of Lords in December to work with representatives of the academic and research communities on how the controls on intangible transfers may affect them. DTI compliance officers are raising the Act during compliance visits and have brought forward the scheduled visits of certain companies thought to be particularly affected. We are encouraging exporters to submit individual licence applications as soon as possible and register now for the OGTCL rather than waiting until May. We have re-deployed staff within ECO to accommodate this. Staff from other Departments have also been seconded to the relevant part of ECO to train in the new controls. So far there have been very few applications for licences under the new controls and officials will proactively chase those exporters who might have been expected to need licences.

January 2004

Annex

JOINT MISSION STATEMENT

"Promoting global security through strategic export controls, facilitating responsible exports"

GUIDING PRINCIPLES

We shall implement effectively the UK's framework of strategic export controls so as to ensure that sensitive goods and technology are kept out of the wrong hands. In so doing we shall facilitate responsible defence exports, as these depend on a sound regime of controls.

We shall administer the licensing system efficiently so that we keep the compliance burden on UK exporters to the minimum. In particular we shall therefore:

— within the framework of our case by case approach, ensure maximum predictability for exporters by taking decisions which are consistent with the Consolidated EU and National Arms Export Licensing Criteria and our policy statements;

— aim to meet our published performance indicators which will set us challenging targets for processing applications in a timely manner;

— be transparent about our performance and operations, including by publishing an Annual Report to Parliament;

— establish a dialogue with exporters, our customers, to enable us to understand their concerns and them to understand our requirements. We shall support them in complying with the process through services such as DTI's helpline, website, and awareness activities and ratings. We shall keep our licence products under review to ensure they remain appropriate as circumstances change;

— benchmark ourselves against comparable licensing authorities elsewhere so that we capture best practice and ensure we are leaders in our field;

Appendix 10: Further memorandum from the Campaign Against Arms Trade

We are writing to you as Chairperson of the Quadripartite Committee on Strategic Exports to express our grave concerns over recent developments in the UK's arms sales relationship with Indonesia. We urge your Committee to inquire into the issues raised in this letter.

In particular, we are concerned that in August 2002, the UK Government quietly agreed to a significant relaxation in the "assurances" provided by the Indonesian government as to the end use of UK-supplied military equipment. This was not announced in Parliament (or elsewhere) at the time and no explanation has been given as to why the UK Government accepted the change.

The consequence has been that Indonesia has been able to use its UK weaponry in the current war against the Free Aceh Movement (GAM) in Aceh and the UK Government has been able to argue that Indonesia is not in breach of its assurances (although we would strongly dispute that argument—see below). Before September 2002 the Indonesian Government would not have been able to deploy UK equipment at all to Aceh, at least without prior notification.

Before we detail our specific concerns we would like to set out the background (we attach some correspondence between CAAT volunteer Richard Andrew and the FCO for information).

According to the FCO "before August 2002, the Indonesian Government had provided assurances that *British-built military equipment would not be deployed to Aceh, and that they would provide advanced warning of any possible deployment* [italics added]". In August 2002 the British Government received advance notification from the Indonesian government that they intended to deploy British-built armoured personnel carriers to Aceh for casualty removal and logistics.

The Foreign Secretary then wrote to you on 3 October 2003, pointing this out (we enclose a copy of the letter). He told you "the Indonesian Government has provided assurances that this equipment will not be used to infringe human rights in Aceh or elsewhere". However, crucially, he did not tell you that the Government had just agreed to lift the ban on Indonesia deploying UK-supplied equipment to Aceh and to remove the requirement for Indonesia to notify the UK in advance of any UK-supplied equipment being used in Aceh (see enclosed letter from Mark Polatajko of the FCO to Richard Andrew dated 20 August 2003).

Subsequently, the Government announced the change in these assurances, but only by inference. Mike O'Brien MP told Jeremy Corbyn MP in the House of Commons on 12 June 2003:

> "Before August 2002 the Indonesian government provided assurances that British-supplied military equipment would not be used in Aceh or be used anywhere in Indonesia against civilians to prevent the exercise of their rights of free expression, assembly and association of other international human rights standards. The Indonesian government added that if against expectations, they were to contemplate the use of such equipment in Aceh at a later stage they would inform the British government in advance.
>
> In August 2002 the British Government received advance notification from the Indonesian government that they may deploy British-built military equipment to Aceh for casualty removal and logistics. Hawk jets do not perform these tasks. Ministers agreed in September 2002 to fresh assurances that British-built military equipment would not be used to violate human rights anywhere in Indonesia nor would the equipment be used offensively.
>
> The assurances apply to all British-supplied military equipment. I emphasised the continuing importance we attach to the assurances during my recent visit to Indonesia."

Subsequent to this, UK-supplied Hawk jets, Scorpion tanks and Saracen armoured personnel carriers have all been deployed to Aceh. After June 2003, Richard Andrew wrote to clarify what Mike O'Brien meant by his comment in Parliament. We were then informed that the assurances required of the Indonesians had effectively been relaxed.

We have three main concerns which we have grouped under three overall headings.

Misleading Parliament and the Public

Your Committee is responsible for the Parliamentary scrutiny of Strategic Export Control issues. We are extremely concerned therefore that the Government in its letter to you of 3 October 2003 explaining the events of August 2002 neglected to make clear that Indonesian assurances on the use of UK-supplied equipment had been relaxed. It is not possible to infer from the letter they sent you that subsequent to September 2002 the Indonesians were permitted to deploy UK-supplied equipment to Aceh and that they did not need to inform the UK Government in advance. Previously deployment to Aceh was not permitted without advance notification.

In fact, the only announcement was over eight months after the event, and only when directly asked, about it by Jeremy Corbyn MP.

Although Mark Polatajko told Richard Andrew on 22 October 2003 that the change had been made known to you, for a change of this importance this can hardly be regarded as adequate. Leaving aside the misleading nature of the letter, failing to make a public announcement is scandalous given the importance of the issue (as we detail below). Putting a letter in the House of Commons library means some time and energy has to be expended for parties with a legitimate interest such as ours to discover the truth (in this case over a year). This cannot be acceptable conduct. An announcement should have been made in Parliament as soon as possible after the summer recess in 2002.

Justification for Relaxing the Assurances

Leaving aside legitimate questions about what Indonesian assurances can be worth following the appalling events in East Timor in 1999 (the Indonesian Army guaranteed security for the act of self-determination, but actually carried well-documented crimes against humanity in defiance of UN resolutions and an international agreement they had solemnly entered into) and Indonesia's record of using British-supplied equipment against its own citizens, the human rights situation in Aceh is appalling and cannot justify such a relaxation.

The level of violence in Aceh in 2002 (mostly perpetrated by the Indonesian Army). had increased from that seen in 2000 and 2001. Indeed. looking through the FCO's own Annual Human Rights Report 2002 (which covers July 2001 to July 2002) we find the words on page 32 "In Aceh there was a rise in the level of violence following the expiry of the Humanitarian Pause in January 2001 . . . the majority of casualties have been civilians". Reporting from TAPOL corroborates the conclusion. For example, in April/May 2002 TAPOL reported that the daily death toll in 2001 was 10 per day, mostly non-combatants, calling 2001 "a very bleak year"[16]. In September 2002 TAPOL reported that in 2002 the death toll, mostly civilians, was around 15 a day[17]. In December TAPOL cited data from the People's Crisis Centre in Aceh showing that the number of internally displaced persons (IDPs) had increased 50% in 2002 from 2001, strongly supporting the conclusion the level of violence increased in 2002[18].

Subsequent to the assurances being relaxed the Indonesian Army has deployed lethal UK-supplied combat equipment to Aceh (Hawk jets, Scorpion tanks, and Saracen armoured personnel carriers). In our view, the very deployment of this equipment to Aceh, as part of a major military offensive, is a clear breach of the current assurance that British equipment will not be used for offensive purposes (the FCO has also previously stated in correspondence that equipment will not be used for counter-insurgency purposes, which is the reason for the current military operation).

Indonesian policies in the province have made it extremely difficult for international media, humanitarian organisations and human rights monitors to access Aceh to monitor the situation and therefore we have very serious concerns about the use to which UK-supplied equipment is being put. We would also question how effective FCO end-use monitoring can be in such circumstances.

According to the police in Aceh, 470 civilians were killed between the start of martial law on 19 May 2003 and 31 December 2003. This is likely to be a very conservative figure.

Recent Arms Export Licences Issued

From the Government's Annual Reports, we know that export licences are being issued for equipment which could potentially be used in Aceh (we do not know precisely what the equipment being licensed is from the Annual Reports).

In 2002 export licences were granted for the following, all which could potentially be for any of Hawk jets, Scorpion tanks or Saracen armoured personnel carriers:

Components for air to surface missile launching equipment;

Aircraft cannons;

Components for aircraft cannons;

Components for armoured fighting vehicles;

Components for armoured personnel carriers;

Components for combat aircraft;

Components for military aero-engines;

Components for military aircraft communications equipment;

Components for military aircraft head-down displays;

Components for military aircraft navigation equipment;

Components for tanks;

Equipment for the use of aircraft cannons;

Equipment for the use of military aero-engines;

General military aircraft components;

Military aircraft head-down displays;

Military aircraft navigation equipment;

Technology for the use of air to surface missile launching equipment;

[16] TAPOL Bulletin. 116.7. April May 2002, *see* http: tapol.gn.apc.org.166-7visi.htm.
[17] TAPOL Bulletin. 168. September 2002, *see* http: tapol.gn.apc.org.168head.htm.
[18] TAPOL Bulletin. 169.170. January February 2003, *see* http: tapol.gn.apc.org.bulletin169-170.htm.

Technology for the use of aircraft cannons;

Technology for the use of bomb handling equipment;

Technology for the use of combat aircraft;

Technology for the use of general military aircraft components;

Technology for the use of military aero-engines.

Additionally military utility vehicles have been licensed as well as armoured all wheel drive vehicles (we understand last year's licence for this description was for a VIP Range Rover but this may not be the case this year). We are also very concerned that the financial value of licences granted from the Military List for Indonesia rose from £2 million in 2000 to £41 million in 2002, and that the number of export licences issued rose from 54 in 2001 to 182 in 2002.

CONCLUSION

We would request that you look into this matter very closely when conducting your review of the 2002 Strategic Export Controls Annual Report, focusing in particular on:

— Why the assurances were relaxed and the FCO's justification for this in the light of the human rights situation in Aceh;

— Why the FCO chose to mislead you about the relaxation and prevented effective public scrutiny of the issue;

— Whether the licensing policy towards Indonesia is being properly implemented given the evident breach of assurances that British equipment will not be used for offensive purposes.

January 2004

Annex A

LETTER FROM THE FOREIGN SECRETARY TO THE CHAIRMAN

I am writing to inform your Committee that we have received notification from the Indonesian Government of their intention to use British-built armoured personnel carriers in Aceh for casualty evacuation and logistical support. However, the Indonesia Government has provided assurances that this equipment will not be used to infringe human rights in Aceh or elsewhere.

All export licence applications for Indonesia will, of course, continue to be rigorously assessed on a case-by-case basis against the consolidated EU and national arms export licensing criteria, taking account of the circumstances prevailing at the time and other relevant announced Government policies. Our position on human rights is clear and unequivocal.

I am placing a copy of this letter in the Libraries of both Houses. I am also copying this letter to Michael Ancram and Menzies Campbell.

October 2002

Annex B

LETTER FROM THE FOREIGN AND COMMONWEALTH OFFICE TO THE CAMPAIGN AGAINST ARMS TRADE

Thank you for your letter of 13 August to Foreign Office Minister Mr Rammell about Indonesia. Your letter has been passed to me for reply.

Before August 2002 the Indonesian Government had provided assurances that British-built military equipment would not be deployed to Aceh, and that they would provide advanced warning of any possible deployment. In August 2002 the British Government received advanced notification from the Indonesian Government of their intention to deploy British-built military equipment to Aceh, and subsequently agreed to the fresh Indonesian assurances that British-built military equipment would not be used offensively or in violation of human rights, thus removing the geographical limitation on the use of equipment. Since August 2002, the requirement for the Indonesian Government to inform the British Government in advance of any deployment of British-built military equipment to Aceh was therefore removed. Therefore Mr Rammell and Mr O'Brien's statements are both correct.

You also raise the issue about the use of Hawk aircraft in Aceh. The British Ambassador in Jakarta spoke to the Indonesian Defence Minister on 20 May to seek reassurance that Hawk were not being used offensively or in violation of human rights. On 21 May the Indonesian Director General for Defence Policy confirmed that the Armed Forces were fully aware that British built military equipment should not be used for offensive purposes, nor for action which would abuse human rights. Since then there have been no confirmed reports that Hawk has been used in Aceh.

We will continue to investigate reports of British-supplied military equipment being used in a way that not only breaks the assurances, but also contravenes the Consolidated Criteria that export licences are assessed upon.

August 2003

Annex C

FURTHER LETTER FROM THE FOREIGN AND COMMONWEALTH OFFICE TO THE CAMPAIGN AGAINST ARMS TRADE

Thank you for your letter of 16 September, received 24 September, to Foreign Office Minister Mr Rammell about Indonesia. Your letter has been passed to me for reply.

I will answer each of your questions in turn:

(a) The assurances that British-built military equipment would not be used offensively or in violation of human rights apply to all British-built military equipment in Indonesia.

(b) We were bringing our practice in this aspect into line with the Consolidated EU and National Arms Export Licensing Criteria, which the British Government assesses its export licences against, and which does not impose geographical limits on the deployment of controlled goods.

(c) As Parliament was in recess at the time of the change in the Indonesian assurances, no announcement was made. However, given the importance of the change, the Foreign Secretary wrote to the Chairman of the Quadripartite Committee, and a copy of the letter was placed in the Libraries of both the House of Commons and the House of Lords. There is no Hansard reference.

The British Government does not want to see British-built military equipment contribute to human rights abuses or fuel conflicts overseas. We take any reports of British built military equipment being used in violation of the Indonesian assurances extremely seriously. Where we have substantiated evidence that British-built equipment is being used in violation of the assurances, we would take immediate action.

October 2003

Appendix 11: Further memorandum from the Foreign and Commonwealth Office

I am writing in response to your letters of 22 October (on the provision of information to the Committee and prior scrutiny). I also take this opportunity to provide the Government's responses to the Committee's questions on the Government's response to your Annual Report (forwarded by the Clerk on 22 October). I am pleased to inform you that all of these answers are publicly disclosable.

In your letter about provision of information to the Committee you mention that I had previously assured you that the Government based its decision in the Tanzania case on sound factual information. I remain convinced that the right decision was made, and I was keen to provide the Committee with as much information as possible, in order that you might better understand how we reached that decision.

While it is not always possible for the Government to provide all the information requested of it, I can assure you that we do not withhold information lightly. Matthew Hamlyn's letter of 28 August to the Committee clearly sets out the reasons for withholding the requested information and reflects the outcome of consultations with a number of interested departments and with the Cabinet Secretary. I very much regret the delay these consultations caused to our reply. The Government, however, stands by the reasoning in this letter. The information provided with regard to the sale of the Consul General's San Francisco residence does not set a precedent here, since it does not relate to the commercial transactions of a third party.

In your letter, you also refer to the withholding of information regarding the Government's guidance for the application of Criterion 8. Again, the Government stands by the decision and reasoning in Matthew's letter of 28 August. The Secretary of State for Trade and Industry's statement to Parliament of 19 September 2002, which set out in detail the factors to be considered when making assessments under Criterion 8, gives sufficient basis on which the Government can be held to account for its assessments under this Criterion.

The Government has acted consistently with the Code of Practice on Access to Government Information in considering the two requests mentioned above. I hope you will agree that an enormous amount of information has been provided by the Government, particularly over the last year, in response to your Committee's questions. As I mentioned to you earlier in the year, the resources involved in meeting these requests are very considerable and impact directly on those available to do licensing policy work.

On your wider point, it is quite natural for the Government's responses to select committee questions, including those from individual departmental select committee reports, to be agreed between the departments concerned. Given the unprecedented level of co-operation and openness shown by the Government to Parliament in the field of strategic export controls, I hope it will be possible to dissuade your colleagues on the Committee from thinking that the Government has "something to hide" in this area.

In your letter about parliamentary scrutiny of export licences, the Committee asks how the Government intends to take this issue forward. We hope to be able to write to you with further information in the near future.

Jack Straw

Export Licence Decisions During 2001

A. *The Government's response to the Committees' recommendation 5 (paragraph 43) states that "Allied forces have . . . taken direct military action abroad, but consistent with international law such actions cannot be characterised as infringements of human rights as defined in Criterion 2, or as 'external aggression' as defined under Criterion 4". Could the Government identify the international law that prevents direct military action abroad by Allied forces from being characterised as "external aggression" as defined under Criterion 4?*

The response was not intended to mean that there is a specific international law that prevents the use of force by Allied forces from being characterised as infringements of human rights or "external aggression" in all cases. We do not consider, however, that Criteria 2 or 4 limit the export of strategic goods to Allied military forces, where those forces are taking military action in conjunction with UK forces, for example by virtue of UN Security Council resolutions or the inherent right of self-defence under customary international law.

B. *The Government's response to the Committees' recommendation 6 (paragraph 56) does not address the Committees' recommendation that decisions on licence applications "should take into account the actual and potential capabilities of the equipment, as well as their intended role". Do the consolidated criteria allow the Government to take licensing decisions with this in mind?*

The Consolidated Criteria do allow the actual and potential capabilities of equipment to be taken into consideration when assessing export licence applications. Moreover, it is a routine part of the assessment process to consider equipment's potential end-use as well as the end use stated by the exporter.

C. *The Committees would appreciate further comment on their recommendation 10 (paragraph 71). Does the Government agree with the Committees that "basic checks on the end-user of this equipment from information easily accessible in the public domain would have revealed concerns about how the oversized cuffs might be used"? Are the Committees correct in their conclusion that these "basic checks were not conducted"? Does the Government believe, in line with the Committees' recommendation, that an "administrative failure" took place in respect of this licence "that should be investigated"? The Committees note that the information sent to the Government by Mr Chidgey is not directly relevant to this case.*

The Government invests significant resources in operating a rigorous system of end-user risk assessment at the export licensing stage, using information from a variety of sources. We are aware that oversize handcuffs can be used as leg restraints, and this possibility is specifically taken into account in the consideration of relevant ELAs.

It appears that the information provided by the Committees was not taken into account in this case. However, had we assessed that there was a clear risk of these handcuffs being used as leg-irons, the export licence would have been refused.

We always strive to ensure that all relevant information is taken into account, but are nonetheless strengthening internal mechanisms to ensure that all necessary end-user checks have been carried out and properly recorded.

Policy Issues

D. *With respect to the Government's response to the Committees' recommendation 16 (paragraph 90), the Committees would be grateful to be kept informed of purchases of military equipment using funds from the Conflict Prevention Pools.*

The Government is happy to undertake to provide this information to the Committee twice each financial year, around April and October, on each occasion listing the military equipment purchased using Pool funds in the previous 6-month period.

E. *The Government's response to the Committees' recommendation 19 (paragraph 96) seems to imply that goods owned by the Crown which are transferred overseas under letter of Crown Immunity, and then transferred to another party overseas, would not be assessed against the Consolidated Criteria. Is this the case, and have there been instances in which this has happened?*

In their report published on 20 May, the Committee enquired about the transfer of ownership of licensable equipment (Recommendation 19) owned by the Crown. The Government's response explained that the transfer of ownership of Government-owned goods took place under contract, or as arranged with the customer or recipient. The transfer of ownership was not accomplished by means of the letter of Crown Immunity, or an F680. The question did not specifically address the export of an item under a letter of Crown Immunity and its subsequent transfer to "another party overseas".

In referring to transfers to "another party overseas", the Committee may also have in mind the procedure for gifting, where an item is "exported" under letter of Crown Immunity and handed over to another government or, occasionally, an organisation. In their Recommendation 17, the Committee asked whether gifts of military equipment were considered against the consolidated criteria. The Response confirmed that in future all gifts of strategically controlled equipment would be assessed under the F680 procedure. Records do not show whether gifts listed in the letter of 15 January 2003 from the Minister of State for the Armed Forces, Adam Ingram, to Llewellyn Smith MP were assessed against the Consolidated Criteria.

F. *On a similar point, in relation to the Government's response to the Committees' recommendation 20 (paragraph 97), the Committees would be grateful for confirmation that goods subject to strategic export controls being sold by the Government for export to a non-Government end-user in another country are always subject to the usual export licensing procedures, and are never exported by the Crown (without a licence), with transfer of ownership taking place overseas.*

The Government confirms its policy that such cases should be subject to the usual export licensing procedures.

G. *The Government's response to the Committees' recommendation 22 (paragraph 104) states that "while we may publish the broad details of certain Government to Government agreements, some overseas recipient governments may be sensitive about the reporting of all the transfers of goods, and confidentiality undertakings may form part of such agreements". The Committees would appreciate a broad indication of the extent to which transfers of goods go unreported because of the sensitivity of overseas Governments.*

Information on Government to Government exports not already included in the lists in Tables 7 and 8 of the Annual Report on Strategic Export Controls, was recently given to the Committee in answer to Question 43 of the Committee's questions outlined in their letter of 22 September. For reasons of confidentiality information on exports was given by category of equipment. This is in line with the presentation of information on goods licensed for export recorded in Section 2.6 of the Annual Report.

H. *The Government's response to the Committees' recommendation 23 (paragraph 106) states that "where support is given to a specific bid to export an item of equipment manufactured in the UK this is generally after the company has obtained a Form 680 approval in support of a marketing campaign". On what occasions during the current Parliament has support been given to a specific bid to export an item of equipment manufactured in the UK before the company had obtained F680 approval for marketing?*

Although the Government strongly encourages industry to use the F680 procedure to gain approval for their marketing campaigns, especially where there might be any doubt about the prospect of obtaining a licence, such approval is a formal requirement only where authority to release classified information is needed. As previously advised, it is normally the case that F680 approval is obtained at the same time as support is given to a specific export prospect. Records show that a small number of occasions have arisen in the present Parliament where this has not been so, when the prospective customer was the Government of another NATO country.

I. *The Government's response to the Committees' recommendation 27 (paragraph 125) states that "It is not in importing countries' interests in the long term to give end-user assurances and then not comply with them". How does the Government ensure that it is "not in importing countries' interests in the long term to give end-user assurances and then not comply with them", and how does it ensure that it is aware when end-user assurances have not been complied with?*

The Government specifically takes any substantiated evidence of misuse of equipment into account when assessing future export licence applications for that end-user. In addition, the Government has the power to revoke licences where evidence of misuse subsequently comes to light. Revocations would prohibit any further exports to that purchaser under the licence. We could also revoke any open licences for exports to that destination country, obliging exporters to apply for individual licences for each export, or refuse to

accept any assurances given by that country about the end-use of an export. We may also liaise with the Government in the country concerned, encouraging them to control or sanction the purchasers in question. If the end-user were a Government, we would have a wide range of foreign policy tools at our disposal.

As regards the Committee's second question on breaches of end-user assurances, the Government's policy on end-use monitoring has been communicated to the Committee before, in for example, our written response to the Committee's most recent report [HC 474] on strategic export control (recommendation 26). The Government would, however, reiterate that we are committed to effective monitoring of the end-use of UK defence exports where this can make a genuine contribution to preventing their diversion or misuse.

Collaborative Defence Manufacturing

J. *The Committees' recommendation 30 (paragraph 137) asked for clarification of whether UK-origin goods in incorporation cases "are more likely to be licensed for export if they are more material and significant to the goods in which they were to be incorporated, or if they are less material and significant to these goods". The Government's reply seems to suggest that the meaning of "material and significant" in additional factor (c) as announced by the Foreign Secretary on 8 July 2002 relates to whether the British components could be easily sourced from elsewhere, or are supplied as part of a long-standing supply programme; rather than to significance in terms of size, cost or utility. Is this the case?*

As the Government's reply made clear, no definitive generalisations can be made in this area. Materiality and significance do not necessarily relate only to the factors to which the Committee refers. The Government cited these as examples of factors that might be relevant in this analysis.

K. *In its response to the Committees' recommendations 33 and 34 (paragraphs 143 and 144), the Government states that "it would be unrealistic for the UK to attempt to exercise extraterritorial control over the end-use to which all of its components that are incorporated overseas for onward export might be put". Why would it be unrealistic for the UK to attempt to exercise this control, given that the US already attempts to exercise such control?*

As stated in our previous response, we believe that the increasingly complex structure of the globalised defence industry means that it is simply not feasible to control every single UK component of an item of defence equipment extraterritorially throughout its life. We believe that the correct approach to controlling the ultimate use of strategic exports from its territory is as set out in the Foreign Secretary's statement about incorporation. The United States' export control policy is a matter for that Government.

Even if it were feasible to exercise effectively the kind of extraterritorial control the Committee suggests for all exports of components, this would have a number of consequences. Amongst other things, it would have significant resource implications, which may have to be found within existing budgets for export control activity, therefore leading to a significant reduction in the number of pre-licence checks of the kind described above being carried out, and a serious downturn in performance.

L. *The export provisions in the Framework Agreement allow the Government to refuse unilaterally to allow the export to a particular destination of equipment produced collaboratively by more than one country. The Government acknowledges in its response to the Committees' recommendation 40 (paragraph 164) that these provisions "recognise the changes in the defence industry, where more strategic export equipment is produced multinationally and under collaborative arrangements". What scope is there for extending this right to other projects incorporating British components? Is there any form of control that the UK can exercise over the end use of finished equipment containing British components but exported from another country?*

As the Committee will be aware, the UK assesses export licence applications for incorporation and onward export against the Consolidated EU and National Arms Export Licensing Criteria, and the factors set out in the Foreign Secretary's statement on incorporation, which include rigorous assessment of the intended end use and end-user, and assessment of the export control policies and effectiveness of the export control systems of the incorporating countries. However, where the nature of the involvement of UK companies in a collaborative project is such as that covered by the Framework Agreement (FA), export control arrangements such as those stipulated in the FA may be appropriate. We do not exclude similar arrangements being used for future projects where appropriate.

In terms of other projects incorporating British components, we take into consideration in the licensing process whether the goods are to be used in a licensed production facility (and our export licence application forms now include a specific question asking this) and, if so, whether there is a risk that the finished products of the licensed production arrangement could be delivered to an undesirable end-user.

M. *On the other hand, if the Government has (as it seems to claim) no control over the use of the equipment into which British components have been incorporated, how does the Government ensure that components are licensed for export for incorporation overseas only where it is content with the standards of export control exercised by the incorporating country?*

The Government does not accept that it has no control over this area. As referred to above, all applications to export components from the UK for incorporation overseas are rigorously assessed both against the Consolidated EU and National Arms Export Licensing Criteria, as announced to Parliament in October 2000, and the Incorporation Statement, as announced to Parliament on 8 July 2002. The criteria specifically include assessment of the proposed end-use and end-user of the exported goods, and the Incorporation Statement of export control policies and the effectiveness of the export control system of the incorporating country.

N. *The Committees remain convinced that future Annual Reports should include as much information as possible on the final destination of equipment exported under Global Project Licences. Will the Government seek agreement to the publication of information in line with the Committees' recommendation 39 (paragraph 163) within the Working Group on Export Procedures under the Framework Agreement?*

The Government reiterates its previous response. However, it has now had an opportunity to raise the issue of publication with Framework Agreement partners. No consensus has yet been reached. The Chairman invited partners to consider this further with commercial confidentiality constraints and their respective reporting mechanisms in mind. The Committees should bear in mind, however, that whatever details of Global Project Licences are included in the Annual Report, these would relate only to UK licences.

Format of Annual Reports on Strategic Export Controls

O. *The Government believes, according to its response to the Committees' recommendation 41 (paragraph 167) that "to publish details on licence applications that have been denied would give unscrupulous arms manufacturers and dealers knowledge about which goods are wanted by whom. They could then use this information to provide the specified goods to the proposed end-user". Does the Government therefore believe that the Dutch Government is wrong to publish details of the denial notifications that it has issued?*

The Government stands by its previous response. The procedures of the Government of the Netherlands are a matter for that Government.

P. *The Committees welcome the Government's response to their recommendation 42 (paragraph 171) that it is considering "whether it can publish information on individual licences broken down between Government and non-Government end users whilst still protecting commercial confidentiality". The Committees hope that the Government will be able to take this suggestion forward, although they would prefer it to go further and consider publishing information on end users of licences by broad category (cf recommendation 44 (paragraph 174))—given that other EU countries already publish this information. Does the Government believe that the Danish government's publication of information on end users of licences by broad category damages commercial confidentiality?*

The Government is still considering whether we can publish information on individual licences broken down by Government and non-Government end users. The Government's response in September (Cm 5943) to the Committee's Report (HC 474) made clear why we do not consider that we can go any further in publishing end-user information, but that we are nevertheless continuously reviewing what information we can place in the public domain.

The information contained in the Annual Reports published by the Danish Government or indeed the Government of any other EU country is not a matter for the UK Government, and we do not consider it appropriate to comment on their procedures. We remain convinced that in the light of our individual circumstances, we have taken the right approach with our Annual Reports. As has been recognised by the Committee, we already have one of the most transparent reporting procedures in the world. Our Annual Report already gives more information than any other national report of which we are aware. This does not, however, mean that we are not open to assessing what other useful information could be included in future editions, notwithstanding our duty to protect commercial and other confidentiality.

Q. *The Committees welcome the Government's response to their recommendation 45 (paragraph 175) and would be grateful if the Government would keep them informed of progress made towards improving the data available on the value of defence exports made.*

In the Government's response, the Committee was informed that ongoing discussion with EC Partners included consideration of changes to the Tariff Codes, to enable a greater level of transparency in the information provided on the value of strategic exports. At a recent meeting in Europe, EC Partners indicated that they were not at present in favour of any further change to those codes. In the UK, the Government will continue to explore opportunities as they arise to improve the data available on the value of defence exports.

January 2004

Appendix 12: Further memorandum from the Department of Trade and Industry

Licensing Information Related to Recent Media Allegations

Allegations concerning UK military goods exports were contained in three recent Guardian articles, "Arms sales breach guidelines" (5 November 2003), "Ministers flout arms sales code" (6 December 2003), and "FO faces court over arms to Indonesia" (10 December 2003), and also in the Menzies Campbell MP report, "UK breaks its own arms sales guidelines" (23 November 2003).

Each of these articles and the report were based on, or referred to, information Mr Griffiths provided to Menzies Campbell on 14 October 2003, at his request.

This information listed the categories of equipment licensed but not what specific goods were authorised for export within each category, as this information was not readily available at that time. Menzies Campbell's 23 November report acknowledges that the information provided to him lists the categories of equipment licensed and not the individual items themselves, but nonetheless suggests that it is the Government's policy to "allow the export of any such weapons mentioned in each category". This is not true.

In July 1997 the Government banned the export and transhipment through the UK of equipment which had been shown to be used for torture and other cruel, inhuman or degrading treatment or punishment. Therefore leg-irons, gang chains, electric shock belts, and shackles, are never licensed for export to any country. Furthermore, none of the licences in question have authorised the export of tear gas to any of the destinations.

Mr Griffiths wrote to Mr Campbell on 15 December 2003 outlining his concern that the information he had provided to him had been misrepresented. He informed Mr Campbell that he would provide the Committees with full details of licences issued for the destinations in question, as soon as that information had been put together. Given the volume of this information, which includes additional information on what was authorised for export under the categories in question, and in respect of SIELs also end-use and end-user information (this information is not provided for OIELs—as the Committees will be aware, OIELs are exporter specific and not necessarily end-use/r specific). It is provided on the enclosed discs.*

This information would not normally be disclosed until publication of the Annual Report on Strategic Export Controls, but is being done so now in order to correct the misunderstandings which have arisen. The information on the end-use and end-user of the goods in question is confidential and would of course not be published in the Annual Report. It is provided to the Committees in strict confidence.

As the Committees will see from the enclosed licensing information, and in respect of the allegations regarding the UK's export of leg-irons, gang chains, electric shock belts, and shackles under category PL5001, the SIELs for Afghanistan and Pakistan covering PL5001 rated goods authorised only the export of ballistic shields, and those for Jordan and Saudi Arabia authorised only anti-riot shields and ballistic shields. The OIELs for Sri Lanka, Egypt and Saudi Arabia covering PL5001 rated equipment authorised only the export of ballistic shields, and for India, again ballistic shields, together with components for ballistic shields.

January 2004

Appendix 13: Further memorandum from the Foreign and Commonwealth Office

A. International Fora

European Union

1. What further work needs to be done to bring the arms export policies and administrative procedures of the associated countries in line with EU requirements? How is the British Government assisting in this process?

Since April 2003, the 10 associated countries have attended the Common Foreign and Security body on arms exports, known as COARM, and they have also been provided with Member States' Code of Conduct denial notification data for the last two calendar years. This information and interactions with current Member States will enable the accession countries to develop an understanding of how EU members regard specific arms export licence applications, and so to further converge their policies. As regards the associated countries' administrative procedures, we consider that they are now, following regular bilateral and multilateral contacts with the UK and several other EU Member States, in line with EU standards.

The UK has organised, in partnership with the Estonian and Slovakian governments, two seminars at which current and accession EU Member States will have a further opportunity to share experiences on the application of the licensing criteria in the EU Code of Conduct. These should take place in late 2003 and early 2004.

* Not printed (classified).

2. According to the DTI website, the Government believes that the European Commission's proposal for a Council Regulation on trade in equipment related to torture and capital punishment "as it stands needs refining so as not to unintentionally catch or ban legitimate goods". The Government proposes to "enter into discussions with the Commission and other EU Member States with a view to amending the proposals in a constructive manner, including agreeing the list of controlled items" (Regulatory Impact Assessment online at http://www.dti.gov.uk/export.control/policy/tortureria.htm). What changes is the Government seeking to the Commission's proposal? Which legitimate goods in particular is the Government concerned would be caught by the proposal as it stands? When does the Government expect discussions on the Regulation to be concluded?

Although the UK supports the main thrust of this proposal, there are a number of elements that the UK would wish to be refined or re-worded during the course of discussions with the Commission and other EU Member States. These include the subject referred to in the following question, and the annexes to the Regulation. Annex I , which for example, contains a list of goods which would be banned on the basis that the equipment has no, or virtually no, practical use other than for the purpose of capital punishment etc. However, there has been no technical discussion on the rationale for inclusion of products in Annex I, in particular, the UK has concerns with the proposed inclusion of certain handcuffs and automatic drug injection systems which we believe would have legitimate uses. In this instance we will be seeking agreement to move these items from Annex I, which would only allow for the granting of an export authorisation where the goods are for the exclusive purpose of public display in a museum, to Annex II thereby allowing for a case by case assessment, against agreed criteria, to be undertaken.

Discussions on the proposed Regulation are still at a relatively early stage and are unlikely to be concluded before March 2004

3. Article 14 (2) of the European Commission's proposal for a Council Regulation on trade in equipment related to torture and capital punishment states that under certain circumstances, notably where any Member state objects twice to a licensing decision by another Member state, the final decision on whether to grant the licence in question will be taken by the Commission. What is the Government's view on this proposed extension of the Commission's competences?

The UK does not believe it would be appropriate for the Commission to play such a role and will therefore be seeking changes to this part of the text. The UK is not alone in raising such concerns about Article 14.

4. The EU's "action plan for the implementation of the basic principles for an EU strategy against proliferation of weapons of mass destruction" of June 2003 includes as a measure for immediate action "considering the involvement of the Commission" in the export control regimes. Has such consideration taken place, and with what results?

The EU is still considering this issue in the light of Commission proposals. The British Government is clear that such proposals should be considered carefully against the objective, as stated in the Action Plan of "making the EU a leading co-operative player" in the export control regimes. That means we should be looking for actions that produce not only a stronger EU performance in the regimes but one that contributes more effectively to the purposes of the regimes. A good example is to make sure that the EU is playing a full part, through its Member States, in chairing those regimes where the chair is taken for a year by a volunteer member.

A greater Commission role might contribute to this objective, but this has to be balanced against the political sensitivities of other participating states about what their role might be. Any negotiation of an expansion would need to be treated with care, so that the issue did not distract the regimes from their core tasks.

5. To what extent have the "measures for immediate action" in the action plan been implemented? How has the British Government participated in this process of implementation?

The EU has been vigorous in taking forward implementation of the "measures for immediate action". For example, the EU programme on disarmament and non-proliferation in the Russian Federation is being extended; a plan for diplomatic action has been agreed; we are discussing a standard WMD clause as an essential element of all EU mixed agreements with third countries as well as finalising a Common Position on universalising the main multilateral agreements; we have agreed an increase in the International Atomic Energy Agency's safeguards budget. The UK has played an active part in discussions and offered some thoughts to the Italian Presidency on how these measures can be taken forward.

6. What progress has been made on the "measures for the coming months or the longer term" relating to export controls in the action plan? What progress in these areas does the Government view as a priority?

7. Have any arrangements yet been made for "peer review" of Member States' and acceding countries' export control systems, as outlined in the action plan?

The Government will respond to questions 6 and 7 together.

The implementation of these measures has started well. For example, we are discussing with partners a standard non-proliferation clause for inclusion in EU agreements with third countries. The Commission has also provided an initial proposal for taking forward the idea of a peer review of export control systems which is the subject of ongoing discussions between Member States and the Commission.

The proposals foresee most of the peer reviews taking place in the first half of 2004.

United Nations

8. What progress was made at the UN Biennial meeting of states in July 2003 to review the implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons? How successful was the UK in its stated aim of pushing "forward where possible on areas left unresolved at July 2001—(i) export control, (ii) brokers, (iii) assistance to developing countries"? How will the British Government be helping to take this programme forward over the coming year?

At the meeting, the UK made a national statement on the need to strengthen and enforce export controls and on the need to mobilise resources to combat small arms proliferation. The UK, with the support of 29 other states, initiated two successful side meetings for interested states to discuss further support for, and the means to, strengthen international controls on small arms transfers. The meetings established a considerable degree of support, particularly for regional processes to agree further consensus as an interim stage to greater international agreement. The UK has offered its support where needed to facilitate these regional processes, and remains committed to working with partners internationally to achieve stronger export controls on transfers of small arms. The UK will continue to work on this issue prior to and during the next UN Biennial Meeting in 2005, and at the UN review conference in 2006.

The UK believes that stronger export control legislation is key to reducing the flow of small arms to developing countries, and thus limiting the impact of arms transfers on development. Both in terms of development and counter-proliferation work, the initiative has proved to be successful in what is one of the most important but contentious parts of the international community's efforts to tackle the problems of excessive availability of small arms. Some differences of opinion are apparent, but there is constructive engagement from many countries. It is now essential to engage with interested states to maintain the momentum behind this initiative. We are optimistic about progress being made, while recognising also the ambitious nature of the initiative.

The UK made a statement at the Biennial Meeting about development assistance in which we emphasised the need to integrate SALW policy. It was also stressed that all States need to co-operate closely to prevent, combat and eradicate the illicit trade and that those States in a position to do so should seriously consider rendering technical and financial support where needed. The UK also hosted a meeting on donor co-ordination, at which the UK launched a booklet "Tackling Poverty by Reducing Armed Violence".

The UK places a high priority on efforts to integrate arms control and reduction measures into development assistance. In April 2003, the Government brought together government, multilateral and non-governmental development agencies to explore ways to integrate small arms reduction into development assistance. The UK encourages all development agencies to engage more fully on small arms issues and is ready to work in partnership to drive this issue forward. Between now and 2006 the UK will, in partnership with other development agencies and donors; support further research into the impact of SALW and armed violence on development and poverty; work to comprehensively integrate armed violence and small arms reduction and prevention into its own development assistance and encourage other agencies to do the same; work to increase donor co-ordination on armed violence issues; and work to secure buy-in on this issue from the OECD and the World Bank. The UK is highlighting the urgent need for co-ordinated and comprehensive financial and technical assistance for affected States.

In recent months the UK has supported a Norwegian-Netherlands initiative on brokering which supports our wider aims, following on from the Lancaster House Conference on strengthening export controls. The intention is that this initiative works in partnership with the UK initiative, as the issues are mutually supportive.

9. What steps has the Government taken to mainstream action against small arms proliferation within its broader export control policy?

Over the last 12 months the UK has worked hard to raise global awareness of the need to improve controls on small arms transfers, and this has included work to mainstream SALW into wider export controls. The UK is leading the global effort to develop common international standards on arms exports. In December 2002 the UK was instrumental in securing Best Practice Guidelines in the Exports of SALW in the Wassenaar Arrangement, a group of 33 of the world's major arms exporters. In January 2003, the UK brought representatives of 49 arms exporting states and interested organisations to Lancaster House, London, to build consensus on the need for tougher international controls on arms exports. This was only the first step in a long-term process of dialogue. At the July 2003 UN Biennial Meeting of States we initiated further discussion and, with partners, hope to carry forward the process via regional dialogue, working towards eventual consensus on responsibility in arms transfers.

The Government also fully applies the Consolidated Criteria to any proposed SALW export from the UK; and will do so for any applications to broker SALW received under the new export control legislation.

UK Waiver from US International Traffic in Arms Regulations

10. What changes have been made or are planned to the British export control system in order to increase commonality with the US system for the purposes of an ITAR waiver?

Although there are differences in some respects in the underlying approaches of the UK and US to export controls, these approaches are widely considered to be comparably effective.

The Wassenaar Arrangement

11. What improvements to the Wassenaar Arrangement has the UK been seeking during 2003? With what degree of success? How has the UK been taking a lead in the 2003 review process?

(Answer—previously classified—updated February 2004) The UK played a leading role in the WA Assessment (review). We made a number of proposals for the development of the Arrangement at the start of the process. Work was carried forward in a number of "task forces", made up of those countries with a specific interest in the subject covered. Together with the US and the Netherlands, the UK led a Working Group in Specific Information Exchange. Within this, we achieved consensus and subsequent endorsement by the Plenary for the reporting of transfers of small arms and light weapons. We also sought agreement to arrangements for the exchange of denial notifications (DNs) for selected Munitions list (ML) goods and consultation on such notifications for both ML and dual-use goods where a limited system of DNs already existed. We were unable to reach consensus on this issue at the Plenary. Denial Notification and Consultation has been deferred to the General Working Group for study and will be one of our priorities for this year. The UK substantially contributed to the activities of the Task Force on MANPADS, Terrorism and Rules of Procedure as well as contributing papers to the Task Force on Outreach and Participation, with a successful outcome for the UK in all of these areas.

12. In response to the Committee's second report of this session, the Government stated that it "supports the introduction of a denial notification procedure to support consistency of decision by the Participating States of the Wassenaar Arrangement within its ambit". What improvements to the denial notification procedure would the Government like to see achieved?

(Answer updated February 2004) The Government would like to see the introduction of a denial notification procedure for the major weapons and weapons platforms listed in Annex 3 to the Initial Elements of the Wassenaar Arrangement. We consider that such additional information sharing would further enhance Participating States' standards or responsibility in export control. Under our proposals a denial notification would be issued when a Participating State decided to refuse a licence application for a transfer for reasons which came within the purposes of the Arrangement, or when it would contravene the provisions of a UN arms embargo. We also propose a bilateral consultation process for Annex 3 items, broadly similar to that operated within the European Union.

We also supported a proposal to introduce a consultation mechanism for those dual-use goods refusals that are already subject to a denial notification procedure.

We were unable to reach consensus on these proposals at the 2003 Plenary, although they have been deferred to the WA's General Working Group for study during 2004.

13. What were the obstacles to the agreement of new reporting arrangements on small arms and light weapons in December 2002? Is it the case (as reported) that these proposals were blocked by the Russian Federation? Please provide further information on the role the UK is playing to achieve such an agreement.

(Answer updated February 2004) No single delegation blocked agreement to the reporting arrangements to which the Committee refers; indeed, there were a number of different proposals regarding thresholds for SALW reporting, but it was not possible to reconcile them. It is important to recognise that such reporting is sensitive because of the information provided, and administratively complex.

However, Participating States continued to discuss this issue during the WA Assessment, which took place during 2003, and the measure was adopted at the December Plenary. The UK played a lead role in facilitating agreement on this issue and others to which SALW reporting had been linked.

14. The Annual Report states that at the 2002 Plenary meeting a "number of additional proposals aimed at strengthening export controls as part of the fight against terrorism" were made. What were these additional proposals; which country(ies) proposed them; what was the UK's opinion of them; and what prevented their acceptance?

* * *

15. The 2002 plenary statement confirmed that the Wassenaar was open to "prospective adherents" on a "non-discriminatory basis". Have any nations indicated that they aspire to join the group in the near future? Are there any countries in particular that the Government is encouraging to join the Arrangement?

(Answer updated February 2004) The Wassenaar Arrangement has formally received applications for membership from Latvia, Lithuania, Estonia, Cyprus, Croatia, Malta and Slovenia. HMG supports the applications of all EU accession states, and other countries, providing that they meet the WA selection criteria.

The following criteria are taken into consideration when deciding on the eligibility of a state for participation:

— Whether it is a producer/exporter of arms or industrial equipment respectively.

— Whether it has taken the WA Control lists as a reference in its national export controls.

— Its non-proliferation policies and appropriate national policies, including: Adherence to non-proliferation policies, control lists and, where applicable, guidelines of the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime and the Australia Group; and through adherence to the Nuclear Non-Proliferation Treaty, the Biological and Toxicological Weapons Convention, the Chemical Weapons Convention and (where applicable) START I, including the Lisbon Protocol.

— Its adherence to fully effective export controls.

16. According to the Wassenaar Arrangement Munitions List, "France, the Russian Federation and Ukraine view this list as a reference list drawn up to help in the selection of dual-use goods which could contribute to the indigenous development, production or enhancement of conventional munitions capabilities". How does the United Kingdom view this list? How does this differ from how France, the Russian Federation and Ukraine view the list?

The United Kingdom includes all items on the Wassenaar Munitions List in the UK Military List and reflects all changes to the list as soon as possible after they have been agreed by the Plenary by way of an amendment to the Export of Goods (Control) Order. However, the Arrangement is not an export control regime and thus there is no formal commitment to adopt the list nationally. France, Russia and Ukraine have chosen to highlight this fact by the insertion of the footnote but in practice they also control the items on the Munitions List.

Nuclear Suppliers Group and Zangger Committee

17. What was the outcome of consultations within the Nuclear Suppliers Group in 2002 on engaging non-member states and transhipment states on counter-proliferation issues? Which non-member and transhipment states were involved? What role did the UK play in these consultations? What progress in this area has been made since 2002? What progress was made within the Zangger Committee on outreach to non-members?

* * *

Hague Code of Conduct against Ballistic Missile Proliferation

18. What does the Hague Code of Conduct against Ballistic Missile Proliferation add to pre-existing fora?

The Code calls for greater restraint in the development, testing, use and spread of ballistic missiles. It also introduces a number of confidence building measures, including advance notice of missile launches, to

increase transparency and reduce mistrust between member states. The Code is not the first or only initiative in the field of missile non-proliferation. It is merely a first step toward further efforts that can be taken, in the UN and elsewhere, to prevent the proliferation of ballistic missiles.

19. How will the Government be helping other signatory states to abide by the commitments made in the Code?

The transparency and confidence building commitments in the Code are being developed through evolution and best practice. The Government is helping other subscribing states through setting a good example and scrupulously abiding by its commitments in the Code. The Government has shared its first Annual Declaration under the Code with other subscribing states. The Government also sends technical experts to annual and inter-sessional meetings of subscribing states that discuss implementation of the commitments in the Code.

20. The Hague Code of Conduct has not been signed by a number of countries possessing ballistic missile technology (including some of proliferation concern), including China, Egypt, India, Iran, Israel, Kazakhstan, North Korea, Kuwait, Pakistan, Saudi Arabia, Syria, the United Arab Emirates, Vietnam and Yemen. What steps is the Government taking to encourage these and other states to subscribe to the Code?

We have received indications through our HCOC partners that some of the countries mentioned here are now viewing adherence to the Code more favourably; in particular Kazakhstan and Yemen. We very much hope that these countries and the others you mention will choose to sign up to the Code soon. The UK has been involved in demarches to a number of non-signatory countries around the world, both singly, in conjunction with HCOC partners, and where the UK is acting as EU presidency, to encourage adherence to the Code.

21. What, if anything, is the Government doing to encourage specifically regional approaches to the missile proliferation issue, for example on the Indian subcontinent, or in the Middle East?

We recently undertook a number of joint demarches with the Australian government in Southeast Asia. Demarches were undertaken inter alia in Brunei, India, Indonesia, Malaysia and Thailand. The government supports promoting the HCOC in regional fora, recognising that adherence to non-proliferation norms helps build confidence as to the peaceful intentions of states and can reduce regional tensions.

G8 meetings

22. The Committee would be grateful for details of the G8 lobbying programme on export controls. What are the aims of the programme, who are the targets of the lobbying programme, and how is the lobbying being conducted?

At the 2002 G8 summit in Canada, leaders agreed the Kananaskis Principles "to prevent terrorists, or those that harbour them, from gaining access to weapons or materials of mass destruction." Principle number 5 called on countries to "develop, review and maintain effective national export and transhipment controls over items on multilateral export control lists . . ." The G8 is planning a number of targeted demarches on export controls to countries of particular concern, as well as some regional organisations. The list of countries and organisations has not yet been finalised, but we expect it to be so shortly. It is envisaged that the lobbying will be carried out in capitals by the Embassy of whichever country holds the G8 Presidency—currently France.

23. How has the Government implemented the measures agreed at Evian to prevent the acquisition of MANPADS by terrorists? What is the Government doing to address the threat posed by MANPADS that may already have been acquired by terrorists?

The UK's inter-departmental working group co-ordinates and implements the G8 Action Plan agreed at Evian. We are committed to tackling the MANPADS threat, and to that end have active programme of work with all stakeholders, including industry. We are confident that the UK already has strict export controls on MANPADS, although we keep under active review both current and future potential measures for combating the MANPADS threat. We are also considering a ban on the export from the UK of MANPADS to non-state actors, which would formalise our current policy. The Action Plan committed Partners to review progress in December 2003. We are now discussing with partners the active exchange of information on implementation and future planning.

In addition to work within the G8, the UK is actively engaged within the Wassenaar Arrangement (WA) negotiations to further strengthen already strict guidelines on export controls. The United Nations, NATO, and OSCE have also taken steps in recent months in response to the MANPADS threat and we have actively worked with these organisations.

The potential threat posed by MANPADS already in the possession of terrorists is amongst those being addressed, including through joint work with industry and with foreign partners both bilaterally and in the relevant multilateral forums. Security considerations make it inappropriate to comment further upon this work at this time.

Export Control Outreach and Bilateral Talks

24. The Committee would be interested to see further details of the bilateral talks on export controls held with China, Hong Kong, Israel, Macau, Poland, Russia, Serbia and Montenegro, and Ukraine, as well as details of the work carried out with the US and Canada. What were the reasons for selecting these particular countries for bilateral talks? At whose instigation were the talks started?

The government conducts both routine annual bilateral talks (Russia, China and Israel) and a programme of ongoing assistance (Hong Kong and Macau). However, talks can also form part of the Government's response to specific issues, for example, UK experts visited Serbia and Montenegro, at the request of our Foreign Secretary, following a breach of UN sanctions by a company in the former Federal Republic of Yugoslavia (now Serbia and Montenegro). The UK held discussions with Poland during their Chairmanship of the Missile Technology Control Regime and assisted the Ukraine with their export controls. The Government has co-operated with the US and Canada in joint work in the Balkans and Eastern Europe, including joint visits to Serbia and Montenegro and Bosnia.

The instigation of talks may result from any one party, as in the examples of Serbia and Montenegro and the Ukraine, or as is more often the case, is the result of long standing mutual agreements.

B. The Export Licensing Process

Involvement of DfID and assessment against Criterion 8 (Sustainable Development)

25. The Secretary of State for International Development did not "consider it appropriate that she should co-sign the report" in 1999 when DfID considered around 15% of all export licence applications (HC (1998–99) 840), and she remained "of the view that it would not be appropriate for her to sign the Government's Annual Report on Strategic Export Controls" in 2000 (Cm 4799), by when DfID had chosen to see fewer than 5% of all export licence applications. Why did the Secretary of State for International Development decide that it was appropriate for her to sign the 2002 Annual Report?

The Export Control Act of 2002 changed the legislative basis for considering export licences and made explicit the need to consider sustainable development issues when assessing licence applications. Since this legislation enshrined DfID's role in the assessment process, the Secretary of State felt it appropriate to put her name to the 2002 report.

26. (a) How many licence applications (absolute numbers of both SIELs and OIELs) were considered by DfID in 2002? (b) How many licence applications did DfID request to see during 2002, in addition to those circulated to the Department as a matter of course? Please provide details of these applications. (c) How many licence applications were referred to DfID for assessment by other Government Departments (other than those circulated as a matter of course) during 2002? Please provide details of these applications, and state which Department referred the applications in question. (d) How many licence applications were assessed by Government Departments other than DfID against criterion eight during 2002? Please provide details of these applications, and state in each case which Department conducted the assessment.

DfID considered 235 SIELs and 175 OIELs in 2002.

The Government only records the total numbers of applications referred to DfID; it does not keep details of whether these applications are requested by DfID or referred by other Departments. However, in practice we would expect the procedures announced by the Secretary of State for Trade and Industry on 19 September (Official Report Columns 309W–311W), together with the fact that DfID can itself ask to see any other applications as appropriate, to result in the automatic referral of all relevant applications to DfID. In addition to this, FCO and MoD liaise with DfID when assessing some licence applications to improve their evaluation. However, this is on an ad hoc basis.

DfID is the lead department for advising on sustainable development considerations, although other Departments may also offer opinions. FCO and MoD assess all export licence applications *against the criteria as a whole*. However, where appropriate, DfID carry out a more detailed assessment against criterion 8, as was set out by the Secretary of State for Trade and Industry. MoD has particular expertise in assessing "legitimate defence and security needs" and aspects of "technical capacity" under the criteria.

27. In 2002 and in 2003 to date, for how many licence applications that were refused was Criterion 8 a relevant consideration, recognising that a licence application may be refused for a combination of reasons? The Committee would be grateful for details of any such applications.

* * *

28. Criterion 8 requires that "states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources". How does the Government assess whether states' diversion of resources for legitimate security and defence needs is "least", and how do such assessments inform the Government's decision-making about licence applications?

The Department for International Development leads on the assessment of export licence applications against Criterion 8.

"Least diversion" is addressed on a case-by-case basis according to the procedures for assessing relevant export licence applications against Criterion 8 announced by the Secretary of State for Trade and Industry on 19 September 2002 (Official Report Columns 309W–311W). The announcement stated that DfID would raise any concerns about least diversion by reference to the other agreed indicators. The specific factors considered in assessing "least diversion" will include:

(i) whether a proposed export is consistent with the recipient country's legitimate defence and security needs;

(ii) the potential effect of the proposed export on the recipient economy and sustainable development; and

(iii) the extent of diversion of human and economic resources which the proposed export would be likely to bring about.

The MoD will ordinarily make an assessment of (i) when giving advice against Criterion 4. A separate assessment of this factor is only made if, for any reason, assessment under Criterion 4 has not been undertaken. Where a separate assessment of this factor is required the MoD acts as the lead department.

In either case the MoD will take into account, as appropriate, capability requirements identified by security sector reform programmes, pre-planned equipment programmes and capabilities recognised within UK conflict prevention strategies or strategic defence reviews.

The DfID will make an assessment of (ii) where an export licence application is for equipment destined for a country eligible for International Development Association concessional loans and the value of the equipment exceeds a pre-determined country specific threshold (below these levels the DfID has judged, taking into consideration the relevant economic and other indicators, that an export will not breach Criterion 8). The DfID will make its assessment after consideration against the indicators set out by the Secretary of State for Trade and Industry in her written response, dated 19 September 2002 (Official Report Columns 309W–311W), to question from the honourable Norman Lamb.

The DfID will consider the above assessments, together with any other information deemed relevant, in coming to a judgement on (iii).

29. Has the DTI yet received exhausted licences for the air traffic control system to Tanzania?

The Government has not yet received the exhausted licences for the Tanzania air traffic control system.

Refusals and revocations

30. In 2000, no SIELs were refused on the grounds that they presented a "risk of contributing to internal tensions and conflicts in the recipient country". In 2001, one licence was refused on this basis. In 2002, 76 licences were refused on this basis. Why were so many more licences refused on this basis in 2002 than in previous years?

31. To what does the Government ascribe the overall rise in the number of SIEL applications refused, by more than 100% since 1999—changes in the Government's assessment process, the nature of the applications themselves, or other factors?

The Government will respond to questions 30 and 31 together.

There are many possible factors, which could lead to a change in the number of refusals over time, not all of which are necessarily relate to the licensing process. Attached for ease of reference is a table showing refusals statistics in relation to Criterion 3 and WMD/missile-related concerns from 1999 to 2002. The table also shows the rates of all refusals (not just under Criterion 3 or for WMD/missile concerns) for Israel, India and Pakistan (there is overlap between these statistics). Clearly there was a significant increase in the number of licences refused under criterion 3 in 2002.There has also been a progressive increase in the numbers of licences refused because of a risk of contributing to proliferation of WMD or ballistic missiles. Clearly global issues and changing situations in particular destinations are taken into account in reaching export licensing decisions. The Committee will note that there was a significant increase in the number of refusals for Israel

in the 2002 Annual Report. In addition, there has been a gradual upward trend in refusals for India and Pakistan since 1999. There have, however, been no changes to the Government's assessment process, which would lead to these increases.

See table below.

Refusals:	*1999*	*2000*	*2001*	*2002*
Total	136	207	245	296
Criterion 3	4	0	1	76
WMD/missile-related concerns	73	109	122	121
Israel	0	3	31	84
India	56	72	89	83
Pakistan	9	52	36	21

32. The Committee would be grateful to receive details of the "licence revoked after it was issued in error and subsequently issued in 2003". Were the circumstances in which the licence was issued in error different from the circumstances in which a licence was similarly issued in error in 2001? Were lessons learnt from the error in 2001 applied in the case of the licence issued in error in 2002?

* * *

Appeals

33. Why was there a large increase in the number of appeals in 2002 over previous years? To what does the Government ascribe the increased proportion of appeals upheld in 2002?

The number of refusals and revocation decisions in 2002 (296) did not increase dramatically on the figure for 2001 (245). There is no obvious reason for the increase in the number of appeals in 2002. The Committee will be aware that all exporters who are refused a licence have an automatic right of appeal. Whether or not to exercise that right is the decision of the exporter concerned. At this time it appears that the number of appeals will increase again in 2003.

Military OGEL

34. In the 2001 Annual Report, the Government wrote that "the new military OGEL, introduced in May 2002 . . . will significantly reduce the number of SIELs required each year" (p 365). But the actual number of SIELs issued in 2002 is only marginally smaller than in 2001. How has the new military OGEL impacted on industry's requirement for SIELs?

The number of SIELs issued each year reflects a wide range of factors, not all of which are necessarily related to the export licensing process. However, in the first half of 2003 there were 800 fewer SIEL applications received than in the same period in 2002. We believe that at least some of this fall in SIEL numbers is due to companies using the new open general licence. In order to draw the OGEL to the attention of industry, officers of the DTI, whilst undertaking visits, have been briefing companies of its possible application. There is some recent evidence that an increased number of exporters are planning to make use of the licence and it is therefore possible that there might be a further reduction in the number of SIELs issued in the future.

Performance in processing licence applications

35. The Committee would be grateful for details of all SIEL applications (not including sanctions only applications) where decisions taken in 2002 took more than 60 days or which had been awaiting decision for more than 60 days at 31 December 2002; and of OIEL applications where decisions taken in 2002 took more than 120 days or had been awaiting decision for more than 120 days at 31 December 2002.

* * *

36. Why did the (modest) progress in the proportion of SIEL applications processed within 20 working days stall in 2002? Has there been any further progress since?

Performance against Government targets to decide on 70% of applications in 20 working days was adversely affected by the India/Pakistan crisis, and by poor performance in some areas of the licensing process. Steps taken to improve handling of export licence applications, among other things, have resulted in a significant leap in performance in 2003. To date, 76.5% of SIEL applications have been decided on within 20 working days.

37. How has the ECO performed so far in 2003 against its internal targets that 90% of SIEL applications should be processed in 60 working days and 100% within 120 working days (assuming that these targets remained in place)?

The ECO has processed 92.2% of SIEL applications in 60 working days and 99.4% of applications in 120 days. We confirm that these targets remain in place.

38. Has any progress been made since 2002 in improving the speed at which the Government is able to process appeals?

Performance against the Government's target for processing appeals against refusal or revocation remains disappointing. The Government is continuing to seek improvements in processing times for appeals in the context of the wider review of the export licensing process.

39. The Committee would be grateful for an assessment of progress made by the JEWEL project. Have performance targets for processing licence applications, rating requests and appeals been altered? How are Government Departments now performing in terms of long-standing SIEL applications, in particular those applications taking 21 days or more to process?

Officials are finalising the JEWEL review and aim to report their findings to Ministers in November. We will give the Committee an update on the project as soon as possible. The review is looking at not just performance indicators but also IT systems, business processes, relations with exporters and joint working arrangements.

The present performance indicators have not been changed, pending the JEWEL review. For the first nine months of this calendar year Government has, for the first time, exceeded the 70% of SIEL applications in 20 days target. Government is currently processing 76.5% of SIEL application in 20 days. The corresponding figure for last year was 57.5%.

The number of SIEL cases that are outstanding for more than six months is two and over 12 months one. This has reduced from 38 and nine respectively last year.

Enforcement

40. Were any strategic goods intended for export stopped by HM Customs and Excise in 2002 or since? What was the nature of these goods, and did HM Customs and Excise take any further action against the exporters of the goods? How has HM Customs and Excise acted on the rating advice received from the Export Control Organisation in 2002 and since?

* * *

41. In how many cases since 2000 has a licence been refused because of suspicion that an end-use certificate has been forged or illicitly obtained? In how many cases since 2000 has it come to light after the issue of a licence that an end-use certificate may have been forged or illicitly obtained? What action was taken as a result?

We do not, as a matter of course, record on our databases whether licences are refused because we believed at the time that the end-user certificate supplied was forged or illicitly obtained. Departments involved in the licensing process do, of course, look very carefully at supporting documentation supplied. In many cases where licences are refused under criterion 7 of the consolidated EU and National Code of Conduct (ie as a result of there being an unacceptable risk of diversion of the goods) we have concerns that the stated end-use, and therefore the end user documentation is suspect.

In cases where we have issued licences and it subsequently emerged that the end user certificates have been forged or illicitly obtained, then those licences are revoked. For example, six licences for the export of small arms to Jordan were revoked (in 2001) when it came to light that the items were likely to go to someone other than the stated end-user.

Government to Government transfers

42. The Committee would be grateful if the Government could identify those licences (SIELs and OIELs) appearing in section 2.6 of the Annual Report which are for surplus Ministry of Defence equipment the ownership of which was transferred to an overseas Government while the equipment was still in the UK, and which therefore required an export licence before collection.

We do not collect such information.

43. The Committee would be grateful for details of any Government to Government transfers of military equipment in 2002 that do not appear in Tables 7 and 8 of the Annual Report.

In addition to the major pieces of equipment listed in Tables 7 and 8 of the Annual Report on Strategic Export Controls 2002, items in the following categories were exported Government-to-Government in that year.

Country	*Type of Equipment*
Australia	Components for ground based radar systems
Canada	Components for military aircraft
Denmark	Ground based radar equipment and components for ground based radar
Finland	Components for ground base radar
Kuwait	Components for armoured fighting vehicles; components for military aircraft; components for missiles
Saudi Arabia	Components for aircraft and their engines; components for naval vessels and their systems; components for ground based radar systems; components for simulators

44. The Committee would be grateful for details of any military equipment gifted by the Government since the letter from the Minister of State for the Armed Forces to Llew Smith MP of 15 January 2003.

Set out below are details on goods subject to strategic control that have been gifted, or approved for gifting, by the government since the letter from the Minister of State for the Armed Forces to Llew Smith of 15 January 2003.

Approved March 2003—Challenger 2 Ammunition to Oman

Handed over 1 April 2003—de-mining equipment to Kenya

45. The Committee would appreciate an explanation of the circumstances under which two Wessex helicopters (value £80,000) came to be gifted to Uruguay. Why is it considered desirable to gift helicopters to Uruguay?

The Uruguayan Air Force had experienced problems with the maintenance of 11 ex-RAF Wessex helicopters that were purchased in the later 1990s. The gifting of two surplus Wessex aircraft in 2002 was seen as a small gesture in recognition of the value we attach to defence relations with that country.

* * *

Export licence decisions

46. The Committee would be grateful to receive details of all licences (SIELs and OIELs) issued for export in 2002 to the following countries: Algeria, Bosnia-Herzegovina, China, Hong Kong, Indonesia, Iran, Israel, Kazakhstan, Saudi Arabia, Syria.

* * *

47. The Committee would be grateful to receive details, as available, of all licences (SIELs and OIELs) issued for export to Indonesia between 1 January and 11 July 2003 (and subsequently if available) (cf HC Deb 8 September 2003 c 73W).

* * *

48. The Committee would be grateful to receive details of what appear to be multiple destination OIELs issued in 2002, as follows: (a) an OIEL including: Angola—OIEL No 6, Argentina—OIEL No 17, Brazil—OIEL No 55 etc; (b) a temporary OIEL including: Bangladesh—OIEL No 12, Brazil—OIEL No 30, Brunei—OIEL No 14, etc; (c) an OIEL, including: Argentina—OIEL No 16, Bahrain—OIEL No 22, Bangladesh—OIEL No 15, etc; and (d) an OIEL, including: Ecuador—OIEL No 10, India—OIEL No 25, Kenya—OIEL No 12, etc.

* * *

49. The Committee would be grateful to receive details of OIEL No. 29 to New Zealand.

* * *

50. The Committee would be grateful to receive details of all licences granted during 2002 for plutonium and/or enriched uranium (including products containing plutonium and/or enriched uranium).

* * *

51. The Committee would be grateful to receive details of all incorporation cases (considered under the additional factors of 8 July 2002) on which decisions were reached during 2002.

The Government has told the Committee that it intends to publish in future Annual Reports information on cases where incorporation is involved. However, the Government said in its response to the Committee of 28 October 2002 that, whilst every effort would be made to collect and provide the necessary information quickly, it would take some time for this data to feed through into the Reports themselves. Because of the need to set up new arrangements for collecting and collating the relevant information, this information is not available for licences issued in 2002. A system is currently being put into place that will enable such cases to be highlighted and it is hoped that such information will be made available in the 2003 Annual Report. However, because of the time it has taken for the data to feed through, although the Government will make every effort to provide this, it might not be possible to provide the necessary information for the entire year.

52. The Committee would be grateful to receive details of the Global Project Licence issued in early 2003, and of any others issued since.

The Global Project Licence was issued on 24/01/03. The licence is valid for the export of missiles and missile components to the French Government. The licence also permits the missile components to be returned to listed companies (linked by contract to the exporter) for repair, replacement or upgrade. The licence conditions are confidential. There have been no discussions on Permitted Export Destinations at this stage of the project. No other Global Project Licences have been issued since.

* * *

53. The Committee would be grateful to receive details of all licences (SIELs and OIELs) refused and revoked during 2002, including OIELs from which particular destinations and/or goods were excluded.

* * *

54. The Committee would be grateful to receive details of all appeals considered during 2002, and of those outstanding at 31 December 2002.

* * *

55. The Committee would be grateful for details of any licences granted since 2001 for export to India of (a) battlefield surveillance radar or (b) flexible printed circuit boards for main battle tanks.

* * *

Government promotion of defence exports

56. The Committee would be grateful for details of promotion activities for specific defence exports carried out in 2002 by FCO ministers in Chile, India and Singapore, and in the Czech Republic, Slovakia and Tanzania while in the UK, and for details of FCO ministerial promotional activities in 2003, including in Singapore, and in India from the UK. (cf HC Deb 14 July 2003, cc 47–48W and ibid 15 July 2003, cc 255–256W). Which ministers carried out the promotion activities, on which dates, and which transactions were discussed? The Committee would also appreciate similar details of any promotion activities carried out in 2002 and 2003 by Ministers in other Government Departments.

Set out below are details of promotion activities for specific defence exports carried out by the relevant department's Ministers in 2002, and 2003 so far. Ministers regularly have meetings during which they, as a main topic or as a secondary matter, promote British exports, including defence equipment. The Government does not keep a central record of these meetings, or the substance of the discussions.

The Committee should note that, since their question was tabled, the Foreign and Commonwealth Office has amended its previous response. Therefore the countries listed for the Foreign and Commonwealth Office will differ to those specified in the question.

Some information is publicly disclosable and some is provided in confidence. Where the information is confidential, it is because of commercial sensitivities or to protect international relations. The confidential information is provided in the separate annex (not printed).

DfID

No Minister from this department has conducted any such activity during the specified period.

DTI

The Defence Export Services Organisation (DESO) of the Ministry of Defence takes lead responsibility for promoting British military equipment and arms sales to foreign customers and as such no DTI Minister has undertaken any specific defence promotional activity either on an overseas visit or while in the UK. Discussions on defence related issues may arise in the margins of a DTI Ministerial visit, but there have been no discussions of note.

FCO

Country	*Date*	*Minister*	*Equipment*
Chile	6–8 March 2002	Baroness Symons	A frigate procurement programme
India	27 February 2002	Foreign Secretary	Sea Harrier/Sea King/Hawk
India	29 May 2002	Foreign Secretary	Hawk
India	17 October 2002	Mike O'Brien MP	Hawk
India	20 January 2003	Foreign Secretary	Hawk
India	20 May 2003	Foreign Secretary	Hawk
India	17 June 2003	Foreign Secretary	Hawk
Singapore	21 May 2002	Ben Bradshaw MP	Typhoon/Eurofighter
Singapore	8 January 2003	Foreign Secretary	Typhoon/Eurofighter
MoD			
Asia & Far East			
India	4 July 2003	Geoff Hoon	Hawk
India	20 January 2003	Geoff Hoon	Hawk
India	5 February 2003	Lord Bach	Hawk
India	1 June 2003	Geoff Hoon	Hawk
Singapore	26–27 February 2002	Lord Bach	Typhoon
Singapore	1 June 2002	Lord Bach	Typhoon and Hawk
Singapore	11 October 2002	Lord Bach	Typhoon
Singapore	16 June 2003	Lord Bach	Typhoon
Singapore	30 June 2003	Lord Bach	Typhoon
Americas			
Chile	April 2002	Lord Bach	Chilean Frigate programme
Chile	25–28 June 2002	Lord Bach	Chilean Frigate programme
USA	17–18 June 2002	Lord Bach	JSF, Galileo and Nimrod MRA4
USA	11–15 November 2002	Lord Bach	JSF
USA	23–27 February 2003	Lord Bach	JSF
USA	23–24 July 2003	Lord Bach	EH101 helicopter
Europe inc			
Eastern Europe			
Czech Republic	24 September 2002	Geoff Hoon	Gripen
Czech Republic	21 November 2002	Geoff Hoon	Gripen
Czech Republic	30 April 2003	Geoff Hoon	Gripen and Typhoon
Middle East			
Inc Egypt			
Bahrain	2–3 July 2002	Lewis Moonie	General references to defence exports
Bahrain	28 October 2002	Geoff Hoon	General references to defence exports

* * *

57. Why was it considered appropriate to invite the Syrian Government to DSEi 2003?

Invitations to official overseas defence delegations are the subject of careful consideration and consultation between Government Departments. The invitation of a country delegation by HMG does not indicate that country will be able to import any particular item on display, or under discussion, at an exhibition. Any application from industry for a licence to export would still be assessed on a case-by-case basis against the Consolidated EU and National Arms Export Licensing criteria.

A list of proposed invitees is initially selected by the Ministry of Defence, selection taking account of ongoing marketing campaigns, longer-term prospects for business, and the cost involved in hosting the delegations. As wider consultation on the list takes place, political issues, arm embargoes and current international relations imperatives are also considered.

Syria was considered to have longer-term prospects for export-related business and, as a government, we remain keen to improve our relations with that country. We are committed to a policy of constructive and, where necessary, critical engagement which allows us to support reform while maintaining a robust dialogue on issues of concern. We have never hidden the fact that we have differences on a number of issues, but the nature of our relationship means we can discuss these issues candidly and at the very highest level. This is something we will continue to do.

End-use assurances

58. What information does the Government have that the Indonesian authorities may have used British built military equipment in operations in Aceh in 2003 in a way that breached the Indonesian Government's assurances not to use such equipment offensively or in violation of human rights? What representations has the Government made to the Indonesian authorities about how they have used British built military equipment in Aceh? If the Government believes that the assurances have or may have been breached, has it taken any action against Indonesia, or in relation to existing export licences to Indonesia or pending licence applications? Does the Government regard the Indonesian Government's assurances about the use of British built military equipment as standing?

The Government has no confirmed evidence that British-built military equipment has been used in violation of human rights or offensively anywhere in Indonesia in 2003. However, following the resumption of hostilities in Aceh, the British Ambassador in Jakarta sought and received from the Indonesian Defence Minister on 20 May confirmation of Indonesian assurances that British-built military equipment would not be used offensively or in violation of human rights. Foreign Office Minister Mike O'Brien also raised this in meetings with President Megawati and the Indonesian Foreign Minister on 3 June, and again with the Indonesian Foreign Minister on 23 July. We continue to raise the matter with Indonesian officials, for example, Mr O'Brien again raised the issue when the new Indonesian Ambassador Dr Prof Juwono Sudarsono paid an introductory call on 6 October.

The Government regards the Indonesian Government's assurances about the use of British built military equipment as standing.

59. What action does the Government believe would be appropriate for it to take if an end-user did not abide by assurances given on the use of military equipment? When an end-user has made such assurances to the British Government, has the Government set out what the consequences of a breach of these assurances might be? Is there any specific action that the Government is required to take against an end user that breaks end-use assurances?

The Government carries out careful and effective risk assessment on end-users before making export-licensing decisions, so as to prevent UK arms falling into the wrong hands. Where substantive misuse or diversion is established, the Government may, for example, revoke existing export licences to that country or end-user, and information on such misuse or diversion will be taken into account when assessing future export licence applications.

Where the end-user is another government, the United Kingdom has the full range of diplomatic tools available to it. Where there is a case of diversion or fraud by a private individual, we look to co-operate with the authorities of friendly countries to bring the perpetrators to justice.

There are no set rules for dealing with substantiated cases of misuse or diversions. Instances are regarded as serious and dealt with on a case by case basis. We will always try to ensure that the negative effects of any misuse or diversion are minimised, where possible, and that any relevant procedures are kept under review to prevent a similar occurrence in the future.

November 2003
(updated February 2004)

Appendix 14: Further memorandum from the Foreign and Commonwealth Office

(Original question numbers refer to Appendix 13.)

An update on progress in discussions on the European Commission's proposal for a Council Regulation on trade in equipment related to torture and capital punishment (original question 2)

Discussions of this Commission proposal at the technical level have covered almost all of the text, except the annexes. Ministers have not yet discussed the proposal.

Further details of the list of countries and organisations to be the subject of "targeted demarches on export controls" by the G8, once this list has been finalised (original question 22)

Four countries were subject to the demarches on transshipment. France carried these out. They are:

United Arab Emirates; Malaysia;

Singapore;

Jordan.

In addition, the following international organisations have been identified for outreach on the Kananaskis Principles:

European Union (General Affairs Council);

Organisation of the American States (OAS);

Association of the Caribbean States (ACS);

Caribbean Community;

Rio Group;

Andean Community; Mercosur;

System of integration in Central America (SICA);

African Union (AU);

Association of South East Asia Nations (ASEAN);

Pacific Islands Forum (PIF);

The Arab League;

Gulf Co-operation Council (GCC);

Community of Independent States (CIS);

Organisation for the Security and Co-operation in Europe (OSCE).

The outreach to international organisations has not yet taken place, but a draft demarche is under discussion by the G8 Non-Proliferation Experts Group (NPEG).

An update on the JEWEL project (original question 39)

The Director of the Export Control Organisation wrote separately to the Clerk to the Committees on 22 January 2004 with an update on the JEWEL review.

Section 2: Clarifications

The answers to the relevant parliamentary questions have been corrected twice. The Committee would appreciate clarification on the following points. Has any Government minister promoted sales of military equipment to Tanzania since 2000? Has any Government minister promoted sales of military equipment to Hungary since 2000? (cf Hansard 29 Oct 2003: Column 2789) (original question 56)

The Government apologies for any confusion over its previous responses. These errors resulted from there being no central record of such meetings, and the quantity and variety of potentially relevant information. Procedures are now in place to prevent such a problem re-occurring.

We confirm that the Foreign Secretary visited Budapest on 9–10 July 2002. Whilst there he discussed Gripen with his Hungarian counterpart. There has been no other Ministerial promotion of UK arms exports to Hungary since 2000.

No Minister has promoted military equipment to Tanzania since 2000.

The Committee requested, but has not been provided with, information identifying the reasons why specific export licence applications were refused. Given the large rise in the number of applications refused under criteria 3 and 5, the Committee would be grateful if the 76 licence applications which were refused on the basis of criterion 3 and the 15 applications which were refused on the basis of criterion 5 could be identified. A simple list of ELA numbers would be sufficient. (original question 30)

* * *

Section 3: Follow-up Questions

The Committee would be grateful for further details of the one prosecution mentioned: transcript (if available), identifying court references, including the name of the judge and court, the identity of the defendant (if disclosable), the nature and details of the charges, the fine imposed, the type and quantity of goods involved, and the destination of the goods. The Committee would be grateful to know the number of cases since January 2002 that have been referred to specialist investigators, and the type and quantity of goods involved. The Committee would also appreciate an indication of the quantity of small arms and light weapons intended for export stopped by Customs and Excise since January 2002 (original question 40).

Prosecution case. At Preston Crown Court on 9 June 2003 David Lee Nicklin of AM Castle & Co Ltd pleaded guilty to an offence under section 68(l) of the Customs and Excise Management Act 1979 of exporting a quantity of aluminium to Pakistan without a licence. His Honour Judge Brown imposed a penalty of £1,000 plus £1,000 costs.

Cases adopted by specialist investigators. Thirteen new cases have been adopted by specialist investigators during the period in question. Customs cannot comment on the detail of these cases which are either ongoing or in the court system. It is not their policy to comment on cases where no formal charges have been brought as to do so could prejudice ongoing enquiries or future criminal proceedings. In addition to these formally

adopted cases it should be noted that Customs' specialist investigators work with other UK government departments to disrupt and prevent procurement attempts and significant investigation resources are deployed to this activity.

Small arms and light weapons. The cases referred to in the original reply involved a total of 88 firearms, 17 firearms parts, 134,800 rounds of ammunition, 2 hand grenades, 1 mortar, 1 mortar shell and 1 artillery shell projectile.

China:

OIEL M1540410/00 seems to permit the export of a variety of training and combat aircraft demonstration models and mock-ups. What was the stated end use of the equipment? What limitations, if any, were imposed on the demonstration of any of these models to Chinese customers, given that the potential sale of any of these aircraft would appear to be constrained by the EU Arms Embargo on China?

It allowed temporary export of the goods for exhibition purposes only.

An explanation of the rationale behind the following refusals (original question 53)—together with the outcome of any related appeals (with an explanation of any successful appeals):

Israel:

ELAs 23934 and 25723, especially given that these appear to be for the re-export of equipment originally sent to the UK for repair.

These applications were refused on the grounds of criterion 2 and criterion 3. They were subsequently approved on appeal in the light of documentary evidence that the goods were for ultimate end use by a NATO country and that they would not remain in Israel. It is established policy to consider goods that are in the UK for repair in the same way as any application for new equipment.

HMG Response to a Verbal Request from Clerk of the Committee for Information About Whether the Government Intends Supplying the Royal Nepalese Army with 2 Aeroplanes

The Maoist insurgency continues to have a devastating effect on the people of Nepal. It poses a significant threat to the stability of the region and could lead to Nepal becoming a failed state. This Government is committed to supporting the Government of Nepal, and working to end the suffering of the Nepalese people.

The Global Pool strategy for Nepal focuses on three integrated strands; support to peacebuilding, improving security and tackling the root causes of the conflict. Under an agreed inter-departmental plan, we provide assistance in a number of areas, from development to stabilisation of the security situation. One of our strands of activity is to provide non-lethal support to the Security Forces, including the Royal Nepalese Army (RNA), in their efforts to combat Maoist aggression.

As part of this support the Government plans to provide the RNA with *** two Short Take Off and Landing (STOL) aircraft. These aircraft are small twin-engined Islander aircraft with a normal carrying load of around 7 persons (including crew). The aircraft *** are not combat aircraft and do not have a substantial military lift capability. These aircraft are used by some police forces in the UK ***. We would arrange for an agreement between HMG and the RNA that the aircraft would be strictly limited to a logistical, medical and humanitarian role.

The provision of the STOL aircraft is the next step logical in our programme of *** assistance to the RNA. These two aircraft *** would be timely assistance following the Maoist resumption of hostilities.

***

The RNA human rights record still gives rise to various concerns. We need to maintain pressure on the RNA to improve their behaviour and investigate alleged abuses thoroughly. We believe that the balance remains in favour of our continuing our non-lethal security assistance plan through the Global Conflict Prevention Pool as part of our strategy to influence RNA mentality and effect behavioural change.

Once all the necessary details regarding the intended gift, including the agreement with the Nepal Government, are settled, we will, of course, go through the appropriate parliamentary procedure to request approval to proceed with the gift.

February 2004

Appendix 15: Memorandum from Oxley Developments Company Ltd

THE CONSOLIDATED AND NATIONAL ARMS EXPORT LICENSING CRITERIA

We wish to bring to the attention of your committee certain information that gives us concern as to the overall commitment by other EU companies in their regard for the above criteria.

Oxley is an SME of some 240 employees, based in the North West at Ulverston. We are regarded as a company that develops and produces high quality products and systems within defence, government and industrial markets, about 80% of our product being exported either directly or indirectly. We are well aware of the arms export licensing controls and continue to apply the highest standards of responsibility when applying for export licences.

Our submission to your committee, which is attached, contains detailed information that appears to show that a French competitor company has been allowed to win a prototype/development contract for an identical system that was refused us by our licensing authorities under criterion 4 of the above EU code.

THE CONSOLIDATED EU AND NATIONAL ARMS EXPORT LICENSING CRITERIA SUBMISSION TO QUADRIPARTITE COMMITTEE

Oxley Developments Company Ltd applied for an export licence to satisfy a contract to supply the Chinese armed forces (Army Air Wing) with a cockpit and aircraft exterior lighting system, for use with NVG (Night Vision Goggles) equipped aircraft. In this case the Z-9 utility/communications helicopter (a Dauphin helicopter, built under licence from Eurocopter in France). The application was refused under criterion 4 of the Consolidated EU and National Arms Export Licensing Criteria at the end of 2002. Early in 2003 we appealed against this decision, the appeal was turned down under the same criteria. The company accepted the decision.

The competition for this contract had included a French company, *** who produce a system identical in function. Our agents in China subsequently informed us that the Chinese government had signed a contract with *** for prototype/development systems prior to a contract for the first tranche of some 50 aircraft of a total of 350. Our estimate of the total French contract value was in the region of £2.5/3 million sterling for the 50 aircraft; £20 million total.

The company informed the Export Control Policy section at the Foreign Office and were advised that the FCO had given notice to EU governments, that our licence had been refused but that they had not received information from the French government that *** had been awarded a licence to export their system. The French government subsequently advised the FCO that no licence had been issued to *** but they would pursue the matter. We were asked by the FCO to provide as much information as possible. Through our agents, in China, we were able to supply the name of the Chinese company engaged in the retro-fit, the serial number of the aircraft and the date of completion and test flight, including a report from the test pilot. Although the Export Control Policy Unit is pursuing this matter, we felt it necessary to bring it to the attention of the committee.

As a result of the information gathering exercise, by our agents, we were also informed that *** a German company had recently exported a "spectroradiometer", an instrument for measuring night vision lighting components. Oxley had been approached by Nanhang Electronics for this and other instruments but declined owing to the end use nature of the order and the fact that that we had been refused a licence. We were also advised that *** a Belgium company, had a technology transfer agreement with a Chinese electronics company for NVG systems, and that *** a French company had exported a small quantity of SuperGen tubes, for incorporating into NVG systems.

Exports are a major part of business and competition is an everyday fact of life in the commercial world, but it must be fair. The EU has agreed a policy on EU wide Export Control Criteria which companies within the EU should have to abide by and governments should police more effectively. We would ask the committee to look into this using the above as an example and see if greater transparency can be brought to bear within the EU code.

February 2004

Appendix 16: Further memorandum from Saferworld

Quality of the Annual Report

The Government announced some time ago that there would be no more improvements to the Annual Report for three years, however those three years were up by the time the 2002 Annual Report was produced. Nevertheless, the format of the 2002 Annual Report was effectively identical to that of 2001. It is now generally accepted that it is in the public interest for the maximum possible level of disclosure regarding export licensing. Saferworld has long argued that the Annual Report should function as a "one stop shop" which enables outside observers to assess whether the UK Government is honouring its export control commitments. Currently this is not the case.

The Report does not provide information on all transfers of controlled items which are either sourced from the UK or authorised by the UK Government (for example, the Annual Report does not provide information on disposal sales).

— **Can the Government give an assurance that the Annual Report will in future provide appropriate information about all controlled goods or technologies transferred or brokered from the UK, making clear the nature of the transfer (eg commercial sale, disposal sale, gift, government-to-government contract etc.)?**

Furthermore, for those transfers on which the Annual Report does report, the information provided is insufficient to allow effective analysis. While certain observers may have access to additional information, for example the QSC gathers more detail through written questions to the Government), many are completely dependent upon the Annual Report: more comprehensive data is therefore necessary.

Key elements missing from information on licences granted (and refused) include:

— Quantities

— Approximate values

— End-user

— End-use (this would be of particular value, as the summary descriptions in themselves often leave many questions unanswered. For example, what is the intended end-use of "components for military infrared/thermal imaging equipment" to China? Is it to monitor the gatherings of Falon Gong supporters in Chinese cities? Information on the use of dual-use goods would also be of significant value, for example, is "radioactive material" for use in a hospital or for a nuclear programme?)

— **What plans does the Government have to improve the nature of information on export licences in the Annual Report so that outside observers are better able to assess whether the Government is honouring its commitments?**

There is also a need for greater disclosure regarding the management of the open licensing system, for example through information on deliveries made under open licences and compliance procedures (see section on OIELs). There are still some doubts about how the new types of licence will be reported, but the indication that Global Project Licences (GPLs) issued under a Framework Agreement[19] project will be reported on in a similar fashion to OIELs is disappointing.

— **Will future Annual Report's provide details of the finished product to which licences issued under a Framework Agreement GPL refer?**

— **Will the Government seek to persuade his Framework Agreement partners to agree to publish those states agreed as possible recipients of goods produced under a Framework Agreement project?**

Open Licences

It would appear that despite Government reassurances to the contrary, the use of open licensing is increasing. This is supported by analysis of the total number of countries listed as destinations on OIELs since the Annual Report has been inexistence, and by the opinion of industry. That the nature and scale of this increase requires further examination has been made clear by the QSC in its report on the 2001 Annual Report, in which it was stated: "it is curious that industry recognises that there has been an increase in the scope of open licensing, given that the Government has consistently denied that this is the case."

— **Will the Government explain why the use of OIELs in comparison to SIELS would seem to be increasing?**

— **Will the Government tell the Committee what proportion of controlled exports on 2002 were made under SIELs, and what proportion under OIELs?**

Saferworld is concerned that this apparent increase in the use of open licences by the Government may be undermining the licensing process. Open licences allow for a lower level of scrutiny and transparency than SIELs, and while we appreciate the rationale behind their use (ie to allow for limited resources to be targeted more effectively), we are concerned that convenience could here become the enemy of responsible policy.

The fact that OIELs typically place allow multiple deliveries, place no limits on value or quantity, and do not specify end-use or end-user, create particular concerns against a number of the Consolidated Criteria. For example, the transfer of large quantities of arms and military equipment under OIELs could adversely affect regional or internal stability in situations where there are tensions or conflict. The use of OIELs can also be problematic in terms of diversion, where unscrupulous end-users may continue to import arms and equipment beyond their needs in order to re-export them to a third party. Additionally, transfers made under OIELs can negatively impact development where potentially large-scale exports of arms and equipment could undermine sustainable development in very poor countries.

[19] The Framework Agreement, to which France, Germany, Italy, Spain, Sweden and the UK are party, provides for streamlined licensing procedures for co-production projects. One Global Project Licence is to be issued for transfers among the co-production parties which will cover all transfers connected with the project among those parties. Exports to other countries will be licensed by the country of final assembly.

— **What steps are taken to ensure that OIELs do not allow for exports on such a scale as to threaten regional stability or hamper sustainable development in the recipient state?**

— **What steps are taken to ensure that exports, permitted under OIELs to countries which are acknowledged as diversionary risks, are not re-exported or put to inappropriate use?**

In transparency terms, moreover, because quantities or values of equipment exported are not recorded in the Annual Report, there is no way of Parliament or the public knowing the volume or value of exports that have taken place under OIELs, thereby preventing an objective assessment of the impact of particular licences and therefore of Government arms export policy. This lack of information also undermines the significance of the data included in the Annual Report on SIELs. Examples from 2002 which illustrate how this selective provision of value data paints an extremely partial picture at the level of individual countries include:

— Cameroon: no SIELS granted (total value £0); 10 OIELs granted;

— Philippines: 5 SIELs (total value <£250, 000); 34 OIELs.

At the very least, the Government should revise the system of open licensing to stipulate maximum quantities and values, and these should be reported upon in the Annual Report.

— **Will the Government commit to providing information in future Annual Reports on the maximum quantities and approximate values that may be exported under OIELs?**

The Government has in place a range of audit and compliance procedures to ensure that companies are honouring their OIEL commitments. This system is a welcome component in the UK export licensing regime. However, no information about the result of these procedures is included in the Annual Report, and it is thus impossible to judge what effect they are having. In order to build confidence in the use of open licences, the Government should report on the management of the compliance system, including information on number of visits or audits, incidences of anomalies or wrongdoing, and the remedial measures taken in response to problems.

— **What plans has the Government to include information on the OIEL compliance system in future Annual Reports?**

Saferworld is also concerned that OIELs are being ordered for a broader range of equipment than is appropriate to some destinations. For example, in 2002, it would appear that 42 countries were named on an OIEL for an extremely wide range of equipment with offensive utility. This equipment would appear to be predominantly naval, but there was also equipment of concern that could have been for use in other environments.[20] lncluded among the 42 states to which goods may be exported under this OIEL are:

Angola	India	Nigeria	Surinam
Argentina	Ivory Coast	Paraguay	Trinidad & Tobago
Brazil	Malaysia	Peru	Turkey
Cameroon	Martinique	Philippines	Uruguay
Colombia	Mexico	Senegal	Venezuela
Ecuador	Namibia	South Africa	

It may be that many of these countries have little interest in a large proportion of the equipment on this licence, which raises questions about why they should be included in the first place. Conversely, if they are in the market for most of the items listed, this would raise other, but no less important questions, with regard to their suitability in light of various of the Consolidated Criteria. In either case, Saferworld has serious doubts about the wisdom of including these countries as permitted destinations under this licence.

For example, what proportion of these predominantly naval items listed is Paraguay, a landlocked country with a reputation as a transshipment point, expected to buy over the lifetime of the licence? If this is typical of the way open licences are being issued it raises serious doubts about the system as currently conceived. OIELs should be tied more tightly to actual requirements of the individual countries concerned; only where there is a reasonable expectation that there is a legitimate requirement for particular equipment should that equipment appear on the licence.

[20] The summary description for the licence is as follows:
Components for submarines, components for naval engines, components for periscopes, components for torpedoes, components for naval mines, components for naval electronic warfare equipment, components for for naval sonar equipment, components for aircraft carriers, components for surface to air missiles launching equipment, components for for heavy machine guns, components for guided missiles decoying equipment, components for command communications control and intelligence equipment, components for naval communcations equipment, components for weapons control systems, components for naval radars, components for fire control equipment, components for combat aircraft, components for combat helicopters, components for military utility helicopters, components for military aero-engines, components for frigates, components for anti-ship missiles, components for surface to air missiles, components for small calibre artillery, components for torpedoes decoying equipment, components for anti-ship missiles launching equipment, components for torpedoes launching equipment, components for anti-submarine rocket launching equipment, components for corvettes, components for combat helicopters, components for aircraft radars, components for depth charges, technology for the use of combat helicopters, technology for the use of military aero-engines, technology for the use of aircraft radars, technology for the use of airborne electronic warfare equipment, technology for the use of torpedoes, technology for the use of depth charges, technology for the use of anti-ship missiles, components for military sonar detection equipment, technology for the use of military sonar detection eqipment components for patrol craft, componants for mortars, components for heavy machine guns, components for naval auxiliary vessels, components for general purpose machine guns.

Saferworld understands the concerns of the QSC, as expressed in its response to the 2001 Annual Report, in which it recommended that "the Government should consider how open licensing might best be extended to minimise the regulatory burden on legitimate business, and in particular to ensure that new business is not lost." However, without a strong link between licences issued and equipment intended for export, the integrity of the export risks being undermined.

— **Will the Government clarify whether OIELs are issued in circumstances where permitted destinations are not expected to have an actual demand for all the goods listed on the OIEL? If so, what steps are taken to ensure that this use of OIELs does not lead to unforeseen exports of controlled goods?**

— **In the case of OIEL number 10 to Paraguay, as listed in the 2002 Annual Report, can the Government explain why this landlocked country with a reputation as a transshipment point was included on this licence (predominantly for offensive naval equipment)?**

Country concerns

Saferworld's Audit of the Governments 2002 Annual report on Strategic Exports, contains a comprehensive country-by-country analysis of UK Government export licensing decisions during 2002. Drawing on this, the Audit has a full assessment of the Government's implementation of the Consolidated EU and National Arms Export Licensing Criteria (Consolidated Criteria). Below is a list of countries where Safer world has raised concerns about the sale of military equipment in relation to the different criteria, full details are outlined in the Audit, along with assessments of Criterion 6: International Law and Criterion 7: Diversion.

Consolidated Criteria	*Countries where concern is raised under criteria*
Criterion 1: International commitments	Afghanistan, Armenia and Azerbaijan, Bosnia-Herzegovina, China, Cyprus, Iran and Iraq, Somalia, Sudan
Criterion 2: Human rights	Brazil, Egypt, Jamaica, Jordan, Kuwait, Morocco, Nigeria, Pakistan, Philippines, Russia, Saudi Arabia, Sri Lanka, Thailand, Turkey
Criterion 3: Internal stability	Indonesia, Morocco, Pakistan, Philippines, Russia, Saudi Arabia, Sri Lanka, Turkey
Criterion 4: Regional tensions	India and Pakistan, Jordan, Egypt, and Israel, Kuwait, Saudi Arabia, UAE, Oman and Qatar
Criterion 8: Sustainable development	Angola, Bangladesh, Egypt, India, Indonesia, Cote d'lvoire, Jordan, Kenya, Nigeria, Pakistan, South Africa, Sri Lanka

There have recently been two developments in relation to Pakistan and China:

Pakistan

The recent revelations about the role played by Pakistani Dr Abdul Qadeer Khan in proliferating nuclear technologies, and the possibility of widespread complicity by other senior Pakistani officials raises very serious concerns about Pakistan as a diversionary risk.

— **What steps are the Government taking to tighten its export licensing policy to Pakistan as a result recent disclosures with regard to proliferation of nuclear technology, not only on key technologies but also on conventional strategic goods?**

— **Has information generated by Libya's recent openness caused changes of policy on licences granted for exports to other countries?**

China

The UK interprets the EU arms embargo on China as covering lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; any equipment which might be used for internal repression. This interpretation does not prohibit the licensing of components and technology for military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms.

In 2002, both the scale of export licensing to China and the type of the equipment were of concern. For example, licences were issued for the export of *inter alia* components for combat aircraft, technology for the use of test equipment for combat aircraft, test equipment for combat aircraft, components for combat helicopters, technology for the use of combat helicopters, technology for the development of components for combat helicopters, components for frigates, components for electronic warfare equipment, components for nuclear reactors, sporting gun ammunition, toxic chemical precursors and technology for the production of toxins. It is not at all clear how effective this interpretation can be in pressurising the

Chinese Government to improve its human rights record. With regard to the licences relating to combat aircraft and combat helicopters, very few licences for complete aircraft or helicopters to any countries were issued in 2002, which raises questions regarding whether the UK interpretation has any impact on the licensing of this type of equipment to China.

— **Can the Government explain the purpose behind the embargo to China, and explain how, in 2002, the issuing of £50 million worth of SIELs and 26 OIELs for a wide range of equipment is consistent with this purpose?**

— **In view of the ongoing and systematic abuse of human rights abuses in China, how is the current UK policy and the licensing of such a large quantity of equipment serving to pressurise the Chinese Government to have greater respect for human rights?**

The French Government has recently proposed ending the EU arms embargo to China. A number of other EU states have responded, with the tide apparently running in favour of the French position. The Netherlands, for example, has recently changed its opinion and is now open to such an idea. The US has expressed its strong preference for the embargo to remain in place. The position of the UK is so far unclear. On the basis of the ongoing human rights situation, the significant procurement ambitions of the Chinese Government and relations with Taiwan, Saferworld would recommend that rather than ending the embargo, it should be strengthened to include components of all embargoed systems.

— **What is the UK Government's position with regard to changing or ending the EU arms embargo on China?**

F-680 process

In recent years, more and more information has come to light regarding the way in which the F-680 process is used in a variety of ways within the UK export control milieu. From being used by industry to get approval for the release of classified information or to receive a non-binding indication as to whether they are likely to (at a later date) be awarded an export licence for a particular deal, it is also used in a number of ways by government to manage its own conduct, for example to determine whether the Government should become involved in supporting a possible sale or to approve a disposal sale or gift.

The Government has given assurances that an F-680 assessment lends full weight to the Consolidated Criteria, which begs the question of why not then use the standard export licensing process. The use of two overlapping processes inevitably creates confusion about how the system works. Furthermore, as the Government has itself stated, considerable time may pass between an F-680 approval and a subsequent transfer, with potential for significant change in the security environment. For example, the UK Government recently threw considerable weight behind a BAE bid to sell Hawk aircraft to India. But negotiations for the deal started almost two decades before the sale was agreed. It is not clear what role the F-680 process had in the Government's involvement, or when any F-680 assessment might have been made. In order to build confidence in the use of F-680, the Government must set out full details of exactly when and how the F-680 is used in different circumstances. This must cover all uses of the process.

— **Can the Government provide information regarding all those circumstances where the F-680 process in used with regard to the transfer overseas of controlled goods, including specific and comprehensive details of when and how it is used?**

Military gifts and the global Conflict Prevention Pool

One of the important issues raised by the QSC in its response to the 2001 Annual Report on Strategic Exports concerns the Government's role in gifting military equipment to overseas governments and using funds from the Conflict Prevention Pool to finance the gifts. The Export Control Act 2002 does not bind the Crown and as such "no licence is generally required for Government-to-Government transfers by gifting".[21] This raises the prospect of the Government participating in transfers of military equipment which have not been scrutinised against the Consolidated Criteria. Indeed, in its response to the QSC, the Government has acknowledged that "gifts of [strategically controlled goods] made in recent years have not always been assessed formally against the [consolidated] criteria"[22] while maintaining that any gifts funded from the Conflict Prevention Pool will have been subject to "appropriate inter-departmental consideration."[23] In the interests of transparency and accountability, it would be instructive if the Government were to reveal the nature of this consideration.

In addition, reference is made to the potential for the Government to facilitate the transfer of controlled goods by way of a letter of Crown Immunity which "confirms to HM Customs that the item is either wholly owned by the Crown or is one over which the Crown has the right of disposal, and will therefore not be

[21] UK Strategic Export Controls Annual Report 2002, p 18.
[22] Government response *op cit*, point 17.
[23] *Ibid*, point 20.

subject to licence".[24] While this information is helpful, again in the interests of transparency and accountability, it would be useful to know under what circumstances a transfer would be classed as eligible for Crown Immunity rather than constituting a Disposal Sale, for example.

When a Government Department wishes to make a gift in excess of £100,000, it is normal practice for the Ministry in question to place a Minute before Parliament, giving Members 14 days to consider the proposal. If during the 14-day period an MP signifies an objection to the gift through tabling a question or a motion or otherwise, then the Government cannot approve the gift until the objection has been considered.[25]

During 2002, controversy was generated by the manner in which the Government gifted 114 Challenger I MBTs and 19 training tanks to Jordan and 2 Russian-made Mi17 helicopters to Nepal. With regard to the former, a memorandum regarding the intention to gift the tanks to Jordan was deposited in the House of Commons Library during parliamentary recess, thereby depriving Parliament of the opportunity to scrutinise the proposal. The Government explained subsequently that the need to keep UK-based tank refurbishment facilities open lay behind the timing of the notice.[26] With regard to the gift of two Mi17 helicopters to Nepal, a Minute giving notice of the government's intention to gift the two helicopters to Nepal was laid before the House at the end of July 2002. Unfortunately the Minute was tabled only two days before the parliamentary recess and so Members were not given the requisite 14 day period during which to scrutinise the proposed gift.[27]

A related issue that arises in connection with the gifting of helicopters (and other equipment) to Nepal concerns the source of Government funds used to pay for the goods. The cost of the gifts to the Government of Nepal, which came to £4.077 million, was borne by the Global Conflict Prevention Pool. The QSC concluded that Conflict Prevention Fund should not have been used to purchase the military equipment.

In December 2003, it was reported that Britain had agreed to supply two used Short-Take-Off-and-Landing (STOL) planes to the Government of Nepal.[28] There had been no announcement of this in Parliament. The Foreign Office confirmed the purchase and said it planned to make a statement to Parliament once the aircraft had been ordered.[29] However,this does not explain why a statement was made by an embassy official in Nepal that the Government had "agreed" to provide the planes, when the correct approval system had not been followed.[30]

— **Under what circumstances is a transfer classed as eligible for Crown Immunity rather than constituting a Disposal Sale?**

— **What authorisation was given to the British Embassy Official in Nepal to make a statement on 21st December 2003 that the British Government had agreed to supply two Short-Take-Off-and-Landing planes to the Royal Nepalese Army?**

— **What is the decision making process for granting military gifts under the global conflict prevention fund?**

Prior parliamentary scrutiny

For a number of years the QSC has been engaged in dialogue with the Government regarding the possibility of the Committee having sight of certain export licence applications in advance of the decision being made, and thereby serving in an advisory capacity. In July 2002, the Committee stated that "We do not accept the arguments of principle raised by the Government against our predecessors proposals for prior scrutiny. We recommend that the Government . . . come forward with proposals for a system of prior parliamentary scrutiny of export licence applications by a select committee, or committees, of this House." Unfortunately, the issue of prior scrutiny appears to have reached a stalemate and the Government has not come forward with proposals or discussed it further with the QSC. In April 2003, the Secretary of State for Trade and Industry was asked whether the introduction of prior scrutiny would assist the process of coming to decisions quickly over licences.[31] The Secretary of State dismissed the argument stating that "I fear that this is one we are going to go on disagreeing for some time to come."[32]

[24] *Ibid*, point 19.

[25] The Departmental Minute Process is described in Erskine May (Parliamentary Practice, 22nd edition, Butterworths, 1997).

[26] *The Guardian*, 29 October 2002.

[27] *The Guardian*, 5 August 2002.

[28] Kantipur new online 24 December 2003 www.kantipuronline.com/php/kolnews.php?&nid=4860.

[29] Peace fund used to buy military planes, *The Guardian*, 23 January 2004.

[30] ". . . when a government department wishes to guarantee for which there is no statutory authority, and the liability thereunder could exceed £100,000 it is normal practice for a Minute to be laid before Parliament. Approval of the guarantee is usually withheld for 14 days, after the date of laying. If in that period a Member signifies objection by the tabling of a question of motion, or otherwise, final approval is not usually given until the government has considered to objection. A similar practice is followed in the case of gifts of public stores, or property of an unusal nature or of a value exceeding £100,000 Erskine May (Parliamentary Practice. 22nd edition. Butterworths. 1997).

[31] Defence, Foreign Affairs, International Development and Trade and Industry Committees *The Government's proposals for secondary legislation under the Export Control Act,* May 2003, HC621, para 169.

[32] *Ibid.*

A system of prior scrutiny would be particularly appropriate with regard to decisions over the gifting of military equipment and also in terms of licences granted for disposal sales and government-to-government contracts since these are a direct expression of Government policy and can involve the transfer of publicly owned equipment. Under the QSC's recommendations for a two-stage system of prior parliamentary scrutiny of arms export licence applications, proposed gifts, disposal sales or government-to-government contracts, should automatically be notified to the Committee in Stage 2 (in which comprehensive details of the proposed transfer are provided). Issues of delay, confidentiality or principle do not apply, as in the case of gifts over £100,000, Parliament should have to approve the gifts anyway and the recent Nepal case illustrated that the intention of the Government had been announced publicly.

— **What discussions has the Government had recently on the introduction of prior parliamentary scrutiny?**

— **Will the Government consider introducing a system of prior scrutiny for the granting of military gifts, disposal sales and government-to-government contracts?**

End-use monitoring

Effective monitoring of the end-use of arms would go a long way to allay many of the concerns that are raised about selective arms exports. Despite the efforts that the Government makes to ensure that arms which might be used for internal repression or external aggression are not sourced from the UK, the danger remains that unscrupulous or irresponsible end-users may themselves re-export arms of UK origin to countries in conflict and human rights crisis zones.

In 2002 and 2003 a number of reports surfaced regarding the diversion of military equipment from third countries into Iraq, India, Jordan, Ukraine, the UAE and Yemen, all countries to which the Government authorised weapons sales in 2002, were suspected of being links in the Iraqi military-equipment supply-chain. The Government has declared itself satisfied that existing pre-licensing checks are sufficient to prevent diversion or unauthorised export, and refuses to institute a system of end-use monitoring to ensure that in cases where there are grounds for concern. The Government has argued that it does not consider that it is either practical or useful to monitor the end-use of all military goods exported from the UK. It has made this point on a number of occasions, however most observers and the QSC have never called for such a system. During a debate in March 2003 the Foreign Office Minister Mike O'Brien said "It would not be possible to have a formal requirement for end-use monitoring, because if we did that on a formal basis everywhere, it would consume a vast amount of resources."[33] MPs in the debate challenged this stating that the call was not "a blanket check-it is on those deals in which there is most likely to be a problem."[34] However, this clarification has not served to forward the debate.

The Government have stated that they "often impose certain, re-export conditions and much informal checking is carried out by posts."[35] However, when the QSC called on the Government to "provide us, in confidence if necessary, with a copy of the guidance issued to overseas posts and desk officers on the circumstances in which end use monitoring should be considered"[36] the Government refused, but explained that the guidance advises "the desk officer to consider where monitoring would be feasible and would make a genuine contribution to our efforts to prevent diversion or misuse of defence exports. It makes clear our commitment that we are prepared to carry out such monitoring where possible and appropriate."[37] The Government have failed to answer when and under what conditions end-use monitoring takes place and it is clear that it remains an *ad hoc,* informal process.

The QSC asked the Government to look at the end-use system in the US. In the US, several formal end-use monitoring systems have been put in place, eg the State Department's Blue Lantern programme. Under this system, while some checks are random, the majority are triggered by the expert judgment of licensing and compliance officers using intelligence, law enforcement and a comprehensive list of "red flag" indicators. Depending on the nature of the specific problem. In 2001 and 2002, the US Government conducted 428 and 410 Blue Lantern end-use checks respectively, of which 50 and 71 were determined to be unfavourable.[38] Crucially it is considered that end-use monitoring has a deterrent effect.

As is the case in the US, targeting the use of limited resources against a matrix of likely risk factors, for example where there is a history of diversion, could be undertaken by the UK Government. In February 2003, the Foreign Secretary Jack Straw said that he would follow-up on the system. However, a parliamentary answer in September revealed that Government officials had not had discussions with the US

[33] House of Commons *Hansard* 27 March 2003, Col 186WH.
[34] *Ibid.*
[35] *Ibid.*
[36] House of Commons Defence, Foreign Affairs, International Development and Trade and Industry "Strategic Export Controls—Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny". HC474. May 2003. Para 122.
[37] Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny—Government response September 2003. Cm 5943.
[38] Letter to Barry Gardiner MP from US Senate Committee on Foreign Relations October 21 2003.

state department on end-user controls.[39] This changed in November when a parliamentary answer revealed that officials in the FCO had been researching the US system and would be "informing Ministers of their findings in the near future."[40]

The Government should strengthen provisions for end-user certification and monitoring. The Government should adopt a system whereby end-user assurances provided by prospective recipients of UK arms and dual-use goods take on the form of a legally-binding agreement—and it should forbid re-export without the express permission of the UK Government. If these assurances are found to have been broken at any point, sanctions should be invoked, such as the revoking of the licence, the suspension of further deliveries and the withholding of spare parts and servicing.

In its response to the 2001 Annual Report the QSC requested that the Government explain how providing information on the identity of the end-user of UK export licences would be to the commercial disadvantage of the exporter. In response the Secretaries of State asserted that revealing end-user information could compromise commercial confidentiality and highlighted concerns put forward by the UK Defence Manufacturers Association (DMA) that any information on lower-value contracts, in particular, is much sought after and of significant potential value.[41] However, the DMA has in discussions with Saferworld expressed its frustration with the Government's refusal to release certain additional information on end-users in circumstances where greater disclosure would protect against erroneous claims of irresponsible licensing decisions and commercial activities.[42]

The Government also state that details of the end-user combined with other information in the Annual Report could reveal sensitive information regarding a recipient country's defence strategy and could lead to difficulties with the UK's bilateral relationships as well as making the UK a less desirable source of defence goods.[43] These arguments remain theoretical and unsubstantiated and, moreover, have not proven a barrier to the disclosure of such information on the part of the US government.

— **What discussions has the Government had with the US regarding the Blue Lantern System of end-use monitoring?**

— **What impact has the discovery of the breaking of end-use assurances (eg in Indonesia and Israel) had on export licensing decisions?**

Amending the Consolidated Criteria

Despite the entry into force of the EU Code of Conduct in 1998, the UK Government has continued to face controversies on arms sales. In some cases this has prompted a review of how the criteria are applied, as was the case with the publication, in August 2002, of the new guidelines on sustainable development, or a clarification of how the Code is applied, as with the Government's statement, in July 2002, on the issue of incorporation. In spite of these developments, broader questions remain as to how effectively the criteria are being implemented.

In terms of the thousands of licences granted during 2002, it should be acknowledged that only a relatively small proportion raise concerns. As discussed in the end use section, it may be that in most cases the concerns would be alleviated if the Government were to reveal some limited information concerning the end-user of the equipment. Information on any guarantees regarding the use of the equipment given by the recipient could also be helpful in alleviating certain concerns. Indeed, when the QSC have undertaken further checks on a number of licences, often fears are allayed.

In the absence of this information, however, substantive questions remain with respect to the Government's implementation of the Criteria. Whilst NGOs and the QSC continue to urge the Government to provide additional information in future Annual Reports so as to facilitate a fully informed appraisal of UK arms export policy on the part of Parliament and the public, the fact that the same concerns are being raised year after year is suggestive of deeper problems.

[39] Mr Gardiner: To ask the Secretary of State for Defence what discussions his Department has had with the US State Department on (a) the use of extraterritorial export control legislation and (b) the need to have strict end-user controls on arms shipments, to reduce threats to military personnel. [130182]
Mr Ingram A range of issues have been discussed with the United States Government in the context of the negotiations, concluded earlier this year, on a text for an unclassified waiver from the US International Traffic in Arms Regulations. These have included consideration of extraterritorial control in relation to the export of strategically controlled goods, but not specifically of end-user controls. The national security of the United Kingdom and its allies is considered at the time an application for a licence to export is made, under the Consolidated EU and National Arms Export Licensing Criteria. 17 Sept 2003: Column 752W.

[40] Mr Gardiner: To ask the Secretary of State for Foreign and Commonwealth Affairs what efforts he has made since 27 February to research in greater detail the US systems of end-use monitoring of exports of controlled goods; and if he will make a statement. [136293]
Mr MacShane: Officials in the Foreign and Commonwealth Office have been researching the United States system of end-use monitoring, and will be informing Ministers of their findings in the near future. 11 Nov 2003: Column 202W.

[41] Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny—Government response September 2003. Point 42.

[42] The DMA gave as a hypothetical example the case of an export of spare parts to a Royal Australian Navy vessel on a courtesy visit to Indonesia, which would appear as an export to Indonesia (the geographical location of the vessel), rather than Australia (the nationality of the customer).

[43] Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny—Government response September 2003. Cm 5943.

It is clear, in fact, from the evidence given by the Government to the QSC that judgements under the criteria can be problematic. At the last evidence session, the Foreign Secretary, Jack Straw, admitted, with regard to the licensing, in 2001, of artillery to Pakistan that ". . . on some initial reading of the criteria, you could refuse every single application from every single country, unless the idea of the sale was that the equipment should never ever be used for the use for which it is contemplated."[44] A Government official went on to explain that at the time of the decision "the circumstances across the line of fire were taking place, were involving at that time small arms rather than artillery."[45] However, as the QSC noted "that artillery exchanges across the line of control were widely reported in both 2000 and 2002." Despite the fact that the Consolidated Criteria states "if there is a clear risk that" the goods could be used for internal repression, regional stability or affect development, licences continue to be granted. The answers above show how inadequate the risk assessment is, for example in the case above even if at the exact time the circumstances were involving small arms and not artillery (which is disputed) surely there was still a high "risk"?

Therefore, as evidence shows, if the UK Government can still approve the export of significant quantities of arms to countries where there are concerns relating to human rights, internal and regional stability, International law and development, while still adhering to the Consolidated Criteria, then a revised approach to export licensing must be considered.

There are plans to review of the EU Code of Conduct and it may be an opportunity to re-examine the Code Criteria (and therefore of the Consolidated EU and National Arms Export Licensing Criteria), with the express objective of strengthening the Code further and eliminating the loopholes and inconsistencies and ambiguities that threaten to undermine the laudable objectives of the Code as agreed in 1998.

— **Does the Government have any proposals for the EU Code review and how will the QSC feed into this process?**

Incorporation

A continuing concern is the change in the guidelines for goods which would be incorporated into products for onward export that were announced in July 2002. The release of the guidance was forced by the fact that a decision had to be made regarding a licence for the sale of heads-up display units to the US for incorporation into F-16 fighter aircraft for onward export to Israel. Application of the Consolidated Criteria and the tightening of sales to Israel would have made granting the licence problematic. The Government therefore chose to issue the new licence at the same time as announcing that the licence had been granted, with no consultation.

In his recent book, Robin Cook illustrates the concern about this issue. "Ben Bradshaw waits behind to share with me his anxiety over the decision Jack Straw is announcing today that we will allow the US to incorporate British avionics in the F-16's that they are exporting to Israel. He is visibly upset by it, as he regards it as a flat breach of our own domestic ban on the export of weapons to Israel, and he personally resisted it during his time as the junior minister responsible for the Middle East..."[46] John Kamphner, in his book "Blairs Wars" quotes a member of the Government who said at the time: "the Israelis had given us assurances that the planes wouldn't be used in the occupied territories, we knew those assurances to be worthless. We knew similar planes had been used to bomb refugee camps."[47] If this is the case, it begs the question why the Government continues to licence equipment in this way?

The QSC raised the issue of incorporation in the May 2003 report and recommended that the Government should identify in the Annual Reports those licences for which the additional factors were a consideration and that the final destination of the equipment licensed for export should be identified in such cases as well as the incorporating country. This reporting has not appeared in the Annual Report.

— **Does the Government agree that by not seeking guarantees regarding the use of Heads-Up Display Units—exported to the US for incorporation into F-16 aircraft for subsequent export to Israel—that the Government is effectively circumventing its own avowed policy not to allow UK equipment to be used in the Occupied Territories?**

— **How many arms export licences currently extant have conditions attached to the use of the equipment and to which countries do these apply?**

— **Does the Government agree that, when it comes to the export of major components and subsystems which are for incorporation overseas, the Government should always be aware of the final destination of the product and their intended use?**

— **What has happened to the promised reporting in the Annual Report on incorporation cases?**

[44] House of Commons Defence, Foreign Affairs, International Development and Trade and Industry "Strategic Export Controls—Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny", HC474, May 2003, Oral Evidence 14 Q 87.
[45] *Ibid.*
[46] Robin Cook Point of Departure, 2003 p 117.
[47] John Kampfner Blairs Wars, 2003, p 170.

Brokering

The Government has chosen to assert extraterritorial control on brokers only where the brokering activities are in relation to long-range missiles or torture equipment, or to embargoed destinations. In doing so the Government has rejected calls from the QSC to introduce full extraterritorial controls on arms brokering. Subsequent to the publication of the secondary legislation in October 2003 there has been additional debate about the adequacy of UK arms brokering controls, with particular reference to the transfer of surface to air missiles (MANPADS), which have become an increasing concern.[48] The ease of transfer of these weapons makes them a particular concern when addressing trafficking and brokering of arms.

Janes estimates there are about 500,000 MANPADS in the world. Of these, only 350,000 are held in defence stockpiles: 150,000 shoulder-fired missiles are in the hands of unauthorised parties. Some of the simpler systems are available on the illicit arms market for as little as $1,000. Janes further estimates that 27 militia groups and terrorist organisations own shoulder-fired missiles.[49] In December 2003, the 33 participating states to the Wassenaar Arrangement agreed to "apply strict national controls on the export of MANPADS."[50] These measures are to be aimed in particular at "preventing acquisition by and diversion of these weapons to terrorists."[51]

However, the Government has given confused statements about how they are controlled. In a House of Commons debate in November 2003, the Minister, Nigel Griffiths, stated that: "The trafficking in shorter-range missiles by terrorists or for the purposes of terrorism is covered in many circumstances by the anti-terrorism legislation, which also has extraterritorial effect."[52] Roger Berry MP asked "Will he advise us in which circumstances the issue had not been addressed? Does he acknowledge that if missiles are not covered through the extraterritoriality provisions, they could be supplied to one or two individuals who could subsequently supply them to terrorists . . .?" The Minister responded that "My hon Friend's point is covered. One reason that we consider exports on a case-by-case basis is to review reports on where they end up. It is our intention to stop exports being passed on by anyone beyond the designed destination. That is the most effective way to keep weapons out of the hands of terrorists or anyone else." The Minister is completely wrong to claim that in this case the broker would be under the regulatory control and be assessed on a "case-by-case basis". A UK broker located overseas and supplying arms indirectly to terrorists, will in most cases not need to apply for a licence, thus there will be no assessment. UK law will not apply. This is exactly why there is a need for extraterritorial controls.

The Government has since at further controls on MANPADS. In a parliamentary question Foreign Office Minister, Denis MacShane, stated that "to counter the threat from [MANPADS] the Government will decide over the next few months whether anything further needs to be done to control brokering of these weapons."[53]

— **What decision has been made about the extension of extraterritorial controls on arms brokering to cover MANPADS?**

February 2004

Appendix 17: Further memorandum from the Foreign and Commonwealth Office

EXPORT LICENSING: POST EXPORT MONITORING

We have, as agreed during the Foreign Secretary's appearance before the Committee last year and mentioned in subsequent PQs, been conducting research into the US Government's system of end-use monitoring, Blue Lantern. I am now writing to let you know of our findings and conclusions.

We have investigated Blue Lantern through study of material and discussions, involving both the British Embassy in Washington and an official visiting from London. Ministers have agreed the conclusions.

Blue Lantern is run by the Office of Defence Trade Controls in the Department of State. They carry out end-use checks on about 10-12% of the 40,000 or so licences the US processes annually. Most of them are the sort of the pre-licensing checks that we carry out here. A little less than half are post-export. Of those

[48] In November 2002, a Kenya based Al-Qaeda cell fired a Russian-designed Man Portable Air Defence System (MANPAD) at an Israeli airliner in Mombassa. In February 2003, troops were deployed at Heathrow airport because of the intelligence reports that Al-Qaeda planned to fire portable missiles at civilian aircraft. In August 2003, UK citizen Helmant Lakhani was arrested in the USA for allegedly arranging the transfer of a MANPAD into the USA. In November 2003, a cargo plane was hit by a SAM on approach to Baghdad and had to make an emergency landing.

[49] Janes Terrorism and Security Monitor: *Portable missiles—the ultimate terror threat.*—AL J Venter. 1 October 2003.

[50] Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS), *The Wassenaar Arrangement,* December 2003, http://www.wassenaar.org/2003Plenary/MANPADS_2003.htm

[51] Public Statement, 2003 Plenary Meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, *The Wassenaar Arrangement,* December 2003, http://www.wassenaar.org/2003Plenary/public_statement2003.htm

[52] *See* Westminster Hall Debate Export Controls, 6 November 2003.

[53] House of Commons Hansard 18 November 2003 Col 30WS.

the vast majority are carried out through documentary checks or simple checks of arrival. Only around 0.5% of licences issued—those judged to be at highest risk—are subject to physical monitoring through an on-site inspection.

We conclude that we already carry out the vast majority of the work in the Blue Lantern programme as part of our current licensing procedures, although we have not "badged" it as a separate programme.

We have carefully considered whether to carry out such checks on a similar sample basis would add a further level of certainty to our own system of controls. We are not convinced that it would do so to any significant extent. We believe that our careful system of post-export checks reduces the risk of misuse to a minimum. Once an item has been exported, the options for putting right misuse or diversion are limited. A formalised system of post export checks would only divert resources and focus away from the most important decision: whether to export or not. We are, however, very conscious of the need to ensure that UK exports of military goods are not diverted to those who would use them to commit human rights abuses or acts of terrorism.

We will therefore encourage relevant officials to consider greater use of the facility already available to them to request end use monitoring on a case by case basis, reminding them of the indicators that would suggest such action. We will also look to see if export licensing procedures should be adjusted to make such checks, which as noted will normally fall short of requiring a visit, easier.

February 2004

Appendix 18: Memorandum from the UK Working Group on Arms[54]

Introduction

A Review of the EU Code of Conduct on Arms Exports is currently underway, and at the Committee's evidence session with the Foreign Secretary in February, FCO officials indicated that they anticipate the final revision to be ready by the autumn.[55]

The Review is an opportunity to address some of the weaknesses in the existing EU export control regime. In discussions held with officials late last year it was suggested that no limits had been placed on the subjects for discussion and revision. In such circumstances, it is crucial that this Review is not the exclusive preserve of governments. Yet to date, the process has been conducted inter-governmentally, with very little involvement from outside. The statement by the Foreign Secretary during the evidence session that the Government is open to proposals for the review is therefore extremely welcome, as is the indication from the QSC of its intention to examine this issue. However, the Irish Government set 25 March as a deadline for member and accession states to submit proposals for change to the Presidency of the EU, despite the fact that no procedures have been established for engaging in consultation outside of government. The UK Working Group on Arms is therefore concerned that the ability of Parliament or other external observers to influence this process will be strictly limited, and is urging all interested parties to contact the Government to ensure a fair hearing. This submission sets out a number of issues that the UK Working Group on Arms believes should be addressed in the Review.

Background

The EU Code of Conduct, agreed by member states in 1998, was an important step forward for EU Member State co-operation over export controls. Implementation of the Code in the intervening five-plus years has resulted in a number of positive developments including enhanced transparency and accountability in EU arms export policy. There has also been a number of additional supporting agreements and initiatives, including a Common Military List and a Common Position on Arms Brokering. The operation of the denial notification system has been crucial, particularly to countries without extensive and sophisticated intelligence capabilities that otherwise may be unaware of the risks posed by particular exports to particular destinations.

Despite these positive developments, it is difficult to assess whether the Code has actually led to increased restraint to any significant degree since EU states are still supplying arms to countries that abuse human rights, suffer internal instability, or that are situated in regions of conflict and tension. Furthermore, there are a number of areas where there is a pressing need for improvement: some relate to issues that have been addressed by the member states, but inadequately; others relate to issues that have yet to be addressed.

Although the Code is a dynamic instrument, and as mentioned above developments in this issue area have been ongoing since its inception, there remains a significant range of elements of export control still to be addressed. The EU Code Review would appear an ideal opportunity to consider all outstanding issues, thereby creating a fully comprehensive and effective EU-wide arms export control regime. The principal areas for member states to focus their attention on are as follows:

[54] For the purpose of this briefing the UK Working Group consists of Amnesty International, BASIC, International Alert, Oxfam and Saferworld Minutes of evidence taken before the Quadrigpartile Select Committee, Strategic Export Controls 25 February 2004 Q27.

[55] Minutes of evidence taken before the Quadripartite Select Committee, Strategic Export Controls, 25 February 2004, Q27.

Export Criteria

1. **Language**: There is a need to strengthen the language of the EU Code, particularly with regard to international humanitarian law (IHL—criterion 6). Current provisions relating to IHL, whilst being inadequate, are also non-binding on member states. Steps should be taken to ensure that this and other criteria are fully reflective of states existing responsibilities under international law, inter alia, by incorporating all the elements of the draft Arms Trade Treaty[56] into the EU Code.

2. **Clarity**: There is a need for making the application of the Code as clear as possible and for reducing the scope for differing interpretations of the criteria. For example, this should involve defining those circumstances where a licence should not be granted rather than saying what factors should be "taken into account".

3. **Guidelines**: In order to address the widely different interpretations of the Code Criteria, there is a need for the development of guidelines to assist the member states in interpreting the criteria and the indicators that are used to carry out assessments; these guidelines would be particularly helpful to the Acceding Countries.

Operative Provisions

1. **Applying the Code to all relevant transactions**: The Code should apply to brokered transactions of controlled goods, licensed production overseas, transhipments of controlled goods through the EU and intangible transfers of controlled technology (transfer of technology by electronic means) as well as to physical exports of controlled goods from EU states.

2. **Denial notification issues**:

— *Swift notification of all denials:* There is a need to ensure that denials are swiftly notified to other member states, for example, by circulating them via electronic means instead of through the cumbersome "diplomatic channels". Provisions also need to be agreed for taking into account denials which some countries issue following "informal" or "preliminary' approaches from industry and which can replace a formal licence application.

— *Adequate record-keeping:* The establishment and maintenance of a central database of denials would ensure that all member states would have access to the information relating to existing denials. The extension of this database to include a record of denial consultations and their outcomes would also be desirable as would the inclusion of information on suspect or unreliable end-users.

— *Promoting greater convergence and understanding amongst EU member states on the application of the Code:* By sharing information on denial consultations amongst all EU states and not just bilaterally all EU States may understand the issues raised during the consultation provisions leading to a more consistent application of the Code.

— *Widening the impact of the Code:* By sharing information on denials with non-EU countries that subscribe to the Code, convergence and restraint can be encouraged amongst a wider group of states. EU member states should move towards sharing information with the remaining Associate Countries (eg Bulgaria and Romania) and could hold out such involvement as a reward for progress in arms export control such as the publication of an annual report and the development of strong legislative and administrative procedures. An annual meeting of all states that subscribe to the Code to ,discuss its-application and evolution would also enhance the sense of such countries as partners in the EU Code and give substance to the concept of "alignment" to the EU Code.

3. **Control list issues**: The EU Commission has developed a proposal for a regulation controlling the export of non-military (police and security) equipment that may be used in internal repression. It is essential that there is speedy agreement on such a regulation since. this is a major issue that has yet to be addressed even after almost six years of the Code's operation.

4. **Annual Reporting**:

— *Producing comprehensive national Annual Reports:* Not all EU member states produce Annual Reports on their arms exports. Of those Reports that exist, moreover, many provide insufficient information to allow national parliaments and publics to conduct a fully informed appraisal of their government's implementation of the EU Code. Accordingly there is a need to develop common provisions for the production of national annual reports based on best practice.

[56] The draft arms Trade Treaty, as proposed by an international grouping of NGOs, does not cover all the elements in the EU Code, for example with regards to several of the operative provisions. The context of a review of the EU Code would however seem to provide an opportunity to ensure that where the EU Code falls short, it is amended to reflect all the obligations contained in the draft ATT.

— *Ensuring all states provide comparable information in the context of the Annual Review:* Even after five years of the EU Code, member states are providing incomparable data for inclusion in the Annual Consolidated Report on the operation of the Code. Member states need to harmonise their methods of data collection and evaluation so that there is consistency in terms of information provided in the Consolidated Report and what it means.

— *Ensuring that the Consolidated Report allows for informed analysis of how the Code is operating:* The current level of information provided in the EU Code Consolidated Report provides only a limited insight into the operation and effectiveness of the EU Code. Disclosure of more detailed information, for example on denials and consultations, would help to enhance transparency and accountability in the operation of the Code.

Ensuring all states have the same understanding of key principles: Member states have agreed that the day-to-day operation of the Code will lead to a convergence of thinking on what constitutes an "essentially identical transaction" and thus when consultations need to take place between states on possible undercutting. However, a concerted effort to develop a common definition of an "essentially identical transaction" is needed to prevent member states unwittingly undercutting each other, and thereby to ensure that the Code is consistently applied by all member states. States have agreed that for the moment they will use a broad interpretation of the concept of "essentially identical": there is a need to develop an approach which explicitly provides for an interpretation based on whether transactions might have essentially identical consequences, eg where they would contribute to similar capabilities of the end-user, or raise the same risks for diversion, human rights or regional stability.

Other issues

1. **End-use issues**: Member states have agreed a list of provisions which should be incorporated into an end-use agreement; additionally they have agreed a further (optional) list of provisions which could be required from any end-user undertaking. Member states should expand the list of required provisions to include those recommended provisions. In addition, member states should reach swift agreement on those circumstances in which an end-user certificate should be required and they should further agree on what should be the response when end-use assurances are found to have been broken. EU States should exchange information and maintain an EU (or wider) database regarding re-export and diversion risks. This should be supplemented by an active and focussed information exchange on end-use issues so that countries without extensive intelligence resources can benefit from the knowledge of larger member states. EU states should also reach agreement on invoking end-use monitoring provisions. Arguments have been made that EU states do not have the power or capacity of the US, for example, and so cannot take such steps, however by working in concert member states could overcome this difficulty.

2. **Arms-brokering issues**: Member states have agreed a Common Position on Arms Brokering but it does not go far enough. Member states need to strengthen the agreement to include extraterritorial controls and the requirement that all EU States establish a register of arms brokers. Member states should also agree-that all must introduce controls within a two-year time-frame.

3. **Licensed production overseas (LPO) and incorporation issues**: Few member states currently operate controls on the production of arms by national companies overseas raising concerns about the global proliferation of arms manufacturing capabilities. Member states should agree to subject all LPO and incorporation deals (where components are exported for incorporation into a weapons system overseas) to a licensing requirement. This licensing requirement should include scrutiny of all such deals against the Code of Conduct—taking account of the nature and quantities of the goods to be produced and their ultimate destination and end-use.

4. **Transit issues**: There is currently no co-ordination of EU member states' policies regarding the transit of controlled goods through their territory. Indeed, the apparent lack of regulation in this area raises the prospect that weapons could be passing through the Community to countries which would not receive direct exports of the same from EU member states. This issue must be addressed with a view to full regulation in this area. In the first instance, member states need to agree on those circumstances in which a transit licence is required.

5. **Assisting Acceding states in implementing the Code**: Member states need to be more proactive in offering help and should suggest areas in which their expertise could be offered, since accession countries may be unaware of what is required of them in this area. Member states should also establish a mechanism which enables the provision of all necessary assistance to Acceding countries so as to facilitate their full compliance with the Code and associated agreements, possibly through establishment of a dedicated fund allowing the provision of legal and technical assistance.

6. **Enhancing the impact of the Code**: Member states should adopt the Code of Conduct as a legally-binding instrument in order to encourage stricter application of its provisions by member states. If this is not possible; member states should undertake to incorporate the criteria and operative provisions of the Code into their national law.

7. **Consistency in implementing. international embargoes**: It is essential that member states agree a common interpretation of all EU, UN and other international embargoes to which EU states are a party. Differing interpretations serve to undermine the credibility and the operation of the Code.

8. **Consistency in MS approach to sensitive regions/countries/end-users**: Currently member states "concert" on national policies towards sensitive regions, countries and end-users, although there is little indication of how extensive or systematic such exchanges are. An agreed common approach to particular regions of tension or instability or to human rights crisis zones would be a significant step towards ensuring consistency in the application of the Code's principles by all.

9. **Enhancing accountability in EU arms export policy**: While member states have undertaken to develop a dialogue with the European Parliament, it is important that this forum is offered an enhanced role in scrutinising implementation of the Code and making recommendations for its improvement. The EU Code review also provides an opportunity to set out certain minimum standards to ensure that national parliaments play an active part in monitoring government policy and practice in this area, for example as occurs in the UK. Such steps would enhance accountability and help engender greater public confidence in the operation of the Code.

March 2004

Appendix 19: Further memorandum from the Defence Manufacturers Association

Awareness

Over a period of some eight weeks from mid-January to the end of February 2004 a small DMA, DTI, HM Customs & Excise team, with a couple of helpful appearances early on from the MoD(UK) and FCO, travelled well over five and half thousand miles (ie more than the distance between London and Los Angeles!) to brief over 700 representatives from UK firms in 13 different locations around the UK, from Exeter to Glasgow, Belfast to Duxford, on the new Export Control Act 2002, which will be coming into force on 1 May 2004.

This highly ambitious and exhausting roadshow, which began in London on 15 January was jointly organised by the DMA and the DTI, with assistance from a range of other national and regional bodies scattered across the UK, to provide awareness of the new Act and its implications for UK firms and to help British Industry to frame implementation and compliance procedures to meet their new regulatory requirements from 1 May. It built upon the success of the previously successful roadshow similarly jointly organised by the DMA and DTI in October 2002 to April 2003, which was attended by some 650 people around the country. This means that the DMA and DTI, at their own various events, as well as participation at those organised by other bodies, have now between them briefed some 4,000 + people around the country (as well as overseas) since the Act received Royal Assent in July 2002. It is hoped that these considerable efforts will have enabled those affected by the new regulations to be in a better position to be adequately prepared for their implementation.

One of the clearest lessons to come out of the roadshow is the need for even more efforts to have to be made to spread awareness not just of the new regulations, but of the existing export control system, as well amongst UK companies, as there is still much confusion in many firms on fundamental aspects of the British export control system, and many common misconceptions. We understand that the Communications Unit within the DTI's Export Control Organisation is seeking to address this perceived need in a very constructive way.

Attached is a brief summary from the Society of British Aerospace Companies (SBAC) which consolidates the awareness findings of a survey which it recently undertook of a cross-section of its Members.

We hope that our efforts will have helped to promote a greater widespread awareness of the new regulations within the UK, although the issue of promoting awareness amongst those British nationals overseas who may be affected by the "restricted goods" trade controls is one which still, in our view, needs to be addressed. For the most part companies now appear to be much more relaxed about the practicality of complying with the new regulations, although on the roadshow we did occasionally come across some whose views differed from this generally positive line (including one company at the Exeter briefing who asked: "Does the DTI realise the complete paralysis of all commercial activity here in the UK that will result from the imposition of these draconian controls by the British Government's thought police?") Such views are now in the minority!

Lacunae in the ECA

Identified Lacunae in the Export Control Act 2002's Secondary Legislation, include the following:

1. *Software*

   The legislation explicitly (articles 6 & 7) purports to control the electronic (intangible) transfer of software. However, it fails in this objective, for technical reasons. Since software is defined for the purposes of the Export of Goods, Transfer of Technology and Provision of Technical Assistance

(Control) Order 2003 as, "means one or more 'programmes' or 'microprogrammes' fixed in a tangible medium of expression", it is axiomatic that anything which is intangible cannot be "software" for the purposes of this Order.

2. *Electronic and Non-Electronic Transfer of Software and Technology and End-Use Controls*

Here again the apparent legislative aim has been frustrated by the drafting, this time imposing a potential burden on both legitimate industry and on government whilst leaving the area of risk unregulated. Articles 8 and 9 seek to impose controls on the electronic and non-electronic "transfer" of software and technology in an "end-use" context. Article 8(1) has the apparent effect of requiring a licence for the electronic "transfer" of software or technology to a person or place in the United Kingdom in an end-use context. The DTI has now informed us that this will require a UK company wishing to hold technical discussions with MoD(UK) on a WMD detection programme to have an export licence for such discussions, since the transfer would be from a person in the UK to a person in the UK, with reason to believe that the technology would be used outside the EU by our own Armed Forces. The lacuna in these provisions arises from the definition of "transfer". Article 2 defines "transfer" as, "transfer", in relation to any "software" or "technology", means the "transfer by any electronic" or "transfer by non-electronic means"(or any combination of electronic and non-electronic means) *from a person or place within the United Kingdom*". Since it is clear from the definition of transfer that the transferor must be within the United Kingdom, the objective of controlling the actions of UK persons outside the UK has not been met. In short, a legitimate UK company would need a licence in the circumstances outlined above to discuss with our own MoD a defensive system for use by our own forces personnel—whilst, however, a disaffected UK person acting whilst. outside of the EU could communicate with whomever in an "end-use" context envisaged by this Order yet remain beyond the reach of this legislation. Which is the activity that poses the greater risk? It appears that the legislation, if it were compared to a weapon, succeeds in leaving the target unscathed whilst causing considerable collateral damage.

Interpretation

It is clear that the DTI's interpretation of the new legislation has "varied" in certain instances from time to time. This has resulted in certain comments being made by companies about the apparent lack of total certainty about what is export controllable activity. One company at one meeting with DTI expressed this as "how long did it take for the DTI team to become confident enough in knowing their own regulations to decide how they would be implemented? Are they expecting industry to devote the same amount of time to this activity? If they are not then how can they expect industry to comply with the law in a way that will guarantee their employees do not go to prison?" The lack of consistent interpretation on some areas of the new regulations has resulted in unease being expressed by firms as to what might happen if or when these interpretations change again at some future stage. Companies need to know, with certainty, what the law is, if they are to be expected to abide by it.

Impact of export controls on UK Industry's competitiveness—

There is a common feeling within many companies that the additional burden of export controls under the new regulations will result, of necessity, in them having to employ more staff to deal with export control issues, which, in turn, will increase their overheads, having an impact on their general competitiveness. Certainly we know of at least one (SME) company which operates at the component level who stated some years ago that it was having to decide not to compete for some potential business opportunities at all because, with the high value of the £ sterling, it was having to cut its prices to rock bottom to have any chance of winning contracts, and in certain cases if they factored in the overheads costs of applying for licences then their bids would not be competitive enough to win, whilst if they did not do this they might win the contract, but when the actual overheads were then added it would not have made any commercial sense.

HMG's interpretation of the EU Code of Conduct—

There is a general perception within UK Industry that the British Government's interpretation of the EU Code of Conduct (and EU Embargoes) is amongst the strictest of EU Member states. Certainly comments have been made in the past specifically with regard to the embargoes currently in place on the People's Republic of China and Cyprus.

EXPORT CONTROL LEGISLATION

SBAC Associate Member Telephone Survey

Twenty SBAC Associate Member companies were surveyed. The sample is statistically robust percentage of all associate members and a random sample of types of business.

Returns were based on a telephone questionnaire directly mainly to export; sales or marketing personnel who were responsible for company compliance. In a few cases, MDs took the call. Duration was between 5 and 10 minutes with respondents also given an opportunity to expand on the issues covered by the questionnaire.

The main results were:

Awareness and briefings

- two firms were not aware of the issue until SBAC contacted them. The rest were at least aware of the legislation, most were familiar with the changes in the legislation;
- 10 had used DTI website or briefing sessions;
- four had attended DMA briefings; and
- two had used SBAC routes.

Costs

- All of the companies that were aware of the issue and which were involved in defence business were incurring some costs either directly in terms of contracted training and other manpower training costs.
- One company estimated immediate direct costs at £0.5–0.75 million. Others were estimating in the region of £5–50,000 K.
- Most were allocating between 2-3 man days and 2 man weeks depending on size of company for training.

General Comments

- A certain degree of resignation in coping with more regulation but general willingness to get on with things and work with DTI compliance team to establish sound processes such as buying clean lap tops for foreign visits.
- A small number reported real difficulties especially with foreign based subsidiaries and additional complications in applying for licenses.
- This included one company that felt that it was at a commercial disadvantage compared to its European competitors.

Comments on results

So far so good seems to be the rule, with many firms waiting for a compliance visit to see how they shape up. While there have been no real delays in getting licenses, there is a concern that things might get worse, but we will have to check again after the legislation has been in force for a period.

March 2004

Appendix 20: Further memorandum from the Campaign Against Arms Trade

We are most grateful to you and your Committee for questioning the Foreign Secretary about Indonesia during his evidence session on 25 February; and in particular about the change of "assurances" concerning the end use of British-supplied military equipment in Aceh. We hope that our letter to you of 27 January on this matter was helpful.

We would just like to follow up a few points in the evidence.

At one point Mr Straw's official, Mr Landsman, stated that: "There is no evidence that Scorpion [sic] has been used in Aceh in recent times". That is not correct. As far as we know the Foreign Office has never previously questioned the use of Scorpions in Aceh and has indeed admitted it in several letters to us and others (For example: "The Indonesian Government announced on 23 June that British-built Scorpion vehicles were being deployed to Aceh to protect supply routes against attack", letter from Mr Mike O'Brien to Carmel Budiardjo of TAPOL, 10 July 2003). We hope that you will be able to ask Mr Straw to correct the evidence on this point.

We were interested to see that your committee questioned Mr Straw at some length about end-use monitoring and he assured you that he is not "turning a blind eye" to the breach of end-use assurances. With that in mind, we wonder if you might have the opportunity to question Mr Straw further about a report in *The Guardian* on 20 January that "local television has shown heavy machine guns mounted on Scorpions firing at alleged separatist positions on several occasions since they were deployed to [Aceh] in June". That would represent a serious breach of the "assurance" that British equipment will not be used for offensive purposes and we would have expected the Foreign Office to investigate. It would be a simple matter for the Jakarta Embassy to track down the TV footage in question, but as far as we are aware they have not done so.

We wonder if you might also question Mr Straw about why the "assurances" were relaxed at a time when violence was increasing in Aceh (see our letter of 27 January) and if you might press him to make a formal announcement to Parliament concerning the relaxation.

March 2004

Appendix 21: Memorandum from BAE Systems

This paper takes up an invitation by the Clerk of the QSC to submit written evidence for the current session. This evidence deals solely with the introduction of the new regulations under the Export Control Act 2002.

The Company fully supports the objective of the new Act to ensure that military (and dual use) goods and technology do not get into the wrong hands. At the same time, we agree with the conclusion of the QSC on the government's consultative document that the new regime ". . . will regulate activities which are not exports and are not like exports. While the consultation document is a brave attempt to square this circle, perhaps what is needed is another shape altogether." (HC 620, Conclusion, paragraph 32)

For these reasons, we proposed during the consultation process a number of changes which, in our view, would reduce the amount of bureaucracy while ensuring that the government's objectives were met. They included:

- A number of exemptions, for example for exports for personal use, noting in this context that the dual use regulations contain a personal use exemption for cryptographic products otherwise controlled;
- A proposal for regulation of arms dealers which distinguished between "traders", ie those whose business was entirely or mainly involved in the trafficking or brokering of arms between third countries, and "exporters", whose primary business was the production or export of arms from the UK and for whom the third party movement of arms was integral to their UK business;
- Removal of long range missiles from the category of "restricted goods" for trade purposes—which inappropriately linked them with torture equipment; and
- Exclusion of equipment for the detection and identification of nuclear, biological and chemical weapons from the definition of and detailed controls on weapons of mass destruction.

These proposals did not find favour. Instead, the government has preferred a blanket approach, coupled with the extensive use of Open General Export Licences and a new Open General Trade Control Licence. This is welcome in the sense that as a result the burden of extra licence applications has been kept to a minimum. But it must be understood that Open General Licences are not without costs of their own, particularly for industry:

- They are scarcely user friendly, and require expert knowledge and interpretation. As an example, a key OGEL, that for technology for military goods, commences:

"Subject to the following provisions of this licence,

(A) Goods specified in part A of schedule 1 hereto, other than any specified in part B or C thereof, may be exported from the United Kingdom to any destination other than a destination in any country specified in schedule 2 hereto, and

(B) Goods specified in part B of schedule 1 hereto may be exported from the United Kingdom to any destination in any country specified in schedule 3.

- They are subject to change without notice and need to be continually monitored. For example, in mid February, the DTI issued without prior warning an amendment to the military technology and military end user OGELs to exclude all missiles and associated technology from their coverage, effective in two weeks; following complaints from industry the OGELs were successively reissued, first to extend the deadline to 1 June and then to reduce the scope of the exclusions.
- They all require record keeping in order to demonstrate compliance. There has been much discussion about the amount of detail required. The Secretary of State for Trade and Industry's assurance to the QSC that records would not be required of individual intangible transactions—more than 20 million a year in the case of BAE Systems—was very welcome and has been reflected in subsequent DTI guidance. Nonetheless, machinery is required in companies to ensure that appropriate records are kept and are accessible for audit purposes. The record keeping requirements for the Open General Trade Control Licence raise particular practical difficulties.

So far as implementation itself is concerned, industry appealed last November for a twelve month transition period. Ministers subsequently announced that the implementation date for the new regulations should be 1 May—little over six months. It is clear that, so far as BAE Systems is concerned, this time scale will be barely adequate. BAE Systems is a large and complex international company. The new controls on intangibles bear not only on a far wider range of individuals than have been affected by the physical controls of the past, but also on the electronic traffic which is becoming the standard method of doing business in an increasingly international environment. It has been necessary to survey every project and area of business activity to determine whether they engage in intangible transfers of technology—and in some cases "trade"— and to ensure that there is appropriate licensing cover available. Because of the complexity of the issues, the whole exercise has had to be conducted under the close control of experts, whose resources have consequently been considerably stretched.

An implementation programme was set in hand well in advance of the publication of the new regulations. Detailed plans could not however be finalised until the definitive version of the regulations was available last October. Our programme has involved:

- Launch of a corporate export control web site, supplemented by business unit sites;
- Designation of export control co-ordinators for all business units and lead export control practitioners for every site;
- Designation of points of contact in projects/business areas/departments to liaise with practitioners to ensure that the relevant licensing regime is adhered to and all appropriate records are kept;
- Development of IT based tools and data bases to support export compliance activity;
- Development of appropriate written procedures;
- An extensive programme of briefing, awareness activity and guidance.

We have yet to produce an estimate of the opportunity cost of this effort but it is clear that it will not be trivial. At the same time, we regard the cost as unavoidable if we are to meet the compliance requirements of the DTI (as set out for example in paras 8.1 and 8.2 of the Final Regulatory Impact Assessment) as well as our duty of care to company employees.

April 2004

Appendix 22: Further memorandum from the Foreign and Commonwealth Office

(Question numbers refer to the oral evidence taken before the Committees.)

At Questions 9 and 10, the Foreign Secretary offers to provide an explanation regarding end-use assurances given by the Indonesian Government. As we understand it, until August 2002, the Indonesian Government was bound by an undertaking not to deploy British-built military equipment to Aceh, and to provide advance warning of any possible deployment. In August 2002, the British Government received advanced notification of the Indonesian Government's intent to deploy British-built armoured personnel carriers to Aceh for "casualty evacuation and logistical support". The Indonesian Government provided assurances that this equipment would "not be used to infringe human rights in Aceh or elsewhere". On 3 October 2002, the Foreign Secretary wrote to the Chairman informing him of this. However, in September 2002, the British Government also agreed that the Indonesian Government would no longer need to provide advance warning of any deployment of military equipment to Aceh. The Indonesian Government gave fresh assurances that "British-built nillitary equipment would not be used offensively or in violation of human rights" anywhere in Indonesia. However, neither the Chairman nor (to our knowledge) anyone else in Parliament was made aware of this broader change in policy, until a written answer was given on 12 June 2003 to a parliamentary question from Jeremy Corbyn MP. When the Foreign Secretary wrote to the Committee on 3 October 2002 to inform us of the Indonesian Government's advance warning of its intent to deploy British-built armoured personnel carriers to Aceh, why did he not also tell us that the Government had agreed to do without such advance warnings in the future?

At Questions 12 and 15, the Foreign Secretary promises to write to explain why the Government decided to do without these advance warnings.

The Government will answer these questions together.

In August 2002, the Indonesian government approached the UK government saying that they wished to deploy British-built military equipment to Aceh, which would have represented a breach of existing assurances. The Indonesian government subsequently gave a new assurance that British-built military equipment would not be used for offensive purposes, nor to infringe human rights either in Aceh or elsewhere in Indonesia. The Government of Indonesia also told us that if, against expectations, they had to contemplate the use of such equipment in Aceh at a later stage they would inform the British Government in advance.

When writing to the Committee in October 2002, our overriding concern was to bring to Parliament's attention the Indonesian government's proposal to use British-built military equipment in Aceh, which would have been in breach of the assurances then in place.

On reflection, the Government accepts that the letter should have made explicit that we no longer required advance notification of the deployment of British-built military equipment to Aceh. There was no intention to withhold information from the Committee, and all this was subsequently made clear in the response to Jeremy Corbyn's PQ 118138 of 12 June 2003. The October 2002 letter to the Committee did make clear that all export licence applications for Indonesia would continue to be rigorously assessed on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria. There was therefore no change in the policy in which export licences are assessed, and no practical change in the way in which UK controls of exports to Indonesia are implemented.

The Indonesian Government had been open in announcing their intention to deploy equipment to Aceh. We were satisfied with the substance of the new assurances, since they explicitly rule out the use of British-built military equipment offensively and for internal repression in Aceh and throughout Indonesia. Advance warnings of deployment to Aceh alone was sub sumed as soon as the assurances became applicable to the whole of Indonesia.

The Consolidated Criteria do not specifically regulate where in the importing country the equipment is to be located. Where the equipment is likely to be used will, however, be one factor in assessing an export licence application against the Consolidated Criteria.

At question 17, the Foreign Secretary offers to provide details of recent visits by Government officials to Aceh.

Current: The EU Troika (currently Italy, Ireland and the Netherlands) are planning a visit to Aceh.

February 2004: Two British Embassy officials visited the capital of Aceh, Banda Aceh. They met two local human rights NGOs, STRA and Koalisi HAM.

January 2003: Following up on the donors meeting in Tokyo, the US, Japanese and Italian (representing the EU) Ambassadors, together with the head of the World Bank office in Jakarta, visited Aceh. They met the Joint Security Committee and observed the implementation of the Cessation of Hostilities Agreement, which subsequently broke down in May 2003.

September 2002: An Embassy official visited Aceh to observe mock elections.

July 2001: HMA Jakarta met Aceh Governor Abdullah Puteh.

At Question 44, Mr Oakden states that "all of the accession states either are already or will be members" of "each of the supplier regimes, including Wassenaar". Is the Government certain that Acceding Countries which are not members of export control regimes will become members of all of those regimes this year?

The Government fully supports the EU Presidency's efforts to promote EU Acceding Countries' membership within these fora. However given that decisions within the regimes require consensus, the Government cannot at present be certain of the outcome in each case.

We expect a silence procedure to be launched shortly within the Australia Group (covering chemical and biological weapons) on the applications of the five EU Acceding Countries, which are not already members with a view to their attendance as members at the next Plenary in June. At present we anticipate no difficulties.

A silence procedure is already underway in the Missile Technology Control Regime (MTCR) on the applications of the seven relevant EU Acceding Countries. A final decision will be taken at the MTCR's intersessional meeting, the "Reinforced Points of Contact" meeting, in April. No objections were raised on any application during the three-month consultation period that preceded the launch of the silence procedure on 1 March.

The three EU Acceding Countries not currently members of the Nuclear Suppliers Group (NSG) have lodged applications. These will be discussed at the annual Plenary in May.

Participating States of the Wassenaar Arrangement are currently discussing the prospective membership of EU accession states that are not currently participating in the Arrangement. Based on the outcome of these consultations, a silence procedure will be initiated in the course of 2004.

At Question 49, the Foreign Secretary offers to provide more information in confidence on the Hemant Lakhani case.

While the Foreign Secretary is committed to providing the Committee with as much relevant information as possible, he has concluded that it would not be appropriate to comment On this specific case, which is currently being pursued by US law enforcement agencies. We would however reiterate that the Government already has tight controls on the export and transfer of MANPADS; we are considering whether any additional measures are appropriate.

At Question 56, the Foreign Secretary promises to look at Mr Battle's suggestion to extend the productive expenditure criteria under the ECGD to proposed exports to all of the International Development Association countries.

In order to ensure that the poorest countries do not develop new unsustainable debt burdens, the Export Credit Guarantee Department only supports exports to countries that meet "productive expenditure" criteria.

ECGD, in conjunction with DFID, already apply the "productive expenditure" criteria to 67 of the 81 countries able to receive assistance from the International Development Association. The other 14 countries have larger economies where debt sustainability is less of a concern.

ECGD has, or is just about to, publish guidelines for exporters on the UK's application of the productive expenditure criteria. These guidelines clarify our policy for all stakeholders rather than introduce any new requirements. They can be found at http://www.ecgd.gov.uk

At Questions 61-64, the Foreign Secretary suggests the subject needs to be followed up "in some more detail". The proliferation of small arms in the developing world fuels insecurity and conflict, which in turn hampers countries' sustainable development. In assessing export licence applications—especially for the transfer of small arms and light weapons—against criterion 8 of the Consolidated Criteria, how are possible human security impacts factored into the assessment?

All licence applications are assessed against the Criteria as a whole. The Criteria require the Government to take into account a wide range of issues which impact on human security, including internal repression, the existence of tensions and armed conflicts, and regional peace, security and stability.

When assessing licences against Criterion 8, which focuses on the economic impact, human security implications are captured by consideration of whether the import meets that country's legitimate needs of security and defence.

April 2004

Appendix 23: Further memorandum from the Defence Manufacturers Association

Following on from this oral evidence session, we thought that it might prove useful to provide the following additional comments. However, I also note the action upon us to follow-up on our oral evidence with the following more detailed written information to the Committee:

- Differences between the British and German export control systems.
- Collated and consolidated evidence of the burden on Industry of the new regulations.
- Collated and consolidated information on "under-cutting" activities within the EU.
- Differences in attitudes towards the People's Republic of China.
- Suggested possible amendments to the EU Code of Conduct.

I will endeavour to try to do this as soon as we can gather the necessary information together from companies.

The War Against Terrorism—what has been the impact on Industry?

Overall, there is a widespread feeling that there has been a significant impact on defence business since the events of 11 September 2001, but not perhaps in ways that most people might think. It is felt that there is now much more emphasis placed on communications, anti-terrorism and special forces equipments, to the detriment of many major, traditional, capital equipment procurements by Governments around the World. Spending on special forces' equipment, especially, has been growing at the expense of that on conventional items. Spending on operations (such as in Iraq) is diverting MoD(UK) funding from procurement, except where urgent requirements are identified for particular types of technologies.

Increased perceptions of the threat posed by proliferation (including the apparent ease with which Libya apparently managed to obtain equipment in furtherance of its nuclear weapons development programme) are resulting in enhanced scrutiny of licence applications—things in the USA and perceptions there of the threat of undesirables obtaining advanced technologies, as well as lack of confidence within certain quarters of the US system in other nations' own export control systems, are making it even more burdensome and difficult to obtain US technology than it was before (which was bad enough!).

Given the increased sense of immediacy in some nations for the acquisition of materiel and systems to meet urgent operational needs which arise, some customers are believed to have sought technology from other, non-UK, suppliers, as the bureaucracy was perceived to have been less time-consuming and bothersome than would have been faced with the UK's export control system. This palpable sense of urgency for some purchases is ruling out UK suppliers in favour of those from nations whose own systems allow the expedited supply of urgently needed materiel.

Are there any practical examples of an impact of export controls on the UK's competitiveness in the EU context?

At the same time as UK firms are facing an uphill battle in trying to remain sufficiently competitive to win overseas orders (especially given the high value of the £sterling against the US$ and the euro), they are now having to deal with an increased bureaucratic burden to deal with the new regulations which are coming into force, which will, by their very nature, add to UK companies' overheads, and, thus, impact on their costs, which, in turn, have to be factored in to any bids. One company estimates that the training needs, alone, associated with the new Export Control Act, will have increased the company's overheads by at least

1-2%. Admittedly such figures will vary greatly from firm to firm, but this is an indication of the affect on one company. We are also aware of instances in which competitors in other EU Member States are able to respond to urgent requirements much more expeditiously than British firms can. In one case, in late-2001, when the OSCE cancelled a contract with a UK firm for some equipment for its peace-keeping monitors in Macedonia, due to the length of time that the export licence was taking to process, we understand that the replacement French and Italian suppliers were able to start delivering the required equipment within 36 hours!

Are there any obvious examples where the British Government's interpretation of the EU Code of Conduct, embargoes, etc, has been stricter than that of other EU member states? Is UK Industry being disadvantaged by HMG's interpretation of embargoes and the Code of Conduct, as opposed to the interpretations of other EU Member States?

It is generally perceived that the UK has amongst the strictest interpretations of EU Embargoes, the Code of Conduct, etc, and this is to be applauded. However, this does mean that suppliers in nations whose own interpretations are more liberal in nature are able to gain a commercial advantage.

We are able to quote one example of different interpretation with regard to EU WMD regulations. One EU competitor of a UK firm makes a detector in two variants. They are identical in every way except the colour: the green one for military customers requires export licences, whilst the blue one is for civil defence and, therefore, does not require a licence. The company does not sell many green ones, but does sell lots of blue ones! We could quote many examples of a similar theme, and we will see if we can consolidate them into a follow-up memo. We note that UK has just picked up an award from the EU for being the best country at implementing EU regulations—need we say more?

Also, we understand that evidence which is starting to emerge from Libya on its nuclear weapon development programme would appear to demonstrate that a lot of our EU partners were involved in facilitating these developments. We all await, with interest, full information being disclosed on what comes to light in this regard.

Are there any examples of "under-cutting" having taken place, where a UK licence has been refused, but where a competitor in another EU Member state has subsequently won the business and been granted a licence by its own Government?

The FCO would be aware of circumstances in which this might be perceived to be happening—we simply do not have anywhere near so clear a picture of this. However, the partial information which we do have does appear to show that such things are taking place, and we will endeavour to try to consolidate the information that we are getting on this (and which Tim Otter referred to in evidence) for future submission to the Committee. Whilst we have heard an official refer to at least one instance in which the UK has "undercut" another EU Member State, we do not know anything about this instance or whether, on careful scrutiny, this was, indeed, the case or not.

One additional problem in this regard is the lack of 100% consistency in the various EU Member States' control lists of controlled technology. For instance, the UK is, we understand, one of the few EU Members that regards riot shields as being export licensable. Therefore, if a UK firm had a licence application turned down for riot shields, and the customer then approached a French supplier, the anti-undercutting provisions of the Code of Conduct would not even come into effect as the French company would not have to apply for an export licence from its Government.

Another complication is the UK's 680 system. When in any doubt as to whether a UK export licence would be issued or not (ie if potentially dealing with a contentious end-user or a sensitive technology), many British firms will seek 680 guidance from DESO as to whether a licence would be issued or not, and if the answer is negative, walk away from pursuing the potential business involved. Because the 680 system is (for the most part) a non-regulatory, voluntary system, an indication that a licence would not be issued has no force under the anti-undercutting provisions of the Code of Conduct, and UK suppliers may well have been walking away from potential business that is then picked up by EU competitors, without even bothering to apply for licences, knowing that these would be refused.

The EU Embargo on China

It would appear that there is an argument that the Embargo was put into place (in June 1989) before the creation of the EU Code of Conduct (in 1998), and that this latter development has made the Embargo to all practical intents and purposes superfluous and unnecessary. It has to be stated that anything which would currently be banned from export to PRC by the embargo would also, almost certainly, fall foul of the criteria within the Code of Conduct and still continue to be prevented from being exported from the UK to PRC, even if the Embargo did cease to exist. The DMA is aware of a number of instances in which equipments which are very clearly outside of the scope of the Embargo have been refused licences and 680s by HMG

under the terms of the Code of Conduct when assessed against the criteria, so the removal of the Embargo should not, as some fear, result in the flood gates opening . . . certainly not from the UK, but we cannot vouch for certain other EU Member States.

China is an obvious example where the UK's interpretation of the EU Embargo is much stronger than that in some other EU Member States. For instance, for the biennial China Police exhibition, in June 2002, companies from the following EU Members exhibited (information from the event's website at: www.cpexhibition.com/police/):

Denmark—1

Finland—2

Germany—4

Netherlands—3

UK—3

. . . and France—37

This clearly demonstrates a different perception of the EU Embargo between France and others (including the UK).

From our own experience, DESO has NOT been active in encouraging British defence or police/public security firms to do business in the PRC over the last few years, and has been doing its best to encourage a sense of reality with regard to the licensing difficulties of trying to do business here. We are aware of some licence and 680 applications taking many, many months to process, with the only speedy answer being "no!" Certainly Tim Otter referred in his evidence to two particular programmes where there has been more interest—for the disposal of huge stocks of ex-World War Two Japanese chemical warfare munitions, and for the supply of security equipment for the 2008 Olympics in Beijing. At present most UK firms appear to be standing back from pursuing the potential requirements associated with the latter of these opportunities, due to the uncertainty as to whether licences would be issued and a general perception that this would be unlikely, whilst we are aware that EU competitors are actively pursuing this market, and have been since the Games were awarded to Beijing.

What has been UK firms' experience of trying to liaise directly with the FCO on export licences?

Whilst some years ago the FCO adopted a new policy of much enhanced openness and even set up dedicated telephone helplines for companies to contact in the event of significant licensing delays, it would appear that this has now lapsed, and there is a renewed preference for all enquiries to be made through the DTI. Meanwhile, the FCO's increased openness in giving industry briefings on export control issues and concerns affecting particular nations, has greatly increased and is to be very warmly welcomed.

We believe that the positive effects of these briefings in making British firms more aware of the particular concerns that affect the processing of export licences for certain countries when they are being considered by Government officials has been mutually very beneficial. We, at the DMA, have been helping the FCO to make more companies aware of the criteria used in assessing licence applications, with verbal briefings (by the FCO and/or DMA) being given to over 1,500 company representatives and over 3,000 leaflets detailing the criteria having been handed out at various events around the UK organised by the DMA over the last 18 months.

What is the practical impact of the Export Control Act 2002 on UK firms? The practical implementation of the Export Control Act—what problems have been encountered, and which of our original concerns (as expressed last year) have materialised or failed to materialise—what additional problems have been encountered?

Whilst, as was stated in our previous written evidence, and was quoted back to us by the Committee yesterday, we believe that there is a much greater sense of reassurance within most of Industry that they understand the implications of the Act, and that the regulations are "do-able", this is not universal, and certainly within those firms in the most difficult sectors (WMD for the intangible controls and long-range missiles for the trade controls) there still persists continuing high levels of concern.

One problem is that the DTI's interpretation of the new regulations has been inconsistent and varied from meeting to meeting, thus indicating the lack of transparency and clarity of the new regulations, so that even those who have actually drafted the new regulations cannot, with total confidence, state what is and is not caught and what the potential implications are. Just as one example of this: at a meeting in January in response to a question as to whether the actual organisers of a trade fair needed a trade control licence themselves simply for the act of organising the shows and facilitating overseas companies participating at them, the answer from the DTI was a very emphatic "No", as the organisers were so far removed from any actual deals being done, that they were not directly involved and were not undertaking any licensable activity. However, in February, in a very interesting new take on the famous old rebuttal "What part of the word "no" is it that you do not understand?" the DTI decided that it needed to clarify what it had said in January, and informed us that when they had said "no" they had meant it in a somewhat unconventional affirmative sense (ie the answer was "yes"!!!) This uncertainty and constant changes in interpretation have

meant that the DMA has concluded that companies must be advised to ensure that they are covered by putting the most rigorous possible interpretation on the regulations (ie what it actually says in the Orders), and not necessarily rely on the interpretations outlined in the Supplementary Guidance Notes which the DTI has produced or other interpretations which have been provided on an ad hoc basis, and the expert legal advice which some companies have sought has concurred with this. As one wit has stated, the last thing that anyone in Industry wants is to find themselves sitting in HMP Parkhurst next to some old lag, who asks:

— "What are you in for then?"

— "My beliefs!"

— "Really?"

— "Yes, I believed what the DTI told me!"

The General Technology Note (in Schedule 1 of the Main Order) is another example where the law is just not clear:

In January 2004 a Member company was advised by their DTI Compliance Officer that intangible transfers related to support of existing deliveries (after sales support) for whom the relevant export licences have expired could fall under the terms of the General Technology Note in the Statutory Instrument "Export of Goods, Transfer of Technology & Provision of Technical Assistance Control Order 2003" . . .

As the Company was uncertain about the meaning of the General Technology Note, they asked for written clarification (in January). Although verbal assurances have been received from DTI that the intention is to allow normal product support without the need for extra licences, it has proved impossible to get this in writing. In an effort to clarify this, DTI suggested that the company present a typical scenario and request it be formally rated. The rating enquiry (dated 20 February) has so far (as of 22 April) not been replied to except that the company has been invited to discuss it shortly with LU3 at the Export Control Organisation.

The wording of concern is as follows:

The prohibitions in Articles 3 and 5 do NOT apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) and repair of "goods" NOT specified in this Part of this Schedule, to "technology" "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.

This causes significant uncertainty. The company expects a doubling or more of the number of licences which will be needed if the DTI verbal assurances are not correct. It also means the company (and there must be many others similarly affected) cannot finalise procedures or training or apply for the licences that it is going to need due to the delay in getting an authoritative response from the DTI the company's commercial activities will be paralysed from 1 May until such time as an authoritative clarification has been given and the required licences issued!

Further problems have been encountered , with regard to the "Restricted Goods" Trade Controls:

The creation of MBDA was in response to a Government initiative to consolidate and form a competitive multinational defence company. Through this consolidation MBDA has been able to secure a healthy order book, which relies on the flexibility to work with overseas Customers, Partners and Suppliers, particularly in Europe. Whilst the company recognises the importance of controlling the export of technology and trading and does not believe that it is the DTI's intention to handicap MBDA, nor for that matter the rest of legitimate British Industry, the introduction of the restricted goods category under new trade controls has given rise to concerns not previously encountered.

For example, a UK national working for MBDA in either Italy or France and engaged in trying to secure a contract for a "restricted" programme will need an individual trade control licence to cover their activities—this could be detrimental to MBDA's European colleagues if their respective Government has granted a licence and the UK has not issued a SITCL or OITCL. In fact it puts MBDA at a disadvantaged position with competitors who do not have to deal with such considerations.

The impact also affects MBDA inter-company contracts where goods such as containers or even specially designed components (like castings) are needed (for instance in Italy) and cannot be sourced directly from UK, but could be provided by France under instruction from the UK office, to support an MoD(UK) programme (such as Storm Shadow)—this could well be held up whilst a relevant trade control licence is obtained from DTI.

If MBDA cannot function on a multinational level then it begs the question "what was the purpose of its Government-inspired and encouraged formation?" Indeed it could be that MBDA UK could be excluded from opportunities for further collaboration programmes because of the new British bureaucracy. There is a concern that such restrictions would impact on opportunities for further consolidation with other European Nations, as the UK may not seem an attractive proposition as a joint venture partner.

In order to remain competitive MBDA needs to establish technological and manufacturing centres of excellence spread across UK, France and Italy enabling it to reduce costs through cross border collaboration. The provisions of the new Act will impede these efforts.

MBDA, and other firms in the missile technology sector, were also hit, in the midst of preparing for the new regulations by a sudden, and previously unannounced, intended change in the existing control mechanisms, when, late on 11 February 2004, the DTI issued a Notice to Exporters announcing changes to existing Open General Export Licences to remove coverage for missile technology caught by ML4 of the control list, and giving companies affected only until 25 February (ie 10-11 working days later) to get the necessary individual licences in place to replace their existing OGEL coverage. This was a complete reversal of the previous policy of actively encouraging British companies wherever possible to make use of OGELs. The DTI has since retracted this deadline and given companies longer to prepare for this change, and been very co-operative in helping companies to address this, but the complexity of the future need for using multiple licenses for a particular programme (in place of the OGELs) has necessitated a requirement for more detailed training of staff by those companies concerned.

Training for preparation begun in February 2004 to cover MBDA UK personnel. Due to preparations and existing requirements the Company funded at their own cost a training programme, which was completed in mid-April 2004. Further preparation to provide more in-depth training to those on particular programmes will still need to be undertaken. It has also become clear that the training programme will need to be expanded to cover foreign nationals from MBDA's European sites due to the high level of electronic transfers undertaken using e-mails and shared data environments being developed by MBDA to allow greater ease of information between the company as a whole. This additional training cost is being borne by the company.

One problem with the training aspect of the new regulations has been the difficulty and the loss of credibility of running a training system at a time when: (a) the ground is shifting under companies' feet [see above comments on inconsistent interpretations]; (b) there has been no clarification of vital points, eg the general technology note and extra territoriality; and (c) changing interpretation has resulted in a failure to nail the situation down.

The Committee is to be greatly thanked by Industry for its assistance in getting HMG to take the issue of support for our own Armed Forces seriously. However, the OGEL allowing support of our Armed Forces when they are deployed overseas does not include and extend to allies. There is a need to cover these allies as well, in recognition that they will change from operation to operation and as the operation develops.

Training is made more difficult in that unlike the Financial Services Act, there are no model training courses for industry to follow.

There is confusion within Government and within different and differing Government departments; different departments offer different advice. For instance there appears to be some confusion on the affect of the new regulations on 680s.

The need to include training of overseas people coming into the UK is extremely difficult, and Industry is not sure how this can be effectively achieved.

The total number of new licences which will be needed under the new regulations will only become clearer by May 2005, when the regulations have been in force for a full 12 months.

One of our Members, a privately owned company, has gone into administration. Our understanding of the situation is as follows. The company was having a tough time anyway but as a result of a careful study of the new legislation the two major shareholders decided that they did not want to expend the emotional effort required to deal with the new situation and would rather cash in their chips and retire. We think about 50 people will be made redundant and a very important capability (fluidic handling) will be lost.

How effective will the new controls be in curbing the activities of illicit proliferators?

As we have stated before, the very worst possible outcome, we believe, would be for the introduction of a highly burdensome regulatory system on law-abiding and responsible firms which proves to be ineffective in curbing the illicit activities of proliferators. Only time will tell whether the new regulations will be effective in controlling the activities being targeted. However, our fear is, as we have also stated before, that if it was the Government's intention to introduce the legislative equivalent of a precision guided munition to take out the activities of illicit proliferators, we may well find that they have, in fact, come up with the legislative equivalent of carpet bombing, whose only practical effect is collatoral damage to legitimate industry, whilst missing the intended target completely. David Hayes mentioned during the evidence session the apparent loopholes arising from Article 11 of the Main Order which appear to give blanket exemption under any and all circumstances for the temporary export of aircraft and ships from the UK "on trials"—hopefully this will not be picked up on by illicit dealers to circumvent the regulations with impunity and the assistance of high-priced legal help, but this is just one instance where we are not sure whether the legislative intent of the new regulations will not have been undermined by the actual framing of the legislation, itself.

Are companies able to cope satisfactorily with the new intangible transfer of technology controls?

Companies are trying to get to grips with the new regulations, and what the DTI is expecting of them to demonstrate compliance. A consistent interpretation by DTI staff of what is required will be essential in this regard. There will be particular problems for companies involved in the WMD sector, including in doing business with our own MoD(UK), as described in evidence by Tim Otter. Following questions poised by NBC(UK) Members at a meeting with DTI in January 2004, the DTI confirmed, after consultation with its lawyers, in February 2004 that companies will need licences to enter into pre-contract technical discussions with our own MoD(UK) and other bodies here in the UK, such as the emergency services. Not only is this situation unacceptable, but it is deeply worrying that this only came to light, on questioning from Industry, over half way through the implementation period and so late in the day. Meanwhile it has also been confirmed by DTI that in a hypothetical case in which two or more engineers from the same company in a non-EU nation (such as the USA) came to the UK to discuss a potential development programme for a WMD system (such as a chemical weapon detector) for a non-EU customer (such as the US Army) with a British firm, not only would the UK company need an export licence to undertake technical discussions with them, but the two or more engineers, working for the same US company, would need a British export licence to talk to each other whilst in the UK (whether or not anyone else was present in the room with them)! Naturally such a level of bureaucracy is likely to have such foreign firms fighting each other eagerly for the privilege of doing business with UK Industry!

In the light of the reports published on 21 April about the UK's lack of adequate preparedness for a possible WMD attack, the impeding of UK companies in the WMD sector (or, indeed, foreign companies over here talking to the British Government and Armed Services about this) from helping to address these shortcomings, as well as those similar shortcomings of our close allies outside of the EU, from 1 May by the new bureaucratic regulations coming into force is not something that we would regard as being a positive development.

Is UK Industry happy about the ways in which HMG is planning on approaching the issue of licenced production overseas? What is the impact of offset, licensed production overseas and globalisation on export controls?

This is an important issue which does, clearly, need to be addressed, if, as the NGOs state is the case, this is resulting in circumvention of the UK's control system by companies. The problem we have is that the NGOs' allegations are frequently over-simplifying the situation (ie by not alluding to the controls that HMG has over the transfer of technology to set up licensed production facilities or the fact that UK firms will almost invariably seek to retain some technology which still has to come from the UK, and, for which UK export licences will still be required), and they almost always refer to the same tiny handful of long-standing and very well-known cases (eg H&K and MKEK in Turkey, Land Rover and Otokar in Turkey, Alvis and Simba APCs in the Philippines) when trying to illustrate and demonstrate their arguments that this is a growing problem, and not even all of these well-known cases are actually valid examples (eg H&K's licensed production agreement with MKEK was entered into before the company was bought by British Aerospace).

Defence companies are increasingly becoming more focused on foreign markets as opposed to domestic ones. In this regard alliances with local firms are now increasingly crucial to the penetration of local and regional markets. Offset is an increasingly vital aspect of doing defence business around the World, and is now also diverging into many civil areas. Nobody likes Offset! At the same time that UK Primes are seeking to rationalise their supplier bases, the Primes' offset obligations overseas, resulting from their vital success in winning essential overseas business, are forcing them to seek non-UK suppliers. Thus, UK sub-contractors can perceive themselves to be the victims of "a double whammy" and being squeezed out of business that they otherwise would have won.

The adoption of a national offset strategy, to bring greater co-ordination within companies, between companies and between Government and Industry, in their offset, purchasing and investment activities, and to minimise the haemorrhaging of jobs and technology overseas when satisfying offset obligations, whilst maximising the benefits arising from the UK's own "Industrial Participation" policy, is essential for the future economic wellbeing not just of the aerospace sector, but also of the British Defence Industry as a whole. The DMA has been calling for this for some time.

We would have thought that efforts to try to minimise the haemorrhaging of controlled technology overseas, at a time of increased concern about the potential proliferation of such technology, might have yielded some positive responses from HMG, but, sadly, to date this has not been the case. We are not seeking any kind of subsidy from Government or the taxpayer, just better co-ordination as part of a strategic effort to minimise the impact of offset.

One major impact of offset, etc with regard to export controls is when some technical change is made to technology by the UK OEM, who then has to seek export licences from HMG to pass on information on this amendment to its overseas suppliers or JV partners. This can, especially in areas of fast changing technology, be a not insignificant burden.

Is UK Industry awareness of the new regulations and the existing regulations good enough or are some breaches taking place due to lack of awareness within companies of export control issues?

The recent DMA/DTI roadshow around the UK has brought ever more clearly to light certain worrying areas in which awareness of the UK's regulations is not as we would all like it to be. This is in two areas: (a) those who do not believe that export controls are anything to do with them, as they believe that these only concern "arms" and not their military or dual-use technology; and (b) those who are trying to abide by the regulations but have been caught out by the complexity of the controls and are unaware of some aspects. We saw many examples of both of these during the recent roadshow.

One major concern that we have is with regard to the constant repetition, in the media and elsewhere, of the use of the words "arms" and "weapons" when referring to export control and defence export issues. Based on our practical experiences, this is clearly resulting in confusion within some smaller companies, especially in the dual-use sector, who should be affected by export controls, but do not believe that export controls are relevant to them. The sheer breadth and scope of the UK's (and the USA's extraterritorial) export control system is just not understood by many. To illustrate this, at one DMA/DTI roadshow, one of the delegates asked a DTI speaker half-way through the event: "Why have you so far not talked about the differentiation made by the Government between offensive and defensive military equipment? You know: offensive military equipment, like "arms", which need export licences, and defensive military equipment, like my body armour, which doesn't." This perception is symptomatic of the prevailing view in some companies, especially in the dual-use sector. We believe that the media and NGOs have a potentially invaluable, constructive role to play in trying to address this ignorance and help to spread greater awareness of the breadth and scope of export controls, but they display a constant, and, if we may say so, irresponsible, reluctance to do so, being more interested in the "sexier" side of the business and the PR spin which can be achieved by concentrating on this.

The wide-ranging scope of export controls, which is increased further by the extraterritorial nature of the USA's system, was exemplified when the DMA's Exports Director recently acquired a new mobile phone (a Sony Ericsson T610), and noticed amongst the general blurb in the instruction booklet reference to "Export Regulations" on the software it uses or could be downloaded onto it. Having seen this, he then went to the plethora of instruction booklets related to his "Palm Pilot" Pocket PC and found similar reference to export laws. How many staff in UK companies or individual members of the public have ever similarly noticed such references . . . or failed to do so? Similarly at a recent Eurolegal conference in London an eminent export control legal expert was able to argue quite cogently a case under which a normal, plastic biro pen can, under certain circumstances, not only be export controllable, but caught by the WMD controls!

We strongly believe that much greater efforts must be made by all parties to try to get away from the short-hand mantra of "arms" when referring to the sector and export control issues, in favour of language which will more accurately represent the true scope of the technologies caught by export controls so that those perfectly law-abiding firms who are currently inadvertently infringing the regulations can be made aware of the fact that they are affected by export controls. The hard working, professional and highly dedicated staff within the Export Control Organisation, and especially those who deal with awareness activities, might then have greater chance of bringing these companies back onto the path of righteousness!

Have companies noticed any improvements in performance of the licensing system as a result of the HMG's recently introduced changes to the system to improve its efficiency?

Companies are reporting a noticeable improvement in the processing of export licence applications. We understand that in 2003 some 76% of SIEL applications were processed in the overall 20 working days target turnaround timescale. The improvement in the performance of the FCO has been particularly noteworthy—in 2002 only some 49% of SIELs were dealt with by the FCO within its 10 working day turnaround timescale, whilst in 2003, thanks to additional resources and improvements in IT infrastructure, the FCO met its target in over 80% of cases. This is a huge improvement for which the FCO should be warmly congratulated. Industry is looking forward with great interest to the promised future proposal for the introduction of electronic licensing, as opposed to the existing paper format, as this would very greatly help to alleviate the continuing problems which are reported by firms of export licences being lost between HM Customs & Excise and the shipping agents (especially, for some reason, at Heathrow), with a resultant need for the firms concerned to have to seek replacement licences from the DTI—frequently with the DTI mildly rebuking the firm concerned for "their" carelessness in losing the licence! Sometimes, when lost licences occasionally turn up with the customer overseas, it seems that when some HM Customs & Excise officers or shipping agents see the words "Export Licence", they appear to regard this as an instruction rather than a title!

Why are the numbers of appeals against licencing refusals going up dramatically?

Numbers of refusals for SIELs have been going up in recent years, according to the FCO's Annual Reports on Strategic Export Controls:

1997 (May–Dec)—45 (of 6,463 applications processed—0.7%)

1998—122 (of 9,991 applications processed—1.2%)—15 appeals (1 successful)

1999—128 (of 9,095 applications processed—1.4%)—25 (19%) appeals (7 successful)

2000—191 (of 8,562 applications processed—2.2%)—33 (17%) appeals (2 successful)

2001—231 (of 8,336 applications processed—2.7%)—38 (16%) appeals (6 successful)

2002—293 (of 8,328 applications processed—3.5%)—65 (22%) appeals (14 successful)

Thus, whilst it may appear on the surface that the numbers of appeals being launched has greatly increased, as a percentage of refusals issued this is not, in fact, the case, and the increase has been far less marked.

As the numbers of refusals has gone up, so has the likelihood of appeals being launched against those refusals (thus the increase in numerical terms for appeals being launched). The figures for refusals of SIELs for Israel have been particularly stunning in recent years (for perfectly obvious reasons):

1997—1 refusal (for dual-use) of 110 applications processed (0.9%)

1998—2 refusals (one military) of 223 applications processed (0.9%)

1999—0 refusals of 190 applications processed (0%)

2000—3 refusals (one military) of 194 applications processed (1.5%)

2001—31 refusals (all military) of 308 applications processed (10%)

2002—84 refusals (67 military) of 245 applications processed (34%)

If we may take a leaf out of the book of the NGOs for a moment, comparison of the figures for 2000 and 2002 represent a 28-fold increase in numbers of refusals for Israel. Given that Israel has a significant, and dynamically active, indigenous Defence Industry, and that most licence applications are for components—it is not clear what percentage of these sales are intended for use by the Israelis and what might be incorporated into equipments for export from Israel to other nations (including the UK!) We know of one case where a licence has been refused for the supply of components to an Israeli firm for an unmanned aerial vehicle—at the same time that this same Israeli company is bidding this same model of UAV for the British Army's Watchkeeper programme.

Given the fact that companies might perceive that HMG has over-reacted in certain cases, and refused licences whose intended end-use must be perfectly acceptable (eg non-offensive equipment for the Israeli Navy), or which might be intended (demonstrably) to be for export to other nations by the Israelis, it is highly likely that any refusal in such cases would result in appeals being made by the firms concerned.

Transparency in the Annual Reports

The Annual Report's consummate example of transparency and openness by the British Government is to be applauded. However, the DMA believes that further enhancement of this worthy initiative is still necessary. The DMA has expressed some strong reservations and frustrations, both publicly and privately, about the limited nature of the end-use related information which is provided in the FCO's Annual Report, and has raised the issue of whether further, additional, detailed information could and should be usefully provided by the Government on end-use matters, without encroaching upon commercial or diplomatic/security sensitivities, which would have the positive effects of achieving greater openness and transparency, and also protecting the British Government and Industry against erroneous claims of irresponsible licensing decisions and commercial activities, respectively. This stems from the fundamental nature of the UK's control system (as opposed to, say, that of the USA, which is nationality-based, regardless of geographical location), in that it is geographic location-based, regardless of nationality. Thus, under the UK system, an export of spare parts to a Royal Australian Navy vessel, whilst on a courtesy visit to Indonesia, would appear under the UK system to be an export to Indonesia (the geographical location of the vessel, at the time), rather than Australia (the nationality of the customer)—clearly different levels of contentiousness! To illustrate this need for more end-use information to be provided, in the 2000 Annual Report the section on Morocco includes mention of a raft of licences being issued for small arms and light weapons, which could result in the unsighted having extremely dubious opinions of HMG for approving these "exports". In fact, we understand that many, if not all, of these are apparently to be accounted for by the supply of props for the filming of "Black Hawk Down" in Morocco. Even taking into account concerns of commercial confidentiality and security, we are sure that in many cases (especially with regard to permanent exports, rather than for temporary licences) more end-use information should be able to be usefully provided than is currently the case.

The Future

We fully support the Committee's comment from its 20 May 2003 report on the Government's proposed Secondary Legislation that "While the consultation document is a brave attempt to square this circle, perhaps what is needed is another shape altogether." We have increasingly come to the conclusion that if only past Governments, in response to the Scott Report and the 1996 Green Paper, had created a joint Government-Industry-NGO working group to look at the whole subject of export controls and how they should be done in future, starting with a blank sheet of paper, that a solution would have been found which was more satisfactory for all concerned than that with which we are now presented, and much sooner than

has been achieved. We would hope that the Government can be persuaded to give serious consideration to the possible creation now of such a body to help with assessing the effectiveness of the Export Control Act and provide recommendations for the 2007 review of the Act.

April 2004

Appendix 24: Further memorandum from Mr Tim Otter, NBC UK

I promised to follow up in writing with further information on three issues following my evidence to the Quadripartite Committee on 21 April. The first is increase in overheads as a result of the burden of the new Export Control Act regulations, the second is where we have identified clear cases of "undercutting" by other EU Member States, and the third is differences in operating procedures between German legislation and the UK's.

Overheads

The current burden on companies imposed by the new regulations is for training, licence application and record keeping. Our experience so far is that the original half-day's training that we were advised would be adequate to meet our needs as a background awareness training is insufficient. This reflects the views of several companies outside the NBC sector too. (See evidence from Mr David Hayes of Rolls-Royce.) This is partly prompted by individuals' fear of the penalties of contravention. However it is mostly due to the sheer complexity of the new legislation, which even has long-standing experts (including people in the DTI) in export control issues, with many years' experience in this sphere behind them, disagreeing about fundamental aspects of the new regulations and what they actually mean.

Comments from companies across the trade interest group have shown that the general awareness training of all staff now affected by the new regulations needs to be at least one day, preceded by at least one module, lasting one to two hours to complete, of computer-based training. For those who are in more regular contact with customers and end users, and, thus, with the commercial activities which will now be caught by the new regulations, the training needs have to be extended by a further two to four days. Conversations with colleagues in the rest of the Defence Industry indicate that to deal with all the questions and answers normally raised at such training sessions requires an average total of five days for these people. (Again see Mr Hayes' evidence.)

It is worth pointing out that these existing employees are experienced in working with the existing regulations and, therefore, the training has already been jump started. When we move to training new employees this time will have to increase. Some figures are at the annex to this letter. The interesting thing is that these figures are roughly in line with the figures that I gave to the Minister (Nigel Griffiths) at a DMA meeting on the issue and which he rejected.

"Undercutting" Within the European Union

We have evidence from colleagues in the Defence Industry which clearly shows that countries to whom Smiths Detection were refused 680s or licences, viz Egypt and Israel, have had their requirements fulfilled by French competitors. Similarly, licence rejections for India where we know Smiths Detection were the selected supplier and had an order for detection equipment, have resulted in Finnish and French, and possibly US competitors, being able to tender for this business, instead.

We have similar evidence that requests to provide filtration equipment to India and Pakistan for armoured vehicle and ship platforms have been fulfilled by French competitors. Whilst there was not a rejection in writing from HMG for this, the verbal advice, from both DTI and DESO, was that there was little point in applying, as there would be a rejection.

We know that protection equipment has been supplied by Belgium to Israel. This followed advice that there would be a licence rejection by UK and the company concerned informing the customer of this.

In addition, as I mentioned to the Committee, I have previously supplied original photographic evidence of Chinese officials using equipment supplied by Smiths Detection's French competitor. Smiths Detection currently only has clearance to deal with the Chinese Demilitarisation programme through the Japanese Government.

There is also the problem of using identical equipments declared as "civil defence" equipment. These are probably being used in the cases referred to in Egypt and Israel.

German Regulations

Discussions with our colleagues in the same industry in Germany show that German competitors do need a licence to take their equipment to overseas exhibitions and seminars. However, and this is the key difference, because of the temporary nature of the export the company only has to phone and obtain an authorisation (presumably number) to get the export licence. The only restrictions are those of security: what the company is allowed to discuss in public and what is permitted for discussion with government

officials. The Government updates the advice on both security and licence availability to the company on a fairly regular basis. Often this is done verbally. Whilst the regulations appear, at first glance bureaucratic, they are easy to operate and quick to implement. The company can get approval for a rapid despatch of goods or intangible information by a simple telephone call to the German authority, which will issue an approval number immediately with paper work following in due course. Apart from the recording of the changes in status and the licence applications the demands of record keeping are much less.

It is also worth pointing out that the UK NBC industry as a whole lost out to the German when the Czech Republic first applied to join NATO. This was because Germany rescinded restrictions on provision of equipment to the Czech Republic some 11 months earlier than by the UK.

The point that is that the regulations and their implementation are more flexible and lighter than those applied outside the UK.

Annex:

TRAINING, LOGGING AND LICENSING COSTS

Training and Logging

If one takes a company predicated say, on 300 people with a Sales & Marketing team and Engineers who have regular contact with customers of say, 50% of those 300 people, one is left with a training bill which adds up as follows:

300 × 1.14	=	342 days
300 × .5 = 150 × 4—a further		600 days
Total	=	942 man days per year.

Each employee works a total of 216 man days

216 × 300	=	64,800 man days per year
% Man days for training		
942/64,800 × %	=	1.4%

A rough rule of thumb is that personnel cost multiplied by a figure of 2.5 = overheads.

942 × 2.5	=	2,355
2,355/64,800%	=	3.6%

Add in, then, the need for probably two people to maintain the database of customer contact and transfers

2 × 216	=	432 man days

The time of the 50% of people logging information at say, 10% of their working time (This is my experience from my last business trip and the paper I sent the DTI in Jan 2003).

This is a further

300 × .5 × .1 × 216	=	3,240 man days

Total man days

942 + 432 + 3,240	=	4,614 out of a total of 64,800 = 7.12% of personnel costs.

This might then be multiplied by the 2.5 factor and then one might get a figure of 17.8% increase in overheads just to train and complete the bureaucratic requirements of logging etc. However until we actually run this system we could not make this latter claim. Up to now we can show that the evidence is pointing to a figure of well in excess of 2% on training costs alone.

Further training for new joiners and update training for the existing workforce is not covered in these estimates. Our experience so far is that the update training requires almost as much effort as the initial training, mainly to keep pace with changes in the legislation (this is largely dictated by DTI reinterpretation of the regulations).

Licence Applications

These figures do not include the activities of applying for and administering the F 680 or licences we need to carry out the four phases of any project.

Each form takes roughly .75 man hour to complete and process and then .25 man hour to deal with on return provided there are no follow up questions.

Smiths Detection's (arguably the worst effected company) figures arrived at in conjunction with DTI LU 3 and DESP in DESO show that there will be between 19,500 and 100,000 forms which is a total of 19,500 man days per two years or 9,750 man days. Or 9,750/216 = 45 people!!

Major efforts are being made, in conjunction with LU 3 and DESP, to reduce the number of licence applications. However these currently seem to be of no avail and all we are doing is moving the piece of paper that has to be filled out from one ministry to another.

April 2004

Appendix 25: Further memorandum from the Defence Manufacturers Association

Differences Between the British and German Export Control Systems

We have received mixed comments from companies about comparisons between the UK and German export control systems, but the general view appears to be that whilst the German system appears overtly on paper, when one looks at the regulations (see: www.bafa.de/1/en/tasks/exportcontrol.htm), to be very (indeed, horrendously) bureaucratic in nature, in some areas much more so that the UK system, the actual practical operation of it, in some respects, is easier and much less bureaucratic than might appear to be the case on the surface. Comments have been made that the German regulatory authorities, recognising that the bureaucracy outlined in the regulations is unworkably unwieldy, have adopted very practical working solutions to enable the system to function smoothly in reality at the working level. Whilst both the UK and Germany work from the same EU military list, there remain substantial differences in the practical application of export control.

Here, as we understand it, is what we believe to be the "official" German Export Licence Procedure. Germany follows the pattern of most other European countries in the issuance of individual, Global or Project type licenses.

For the German Government the Export Market for Defence Material is divided into several classes of countries:

1. All NATO-countries.

2. Countries which will be treated like NATO (eg Australia, New Zealand, Switzerland, Sweden, Finland).

3. Countries where export is restricted (eg South America, Africa, Middle East, Asia).

4. Countries where all export is forbidden (eg Libya, Syria, Iraq, Iran, North Korea)

The procedure to get an export licence depends on this classification and on the type of product:

(a) sensitive technology (eg countermeasures, HE);

(b) insensitive technology (eg smoke, illumination, small pyrotechnics); and

(c) products which fall under the war weapon control act (eg incendiary ammunition).

Procedure

1.+ a.: pre-marketing licence (BWB,MOD) and standard export licence after receipt of contract (Export Licence Authority in Eschborn).

1.+ b.: only standard export licence.

1.+ c.: after receipt of contract: war weapon licence (MOD) and after receipt of war weapon licence additional the standard export licence.

2.+ a.: same as 1.+ a.

2.+ b.: same as 1.+ b.

2.+ c.: same as 1.+ c.

3.+ a.: same as 1.+ a.

3.+ b.: same as 1.+ a.

3.+ c.: same as 1.+ c., but additionally a pre-marketing licence.

4.: No export possible, requests should not be answered and/or should be sent to MoD for information, that country X wants to buy certain products in Germany.

For a pre-marketing licence, the company should have an RFQ or Invitation for Tender presentation or Request for Information. Normally classified information will be transferred, but German Authority (MoD, BWB) must give clearance. If you have received a license, it is valid until it is revoked, the situation in the particular country has changed dramatically, or an embargo has been declared.

It is not always necessary to ask for a pre-marketing licence.

For a standard export licence, an End User Certificate and a Contract are required.

Some examples of the general rules and how they affect export policy towards particular nations are:

India, Pakistan: only category b.

Taiwan: a. (only with government approval: German Security Council), b. and c.

Israel: case by case decision, no general guideline, but for c. no chance.

We hope that this is not too confusing. Please note the situation can change in one or the other direction on a weekly basis. All procedures are also valid if the German company is only a subcontractor and the deliverable part is a major item of the final product.

Companies in almost any nation will seem to regard their own export control system as being extremely difficult and (seemingly through "rose-coloured spectacles") those of other countries as being much easier. One Member Company has reported that, in discussion with a German competitor, his interlocutor "was under impression the UK system is easier than the German one!" Most comments from UK companies are, almost inevitably, with regard to comparisons with the French export control system's policies, systems and procedures, which are regarded, almost universally, as being extremely liberal and export-friendly. However, one Member Company reports that: "Everyone [in European Industry] agrees the French are a different matter—but my Egyptian Agent recently said . . ." EVEN the French are getting more difficult"!!" We also know of French companies who have commented in the past that their system can be very difficult, despite commonly held perceptions elsewhere. Equally, I am aware of one Israeli official who commented to one of my colleagues recently at an overseas exhibition that their export control system is the toughest and most rigorous in the World. Almost the only thing which is seemingly universally agreed is that the US system is the consummate example of how NOT to do it!

Discrepancies in national control lists, as indicated in our earlier evidence, make the situation more complicated. For instance, under the UK regulations, ML6 (b), of EGTTPTA(C)O 2003, discretely armoured 4 × 4 VIP vehicles require UK export licences (as they fall under the definition of "an all wheel drive vehicle capable of off road use which have been manufactured or fitted with metallic or non metallic materials to provide ballistic protection"). Our understanding of German, French and other EU regulations is that they control the movement of COMBAT armoured vehicles (ie for use by the armed and security forces), but not for discretely armoured vehicles for use by diplomats and other VIPs. As a result, UK suppliers of such vehicles frequently quote for business against BMW (× 5) and Mercedes (M Class & G Wagon) which can all be armoured and delivered without regulatory hassle from other EU Governments.

We cannot give firm details of lost orders resulting from this (and the need to submit end-user undertakings which customers for these types of vehicles are often reluctant to give, due to security/ confidentiality concerns), but the UK companies involved report that business is being lost as a result.

One of the major weaknesses of current Worldwide efforts to counter global proliferation is the sheer diversity of export control policies, systems and procedures around the World, which, in a buyers' market, make export controls almost totally ineffectual as a means of preventing proliferation, and mean that the very best that can ever be hoped for is that they can delay proliferation, rather than stop it. As a result, proliferators can shop around to obtain whatever they want until they find a willing supplier who can meet their needs, and efforts at the national level, by Governments, such as that in the UK, to tighten their own regulatory systems are rendered ineffective as tools to try to control global proliferation.

On another, related, issue, we believe that there has been far too much public focus on the issue of trying to curb the activities of British brokers, and that this is in many ways a red herring in global non-proliferation terms. At the end of the day, if it is inherently undesirable for a (particular?) supplier and a customer to come together and do a deal, then it is inherently undesirable, whether the broker who brings them together is British, French, Italian, Israeli, Ukrainian or Saudi, etc, etc, or whether there is no broker involved at all, and they do it directly—the nationality of any broker involved is irrelevant, and it remains inherently undesirable under any circumstances. What is really needed, rather than focusing on the issue of British brokers, and controlling them in the UK (and overseas?), is drafting some effective international and multilateral control regime which will prevent these deals from happening at all! Many proponents of the introduction of extraterritorial controls by the UK we believe appear to be looking at the issue through blinkers and unable to gain a strategic vision. As an instrument to try to curb global proliferation and the sorts of deals that we all want to see stopped, the UK arbitrarily and unilaterally changing its regulations will be about as effective as rearranging the deck chairs on the Titanic!

The only truly effective mechanisms have to result from reducing the diversity of export control policies, systems and procedures around the World, and adopting multilateral mechanisms at the international level to bring greater co-ordination and consistency to global counter-proliferation efforts by all Governments. However, as these will, by their very nature, almost certainly have some measure of subverting or undermining impact on the independent autonomy of policy and decision making by national Governments, including in areas such as trade, foreign and defence/security policy, such efforts along these lines will be difficult to achieve at the practical level. For instance it is very hard to perceive the USA being willing to support anything other than the universal adoption by other nations of its own (widely perceived to be deeply flawed) export control policies, systems and procedures, to achieve any solution aimed at international consensus and consistency.

Collated and Consolidated Evidence of the Burden on Industry of the New Regulations

Obviously there will be a greater burden arising from the introduction of a new regulatory control system, but it is still too early to tell how much greater this true cost will be. We understand that Mr Tim Otter is preparing some figures for the additional burden which his own company is facing (and which he quoted to the Committee on 21 April), but these figures, given that his company operates within the WMD sector where the intangible transfer of technology controls are very much stricter, do not necessarily mean that his experiences will be fully replicated across Industry.

However, we believe that the new regulations will introduce significant administrative "registration and monitoring control" burdens on both companies and individuals. There will also be a start-up and annual continuation "Training Awareness" cost and burden for all companies (including overseas subsidiaries and agents visiting and working in UK) particularly in respect of "intangible" transfer and "trade control". If you take into account the cost of providing (i) training material (ii) the training hours (iii) the opportunity cost of missed working hours (iv) training facility overhead costs, and then multiplied that total cost by the number of engineers, sales & marketing and contract administration staff, export shipping staff, agents and representatives in the Defence Industry it will be possible to obtain a near-as-possible rough order cost impact assessment.

In reality, we believe that it is going to be quite difficult to track and monitor compliance to this new legislation at 100% simply because of the wide diversity of activity areas covered by the legislation, the latent confusion within Industry (and, sometimes, within DTI) as to what activity it actually applies to, and that implementation of the legislation relates not only on the traditional "hardware" export order takers and exports shippers, but now also to the constituency of the many new individuals within companies (or associated with companies) which will now be (or might be) affected (to some greater or lesser extent) by the new technology transfer, intangibles and trade control aspects of the new legislation.

Sight of the legislation and the supplementary guidance notes associated with this, reveals that, in itself, this is large/onerous task with which companies have to get to grips well enough, without the actual compliance procedures and records that will be required to add on top. The time required to prepare and train staff is also a consideration and the burden placed on IT re laptops and remote access to name but a few, is not to be under-estimated.

One Member company has commented that:

> "The great majority of our products and services are covered by export control. Outside of UK MoD business, our customers will all be overseas. We are in continual discussion at all levels within the Company with overseas counterparts and are frequently required to support bid, demonstration and other marketing activity. We currently envisage that our ongoing contracts for supply overseas will require between 10–20 licence applications per annum. The extension of licensing to intangibles could necessitate 10 times this number if all technical discussions at bid and marketing stage are included.
>
> Also of great concern is the need to police the export of intangibles. The number of exporters has changed from a few individuals to over 50% of our staff. The burden of training, recording and auditing transfers has not been assessed, but is believed to be very considerable. Finally, our business will be impacted by our ability to respond to Requests for Quotations from potential overseas customers. Where an export licence is required, a delay of two to three months will occur before technical discussions can commence. In most cases this will be longer than the customer's required response time for the complete bid and the business will be lost."

Collated and Consolidated Information on "Under-Cutting" Activities Within the EU

We understand that Mr Tim Otter is submitting additional information on this. As we have previously stated, information on this is not necessarily easy to come by for companies, and the UK's use of the 680 system, which will discourage British firms from the nugatory pursuit of potential business for which a UK export licence would be turned down, results in competitors from other EU Member States not having to encounter the "under-cutting" provisions of the Code of Conduct. The statutory dual-licensing system of a number of other countries, including France and Germany, under which marketing or pre-marketing licences have to be sought by firms, as well as actual export licences, means that companies in these nations do not face this same aggravating and frustrating problem, as refusal of these will invoke the "under-cutting" provisions of the Code of Conduct.

One case which has only just (over the last couple of days) come to the DMA's attention concerns a UK firm which reports that it had an export licence turned down for the supply of some air traffic control type equipment to Israel, only to see the business be picked up by a French competitor, almost by default, with a French licence being issued without any apparent problems. We will try to obtain more information on this particular case, and pass on to the Committee, when we can.

One dual-use company reports that:

> "1. We export on SIEL's to countries like India, China & Japan.
>
> 2. Over the last 12–18 months we are finding it very difficult to trade & supply with the above countries due to the fact that every order has to be approved by the UK, DTI. This adds another four working weeks to our leadtime and makes us un-competitive.
>
> 3. Our customers have sometimes complained that suppliers in other EU countries like Germany & France are not even asking for End Use Certificates, and would just ship material a lot of the times.
>
> 4. Also, the most frustrating thing out of all this is that when we apply for the Export Licence we are advised after four weeks that No Licence is Required for exporting these goods.
>
> 5. We are also unable to understand fully how the Export Control Act applies to our product."

Differences in Attitudes Towards the People's Republic of China

In general the UK appears to be very circumspect in the supply of Military List equipment to the PRC. We have little detailed information on other EU country attitudes and have some difficulty providing concrete advice on whether some countries are more relaxed or not—however, we would think that former eastern block countries joining the EU could be very relaxed . . .

Evidence from the Chinese agent for one UK firm appears to indicate that French, Italian and US companies whom it also represents in the Chinese market can obtain the necessary export licence approvals from their Governments much more easily—the UK firm quotes normal timescales of three to 18 months, whilst the normal average for the French, Italian and US companies appears to be c 8 weeks.

Another UK firm reports that: "On the subject of export licences we have had some recent experiences of export licence delays with regard to China. We have finally received approval but the delay has caused some difficulties. During a recent visit to China I had been advised that French providers do not seem to have the same level of delays and that where our equipment categories are more stringent related to potential military applications the same is not apparent for French providers."

Suggested Possible Amendments to the EU Code of Conduct

The existing wording appears to be very comprehensive, but, of course, it is very open to interpretation, as has been widely commented upon. We believe that greater efforts should be made with regard to the adoption of a more consistent interpretation of the criteria within the Code of Conduct between nations.

We hope that the above additional comments may be of interest to the Committee.

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