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Defence Committee

UK/US Defence Trade Cooperation Treaty

Third Report of Session 2007–08

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Summary

In this report, we examine the UK/US Defence Trade Cooperation Treaty, laid before Parliament on 24 September 2007, which seeks to establish a new framework for arms trade and technology transfer between the US and the UK.

Arms and defence-related technologies cannot be exported from the US without an export licence issued by the US Government. The US and UK Governments and the defence industries in both countries have, since the 1990s, been searching for arrangements to ease the requirements for exports to the UK. The current system is unduly burdensome and time-consuming. It discourages UK/US industrial collaboration. It affects the speed at which equipment can be acquired for UK Forces in operational theatres. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations.

The Treaty between the UK and US would remove the requirement to obtain licences for certain categories of arms and technologies for defined purposes. Industry on both sides of the Atlantic firmly supports the Treaty. In principle, the Treaty should meet the Government's objective to deepen and strengthen UK/US cooperation and to provide greater interoperability for UK and US Armed Forces. We therefore support the principles and framework set out in the Treaty.

But the Treaty only provides the framework. The detailed operation will be set out in Implementing Arrangements. When we carried out our inquiry, these were still under negotiation. Still to be finalised are the criteria for membership of the Approved Community, to which arms and technologies could be exported, and the technologies which would be excluded. Provided that these Implementing Arrangements are not drawn too restrictively, excluding substantial goods and technologies or significant parts of the defence industry, we would expect the Treaty to bring benefit to the UK defence industry and to the UK Armed Forces.

Ratification in the US is subject to approval by a two-thirds majority of the Senate. We express confidence that Congressional scrutiny will show that the Treaty is in the US interest, as much as in the interest of the UK.

In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty.

1 Introduction

Background to the Treaty

1. The UK/US Defence Trade Cooperation Treaty was signed by former Prime Minister Blair and President Bush in June 2007 and published on 24 September 2007.[1] The Treaty establishes a framework for defence trade cooperation between the United Kingdom and the United States of America.[2]

2. In the UK, treaties are ratified by the Government under the Royal Prerogative, without requirement for parliamentary approval; but, by Government undertaking ("the Ponsonby rule"), treaties are laid before Parliament for 21 sitting days before ratification, to enable Parliament to consider and, if necessary, to comment on them. At our request, the Government agreed to extend the period available to Parliament to scrutinise this Treaty until 12 December 2007.

3. Since the 1990s, both Democrat and Republican Administrations have sought to reform the US arms export control system. The US Arms Export Control Act gives authority to the President to make regulations regarding the export and import of defence articles and services. The items so designated constitute the US Munitions List. The regulations are the International Traffic in Arms Regulations (ITAR), which cover the control of arms exports, the registration of manufacturers and exporters and the administrative procedures for obtaining licences to export.

4. In May 2000, the Clinton Administration approved the US Defense Trade Security Initiative (DTSI), which was an attempt to harmonise export licensing procedures and to shorten the time needed to process US licences for NATO allies, Australia, Japan and Sweden.[3] In January 2001, the UK and the US released a joint statement on the progress of implementation of DTSI.[4] As outlined by that statement, one of the UK's main objectives was to secure an exemption from ITAR for the export of certain equipment and services. Although proposed texts on an ITAR waiver were reportedly agreed in June 2003,[5] the US Congress repeatedly refused to approve a waiver for the UK. Opposition to granting the waiver has been strongest in the House of Representatives.

5. We and our predecessor committee supported the proposal for an ITAR waiver[6] but we now recognise that this is unlikely to receive approval in the US Congress, at least in the short term.

1 *Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning defense trade cooperation: London and Washington, 21 June and 26 June 2007*, Cm 7213, September 2007

2 The United States has subsequently signed a similar agreement with Australia; see and *Explanatory Memorandum on the UK/US Defence Trade Cooperation Treaty*, Foreign and Commonwealth Office, September 2007, para 8

3 *Defense Trade Security Initiative*, Press Statement by Philip T. Reeker, Acting Spokesman for the U.S. Department of State, May 24, 2000

4 *Statement on UK–US Discussions On Defense Export Controls*, Ministry of Defence, 18 January 2001

5 HC Deb, 2 June 2003, col 39W

6 For example, Fifth Report from the Defence Committee, Session 2002–03, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474, para 155

6. In the US, ratification of a treaty is subject to approval by a two-thirds majority in the Senate.[7] The UK/US Defence Trade Cooperation Treaty was received by the Senate on 20 September and referred to the Foreign Relations Committee. It is unclear how long the process of Congressional scrutiny will take but the UK Government is hopeful that the Senate will consider the Treaty by January 2008.[8] **While it cannot be taken for granted that the Treaty will be approved by the required two-thirds majority of the US Senate, we are confident that Congressional scrutiny of the Treaty will show that it is as much in the US interest as it is in the interest of the UK.**

Our inquiry

7. Because of the timetable for ratification, our inquiry has been swift. We held a two-part evidence session on 21 November 2007: first with the Defence Industries Council (DIC), the Society of British Aerospace Companies (SBAC), the Export Group for Aerospace and Defence (EGAD), the US Aerospace Industries Association (AIA), General Dynamics UK and BAE Systems; and secondly with the Rt Hon Baroness Taylor of Bolton, Minister for Defence Equipment and Support, and officials from the Ministry of Defence and the Cabinet Office. We also received written memoranda from the Government, from industry, from campaigning groups, from individual commentators and from members of the public. We are grateful to all those who contributed evidence within the tight timetable for this inquiry.

8. The Government states that its aim in signing the Treaty is:

> to further strengthen and deepen the UK and US defence relationship, allowing greater levels of cooperation and interoperability that will help support our Armed Forces operating side by side around the world. The Treaty will allow both nations to better leverage the respective strengths of their security and defence industries.[9]

9. In examining the Treaty we addressed three questions:

- How will the arrangements underpinning the Treaty work?
- Will the Treaty be effective in removing barriers to the arms trade and technology transfer from the US and in improving cooperation between the US and UK Armed Forces?
- What consequences will the Treaty have for UK defence manufacturers and UK defence industrial policy and arms export controls?

7 An alternative approach is to seek the simple majority of both Houses of Congress, but there has been no mention of this approach being adopted.

8 Q 148

9 Ev 27, para 1

2 Operation of the Treaty

Proposals in the Treaty

10. The Treaty sets out a framework for arms trade and technology transfer between the US and the UK. The Government, in the Explanatory Memorandum accompanying the Treaty, states that it will:

- only apply to defence articles listed on the United States Munitions List for US or UK Government end-use;
- not cover the export to the UK of defence articles intended for use by other nations; and
- not cover certain highly-sensitive technologies.[10]

The defence goods and technologies which will be exempted from the provisions of the Treaty will be set out in Implementing Arrangements (Article 3), which are considered further below. [11]

11. The Government also states in its memorandum that the Treaty arrangements will be in addition to, not a replacement for, both countries' existing export control arrangements. Arms and defence technologies not covered by the Treaty could still be exported if they meet the requirements of the UK's and US's current export licensing systems.[12] Exporters to whom the Treaty arrangements apply may use either the existing export control licensing arrangements or the Treaty arrangements. Those to whom the Treaty arrangements do not apply will have no option other than to apply for a licence through the existing arrangements.

12. The main provisions in the Treaty are as follows:

- It provides for an "Approved Community" of companies and individuals in the UK and US. In the UK, the community will include Government facilities, Government personnel, companies and individuals; the eligibility requirements for inclusion in the Approved Community will be set out in the Implementing Arrangements (Articles 4 and 5).
- It removes the requirement for goods and technologies that are exported from the US to companies within the Approved Community in the UK to be granted an individual export licence (Article 6). The Treaty will also allow for the subsequent transfer of those articles within the Approved Community without further US authorisation (Article 7).
- It prevents goods and technologies exported to the Approved Community in the UK from being re-exported or transferred outside of that community without

10 Explanatory Memorandum, para 5

11 See paras 19 and 27

12 Explanatory Memorandum, para 7

subsequent approval by both Governments. Certain exceptions to this provision, such as those for goods or services being used in support of the UK's deployed Armed Forces, will be mutually agreed and set down in the Implementing Arrangements (Article 9). In the UK, all relevant legislation, including the Official Secrets Act, will apply to the goods and technologies exported under the Treaty. Both Governments will be obliged to investigate any suspected violations and inform the other party of the result of such investigations. Each party shall also have the right to conduct end-use monitoring of exports or transfers conducted under this Treaty (Articles 11–13).

- Both parties will consult at least once a year on the cooperative aspects of export controls, and review the operation of this Treaty (Article 17). Any disputes arising out of, or in connection with, the Treaty are to be resolved on a bilateral basis and will not be referred to any court, tribunal or third party (Article 18).[13]

The current US export control system

13. Arms and related technologies subject to US export control cannot be exported from the US without an export licence issued by the Department of State's Directorate of Defense Trade Controls. In its evidence to us, the UK defence industry identified two key difficulties in obtaining goods and technologies from the US: the excessive length of time it took to secure licences; and the restricted terms of US export licences and consents.[14]

14. Industry found the US export system to be an administrative burden that tied up "huge amounts of resource" every time an application was made.[15] It questioned the point of this procedure as over 99% of applications to the UK were eventually approved.[16] EGAD said that, even after a licence had been issued, it was "very, very narrow and prescriptive" and, if the recipient wanted to step outside its terms, he or she had to go through the whole licensing process again.[17] Dr Sandy Wilson, President and Managing Director of General Dynamics UK, explained that he had had problems in getting clearance for Urgent Operational Requirements (UORs). UORs might be very short programmes, of perhaps four or nine months, and that was "almost outwith the timescale for getting TAA [Technology Assistance Agreement] approval".[18] While General Dynamics UK had been successful in negotiating with the US State Department a one-off waiver, it had taken "a long effort" and "the next time a programme appears with the same kind of timescales that process will not apply".[19] In UK industry's view, the US system was not capable of responding in the time required by modern business and modern defence requirements.[20]

13 Cm 7213

14 Q 2

15 Q 3

16 Qq 2 (Mr Godden), 4 and see also Q 124

17 Q 4

18 Q 7

19 *Ibid.*

20 Q 9

15. Dr Jerry McGinn from the AIA said that "the frustrations that we have had on the US side are similar to those in the UK industry in that trying to meet the operational demands for the war fighter".[21] He described the system as it applied to exports to the UK as cumbersome and not reflective of the close UK/US bilateral relationship.[22] He said that in trying to meet the Armed Forces' operational demands:

> speaking for my company [Northrop Grumman] […] we have had challenges of getting […] systems' TAAs or licences through fast enough to meet the needs of UK forces in the field.[23]

16. The operation of the current US export control system affects the speed at which equipment can be acquired for UK Forces in theatre—diminishing their ability to fight effectively alongside their US allies. The Government stated that there had been "some occasions when the ability to address problems on the ground has been delayed as the information that needs to be transferred at the operational level has been subject to licence".[24]

17. The primary purpose of arms export controls is to prevent goods and technology falling into the wrong hands. We asked industry how the US system operated and how much flexibility it could offer for exports to close allies such as the UK. EGAD considered that the operation of the system was "fundamentally […] a function of the rules rather than the number of people applied to the licensing system"[25] and that it was "an awkward mixture of legislation and […] regulatory practice."[26] In contrast to the UK export control system, the US system does not appear to take into account an assessment of risk.[27]

18. **The US export control system imposes a large administrative burden on defence exports from the US to the UK. While we respect the wish of the US to control its defence exports, we consider that its current system of controls for exports from the US to the UK is unduly burdensome and time-consuming. The US and the UK are very close allies, cooperating closely on defence and security. Our soldiers are fighting side by side in Iraq and Afghanistan. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations.**

Will the Treaty make a difference?

19. The Treaty will remove the requirement for certain categories of defence export to be processed through the US export control system. These categories will be set out in the Implementing Arrangements. When we took evidence from the Government, the Implementing Arrangements were still under negotiation with two key areas still

21 Q8 (Dr McGinn)

22 Ev 44

23 Q 8 (Dr McGinn)

24 Q 132

25 Q 4

26 Q 9

27 Q 4

undecided: the criteria for membership of the Approved Community; and the technologies that would be excluded from the scope of the Treaty.[28]

The UK Approved Community

20. Under the Treaty, goods and technology covered by the Treaty will be able to transfer without further authorisation from the US to the UK Government or to companies and other bodies, forming part of an Approved Community.[29] UK companies or other bodies wishing to use the Treaty will need to apply to join the Approved Community and will be assessed against several criteria. According to the UK Government, these criteria will include:

- current membership of the UK "List X" group, the group of establishments that have been cleared by the UK Government as being able to handle classified material;
- an appropriate level of Foreign Ownership, Control or Influence (FOCI), as decided by the UK and US Governments;
- past performance on export controls, judged against UK and US records of violations; and
- any potential national security risks for the US, due to interactions with countries proscribed in US law and regulation.[30]

21. The ambition of industry was that the UK Approved Community should be "as inclusive a list as possible".[31] Industry's concerns focused on the position of two groups: small and medium-sized enterprises (SMEs); and companies under FOCI.

22. Dr Wilson believed that it was important that SMEs were allowed into the Approved Community "because otherwise the supply chain [of goods and technologies from the US] will suddenly stop at the top level" when for full implementation the Treaty arrangements needed "to apply right down through the supply chain to the SME level".[32]

23. On foreign-owned companies, Dr Wilson considered that "it is essential that foreign-owned companies get onto the approved list because we cannot imagine working without them in the UK".[33] It was the SBAC's ambition that companies such as Thales, Finmeccanica and MBDA became members of the Approved Community.[34] Mr Hayes, Chairman of EGAD, pointed out that where a US company had FOCI then arrangements were agreed with the Defense Security Service in the US to mitigate that foreign interest. He envisaged a similar sort of system operating under the Treaty "whereby if there are

28 Qq 89, 100, 104, 151

29 Ev 28, para 5

30 Ev 28, para 8

31 Q 24

32 Q 22

33 Q 42

34 Qq 44 (Mr Godden), 46 (Mr Godden)

concerns over foreign ownership, control and interest of a company in the UK, then a means is found to address those concerns which would satisfy both Governments and enable the company to participate within the constraints of that agreement".[35]

24. In written evidence Finmeccanica UK put the case for inclusion of FOCI companies in the Approved Community:

> It would not be in the spirit of the Treaty, and would be irrational, to exclude from the Implementation Arrangements companies in the UK's domestic defence capability landscape simply because of third-country ownership. This is exemplified by Finmeccanica's sales in the UK of £1.7 billion exclusively in support of the UK's armed forces and those of allies. Finmeccanica could not accept, given its place in major UK equipment programmes such as Typhoon, Tornado, Merlin and Apache, that we might be treated as some special case, amounting to being labelled as a second class citizen. […] Finmeccanica has made significant inward investment decisions based on the principle that, because of our position in key UK domestic programmes, we would be afforded the same treatment as other companies in this community, regardless of ownership. It was on this basis that Finmeccanica has invested £1.5 billion in high technology facilities in the UK and maintains a high-skill workforce of some 9,000 or 12,000 if our interest in MBDA is included. The creation of a two-tier industrial landscape would undermine the rationale for this very significant investment and high level of activity.[36]

25. The List X procedure is "well-known and understood"[37] by the UK defence industry. List X includes SMEs[38] and university facilities.[39] The Government explained that eligibility for List X status already took "account of a level of FOCI within companies, including the percentage of UK nationals at board levels overseeing the security-cleared facilities".[40] There is, however, a difference of approach between the UK and US: on access to third-party nationals, for example, the UK approach is for risk management at the individual level whereas the US "tends to […] a more blanket level of denying access".[41] The Minister for Defence Equipment and Support was confident, however, that in the outstanding negotiations "we can convince those who are making decisions in the United States that the protections that we have on security and our vetting classification are very strong and very significant".[42]

26. **We share the ambition of industry that the Approved Community should be as inclusive as possible. The current List X, the group of establishments that have been**

35 Q 38

36 Ev 43 (Finmeccanica UK), see also Ev 42–43 (Thales UK) and Ev 45 (EADS UK)

37 Q 24 "List X" is a term that has been in existence for seventy years. It is the British term for what the rest of the world calls "FSC—Facility Security Clearance". The term refers to contractors or subcontractors which have been formally placed on List X because they are undertaking work marked CONFIDENTIAL or above "on the Company Premises".

38 Q 27

39 Q 106

40 Q 103 (Mr Lincoln)

41 Q 104

42 Q 151

cleared by the UK Government as being able to handle classified material, is tried and tested and forms a solid foundation on which to build eligibility for inclusion in the UK Approved Community. In our view a UK Approved Community which was drawn more tightly—by excluding SMEs or major foreign-owned defence companies—would seriously blunt the effectiveness of the Treaty. UK defence companies owned by overseas companies form a significant part of the UK defence industry and have a large footprint in the UK economy: they are in practice regarded by the MoD as UK defence companies. If European-owned UK defence companies were barred from membership of the Approved Community, it would create a two-tier industry and would risk discouraging European collaboration.

Excluded technologies

27. Article 3 provides that the Treaty shall not apply to those goods and technologies that are identified in the Implementing Arrangements. The Government expects a small number of sensitive technologies to be excluded from the Treaty,[43] principally stealth and sensitive communications technology.[44] The Government's intention is that the "list of exclusions would be as small as possible, such that the benefits which can be derived from both Governments' Armed Forces on operations and industry, both on the UK and US side, can be maximised as far as possible".[45] The Minister was confident that agreement with the US could be reached on this issue.[46] Industry supported the Government's approach.[47] **We endorse the Government's approach that the list of technologies excluded by the Implementing Arrangements should be as short as possible. Given the reliance that today's Armed Forces place on technology, an extensive list of exclusions emerging from the negotiations on the Implementing Arrangements would undermine the purpose of the Treaty. In our view, the longer the list of exclusions, the less effective the Treaty will be.**

Joint Strike Fighter

28. We have repeatedly raised concerns about technology transfer from the US to the UK on the Joint Strike Fighter (JSF) programme.[48] In December 2006, the then Minister for Defence Procurement, Lord Drayson, assured us that the UK would get all the technology transfer it required to operate the JSF independently.[49] We asked his successor whether the Treaty would cover technological transfer for the JSF. She replied:

43 Ev 28, para 10

44 Q 107 (Mr Lincoln)

45 Q 100

46 Q 151

47 Q 11

48 Most recently in the Sixth Report of the Defence Committee, Session 2006–07, *The Defence Industrial Strategy: update*, HC 177, paras 81–86. The JSF is a supersonic, multi-role, stealth (radar-evading) fighter with a single engine and a single pilot. The prime contract to develop and produce the JSF was awarded to Lockheed Martin in October 2001. Full production is due to start in 2012. Lockheed Martin and its partners BAE Systems and Northrop Grumman, are facilitating the flow of work, with the development of the engines being managed by the Fighter Engine Team, comprised of General Electric and Rolls Royce.

49 HC (2006–07) 177, para 84

> The Joint Strike Fighter is a multinational programme and, therefore, as such, as a whole, it is not covered by this Treaty. However, aspects of the Joint Strike Fighter are actually where we have bilateral projects with the Americans. If it is a UK/US aspect of the Joint Strike Fighter programme, in terms of any development, then it can come in with this Treaty—it does not have to but there is potential for that—but it is not, as a multilateral project, one that automatically all comes within this Treaty.[50]

29. **We note that the Treaty does not cover multi-national programmes and therefore does not provide the key to ensuring a comprehensive transfer of technology for the Joint Strike Fighter programme. The Treaty has, however, the potential to assist those parts of the JSF programme which are exclusively joint US/UK collaborative projects. We welcome this benefit. We will continue to monitor the JSF programme closely.**

Consultation

30. **The Implementing Arrangements are fundamental to the scope and effectiveness of the Treaty. Until they are agreed, it is hard to judge to what extent the Treaty will reduce the barriers to US/UK defence exports. But the consensus of our industry witnesses was that the outcome was likely to be an improvement on the current arrangements.** As Ian Godden, Secretary of the DIC and Chief Executive Officer of the SBAC, said, "there is nothing that is going to be worse than today".[51]

31. In its written evidence, the DIC expressed the wish that, "to safeguard against any unintended consequences", the Government should "look to share with Industry the emerging draft implementation arrangements at the earliest possible opportunity, so that we can offer considered advice".[52] We asked our witnesses from industry whether they had been satisfied with the consultation that the Government had carried out on the Treaty. Mr Godden believed that the Government had shared as much as it could, given the confidential nature of the Treaty negotiations. He was satisfied, from contact with his 260 members, that "they feel consulted and they feel they understand what is going on, but clearly they have not seen sight of implementation issues".[53]

32. The Government envisaged that, once the negotiations on the Implementing Arrangements had been completed, there would be a Memorandum of Understanding between the two Governments which would not require further ratification. The Government drew a distinction between the Memorandum of Understanding entered by the two Governments (which might have to be kept confidential) and the requirements placed on industry as a result of this Treaty (to which industry would have public access).[54] In its oral evidence the Government explained that it was:

50 Q 110

51 Q 37

52 Ev 31

53 Q 17

54 Q 93

> still in discussion with the US on exactly the form in which we will place those implementing arrangements to either the Senate or to the Committee here. Clearly, we are prepared to share that. Of course, the difference is—and there will be concerns by industry on whether or not we need to share those as well—the implementing arrangements set out the commitments between the two governments are not necessarily the commitments which we place directly to industry. We will, of course, share and work up in detail with industry the exact requirements which need to be put in place with them. So, clearly, those will be done in detail with those who will be affected by this.[55]

33. The Minister indicated that she was keen to keep us "fully in the picture" on the progress of the negotiations on the Implementing Arrangements and would be content for us to receive an informal briefing from officials on the latest negotiating session in Washington.[56] **We expect the Government to keep us fully informed of the content of the Implementing Arrangements and of the progress of implementation of the Treaty, once it is brought into force.**

34. We take assurance from the comments that industry made in oral evidence that it has, within the limitations of the process, been kept informed by the Government of negotiations on the Treaty and on the Implementing Arrangements. **We recommend that the Government continue to keep industry as informed as it is able within the constraints of the negotiating process on the Treaty, and that, once the Implementing Arrangements are agreed, the Government ensure that industry is fully involved in discussions on the practical implementation of the Treaty.**

55 Q 90 (Mr Lincoln)

56 Ev 42 (Ministry of Defence)

3 The wider effects of the Treaty

Interoperability and collaboration

35. The Government's primary aim for the Treaty is "to further strengthen and deepen the UK and US defence relationship, allowing greater levels of cooperation and interoperability that will help support our Armed Forces operating side by side around the world".[57] We asked ourselves two questions:

- Will the Treaty lead to greater interoperability and collaboration?
- Is there a risk that the Treaty might cause greater dependence on US technology, a loss of UK operational sovereignty and the movement of research and development from the UK to the US?

36. In welcoming the Treaty, UK industry considered that it would contribute to "enhanced interoperability on the battlefield, now and in the future".[58] Dr Wilson described how the defence market currently worked in the UK and how it might change after implementation of the Treaty:

> if you are producing a system in the UK you do have a choice of where you go for that technology. It might be indigenous to the UK, it might be from Europe, it might be from the US. Currently there are many advantages to not using US technology because [of] the administrative burden […] We consciously have made decisions not to […] use US technology coming from the greater GD in certain programmes in the UK. […] Sometimes the US has fantastically good technology and it would be very useful and beneficial to the UK to have that here, and it would still be fought for in the competitive market-place that is UK defence but […] it is a sensible way of getting rid of a barrier that has prevented us from offering some things into the UK because it is such a difficult process.[59]

37. On collaboration, Alison Wood, Group Strategic Development Director, BAE Systems, explained that one of the reasons that industry considered it was important that:

> when the UK procures weapons systems and military platforms from the US we need to make sure that we have the industrial capability, whether it be in BAE Systems, Lockheed Martin UK, Northrop [Grumman] UK or GD [General Dynamics] UK, to actually do the through-life support of those aircraft and weapons in this country, and to do that you need to have transferred the technology so that the skills and the individuals and the resources are here to then support the Armed Services. That requires a different way of trying to tackle the technology transfer regime.[60]

57 Ev 27, para 1

58 Ev 30 (Defence Industries Council)

59 Q 54 (Dr Wilson)

60 Q 2 (Ms Wood)

38. The AIA strongly supported the Treaty.[61] Dr McGinn said that the Treaty "will allow US companies to work with our UK branches to do collaborative research and development for both US and UK forces and likewise for UK companies and their US subsidiaries, so the collaboration potentials from this are really substantial".[62]

39. Defence industry on both sides of the Atlantic sees the Treaty as providing potential for greater UK/US cooperation and collaboration. As defence industry becomes more global and multinational and armaments become increasingly hi-tech, the UK defence industry will need to work more closely with its allies to develop new systems collaboratively for the UK's and its allies' Armed Forces. **We fully support the Government's objective of greater levels of cooperation and interoperability between the US and UK that will assist our Armed Forces. Industry welcomed the Government's approach. We conclude that the faster and less restrictive flow of goods and technologies between the US and the UK is likely to foster greater cooperation between our industries and that, in turn, should facilitate interoperability between our Armed Forces.**

Research and development

40. We asked whether the Treaty risked creating an incentive for the defence industry to move research and development facilities from the UK to the US. Ms Wood thought that the Treaty would lead to more bilateral cooperation and that, rather than losing UK scientists to the US, it would encourage US scientists to cooperate with those in the UK and help move technology and research partnerships to the UK. [63] Ms Wood recognised that this approach was "not without risk": here again it was important "that the whole of the UK defence industrial footprint is able to participate in this Treaty because that is the way we will be able to preserve critical mass".[64] Whether this will happen will depend on the outcome of the negotiations on the Implementing Arrangements, particularly on the membership of he Approved Community.

41. The Government saw the Treaty as offering opportunity for the UK defence industry. It pointed out that the US was the largest foreign investor in the UK and in the defence industry, and that the US exploited British technology on both sides of the Atlantic. The Government expected "that there would be some expertise and knowledge which comes here too".[65]

42. **The Treaty has the potential to enhance defence research and development in both the UK and the US. We share industry's concern that a narrowly-drawn Approved Community would allow only a few to take advantage of the Treaty's provisions and share in the benefits of greater cooperation and collaboration. If, instead, the Approved Community in the UK is large, it will build the critical mass to sustain collaborative projects across the Atlantic.**

61 Ev 43 (Aerospace Industries Association); see also Ev 40–42 (Northrop Grumman UK).

62 Q 10 (Dr McGinn)

63 Q 58

64 *Ibid.*

65 Q 137 (Mr Lincoln)

UK operational sovereignty

43. Most of the evidence we received was favourable to the Treaty. There were, however, some critical voices. The British American Security Information Council (BASIC) and Saferworld suggested that, as the UK would inevitably be the junior partner in joint UK/US procurement projects, "the Treaty may well have the consequence of eroding UK operational sovereignty".[66] In other words, the Treaty would give the US a veto on the UK's use of goods supplied from the US and on UK-produced equipment that used US technology. Industry did not share this view. It considered that the framework set by Government's Defence Industrial Strategy with its focus on through-life sovereign control of technology and capability gave us a framework for managing that control. Dr Wilson pointed out that, compared to three or four years ago:

> we are in a much stronger position because the Defence Industrial Strategy, with its focus on through-life sovereign control of technology and capability and the link of that to the Defence Technology Strategy, gives us a framework for managing it. It is now firmly in everybody's minds that having the R&D and the management of capability in-country is the right thing to have. I think that is a good framework.[67]

44. **The current US export control arrangements, with their tightly drawn licences and consents, work against UK sovereign control. Any change that allows a less prescriptive transfer of technology can only assist the UK. We do not believe that the Treaty will erode operational sovereignty.**

45. The Minister considered that the tests—whether interoperability was improved and whether British companies secured advantage—had to be judged in the longer term.[68] **It will take several years before it is possible to assess whether the Treaty has achieved its objectives of greater levels of cooperation and interoperability. As a Committee we will return to this issue once the Treaty has been implemented.**

EU and international aspects of the Treaty

46. We asked whether the Treaty was in accordance with European law. The Government replied that it had been careful in all its negotiations to make sure that it did not discriminate against any commitments the UK had with the European Union (EU), and "the Treaty itself says that we will maintain our international obligations and commitments to any international body".[69] The Treaty will not apply to dual-use goods, that is, goods that could be used for both a civilian and military use. The UK Government was not able to enter into negotiations on these goods as they form an EU competence and therefore not a matter that the UK can negotiate on its own.[70] **We note the Government's assurance that the Treaty is compatible with European law.**

66 Ev 32; Ev 35, para 4.1

67 Q 59 (Dr Wilson)

68 Q 140

69 Q 105

70 Q 123 (Mr Lincoln)

47. We wondered whether the Treaty—by facilitating defence collaboration with the US—might have the effect of discouraging European collaboration. Mr Hayes, the Chairman of EGAD, told us that industry had discussed this possibility and did not think that it would happen: industry would still be "free to shop in whatever market-places we choose".[71] **If European-owned UK defence companies are included in the UK Approved Community, we can see no reason why the Treaty should discourage European defence collaboration; but this will need to be monitored closely.**

Effect on the UK's export control system

48. The Government has presented the Treaty as a two-way system, covering UK exports to the US, as well as US exports to the UK.[72] Saferworld and BASIC suggested that the Treaty was asymmetrical in that, in a number of areas, the Treaty restricted UK freedom of action more than that of the US, and appeared to privilege US interests over those of the UK. They argued that the US would have discretion over which items were covered by the Treaty, and that the US would be permitted to monitor the end-use of weapons developed under the Treaty whereas the UK would not.[73] The Government's Explanatory Memorandum states that the provisions of the Treaty in relation to transfers from the US to the UK mirror the effect of current practice for authorising UK defence exports to the US, the vast majority of which are covered by UK open licensing arrangements.[74] In its evidence the Government said that the Treaty created for the "US system something […] very akin to our open general export licensing system".[75] **While the Treaty appears to be asymmetrical in giving the US more control over UK exports than vice versa, the practical effect of the Treaty will be to bring US and UK exporting arrangements closer together.**

49. BASIC and Saferworld expressed concern that the US is more likely than the UK to export arms to Colombia and Israel.[76] We consider that to safeguard UK export control policy there should be limitations on the ability of the US Government to re-export goods and technology that has come from the UK to the US. **In order to ensure that the Treaty is in accordance with UK export control policy, the UK Government should restrict any open or general licences it issues, to meet the requirements of the Treaty, to exclude the re-export or transfer from the US of UK goods and technology to third countries other than to US or UK forces.**

71 Qq 51–53

72 Q 121

73 Ev 32; Ev 34–35, paras 3.1–3.4

74 Explanatory Memorandum, para 2

75 Q 121

76 Ev 32; Ev 34, para 5.4

4 Conclusion

50. **The US export control system, as currently administered, discourages collaboration between UK and US industry and inhibits the swift supply of urgently needed equipment to our Forces in theatres of operation. Given how closely UK and US Forces cooperate in theatre, this is clearly in the interests of neither the UK nor the US.**

51. **We, like many others, considered that an ITAR waiver might be a way of preserving the close relationship between the UK and the US. The Treaty offers an alternative route. We have scrutinised the Treaty and we conclude that the principles it sets out offer the opportunity for the UK and US to strengthen further and deepen their defence relationship and allow greater levels of cooperation and interoperability. Industry on both sides of the Atlantic firmly supports the Treaty and we believe the Treaty accords with the Government's Defence Industrial Strategy.**

52. **The extent and nature of the benefits to the Government and the defence industry in the UK will depend on the Implementing Arrangements. In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty.**

Conclusions and recommendations

1. While it cannot be taken for granted that the Treaty will be approved by the required two-thirds majority of the US Senate, we are confident that Congressional scrutiny of the Treaty will show that it is as much in the US interest as it is in the interest of the UK. (Paragraph 6)

2. The US export control system imposes a large administrative burden on defence exports from the US to the UK. While we respect the wish of the US to control its defence exports, we consider that its current system of controls for exports from the US to the UK is unduly burdensome and time-consuming. The US and the UK are very close allies, cooperating closely on defence and security. Our soldiers are fighting side by side in Iraq and Afghanistan. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations. (Paragraph 18)

3. We share the ambition of industry that the Approved Community should be as inclusive as possible. The current List X, the group of establishments that have been cleared by the UK Government as being able to handle classified material, is tried and tested and forms a solid foundation on which to build eligibility for inclusion in the UK Approved Community. In our view a UK Approved Community which was drawn more tightly—by excluding SMEs or major foreign-owned defence companies—would seriously blunt the effectiveness of the Treaty. UK defence companies owned by overseas companies form a significant part of the UK defence industry and have a large footprint in the UK economy: they are in practice regarded by the MoD as UK defence companies. If European-owned UK defence companies were barred from membership of the Approved Community, it would create a two-tier industry and would risk discouraging European collaboration. (Paragraph 26)

4. We endorse the Government's approach that the list of technologies excluded by the Implementing Arrangements should be as short as possible. Given the reliance that today's Armed Forces place on technology, an extensive list of exclusions emerging from the negotiations on the Implementing Arrangements would undermine the purpose of the Treaty. In our view, the longer the list of exclusions, the less effective the Treaty will be. (Paragraph 27)

5. We note that the Treaty does not cover multi-national programmes and therefore does not provide the key to ensuring a comprehensive transfer of technology for the Joint Strike Fighter programme. The Treaty has, however, the potential to assist those parts of the JSF programme which are exclusively joint US/UK collaborative projects. We welcome this benefit. We will continue to monitor the JSF programme closely. (Paragraph 29)

6. The Implementing Arrangements are fundamental to the scope and effectiveness of the Treaty. Until they are agreed, it is hard to judge to what extent the Treaty will reduce the barriers to US/UK defence exports. But the consensus of our industry

witnesses was that the outcome was likely to be an improvement on the current arrangements. (Paragraph 30)

7. We expect the Government to keep us fully informed of the content of the Implementing Arrangements and of the progress of implementation of the Treaty, once it is brought into force. (Paragraph 33)

8. We recommend that the Government continue to keep industry as informed as it is able within the constraints of the negotiating process on the Treaty, and that, once the Implementing Arrangements are agreed, the Government ensure that industry is fully involved in discussions on the practical implementation of the Treaty. (Paragraph 34)

9. We fully support the Government's objective of greater levels of cooperation and interoperability between the US and UK that will assist our Armed Forces. Industry welcomed the Government's approach. We conclude that the faster and less restrictive flow of goods and technologies between the US and the UK is likely to foster greater cooperation between our industries and that, in turn, should facilitate interoperability between our Armed Forces. (Paragraph 39)

10. The Treaty has the potential to enhance defence research and development in both the UK and the US. We share industry's concern that a narrowly-drawn Approved Community would allow only a few to take advantage of the Treaty's provisions and share in the benefits of greater cooperation and collaboration. If, instead, the Approved Community in the UK is large, it will build the critical mass to sustain collaborative projects across the Atlantic. (Paragraph 42)

11. The current US export control arrangements, with their tightly drawn licences and consents, work against UK sovereign control. Any change that allows a less prescriptive transfer of technology can only assist the UK. We do not believe that the Treaty will erode operational sovereignty. (Paragraph 44)

12. It will take several years before it is possible to assess whether the Treaty has achieved its objectives of greater levels of cooperation and interoperability. As a Committee we will return to this issue once the Treaty has been implemented. (Paragraph 45)

13. We note the Government's assurance that the Treaty is compatible with European law. (Paragraph 46)

14. If European-owned UK defence companies are included in the UK Approved Community, we can see no reason why the Treaty should discourage European defence collaboration; but this will need to be monitored closely. (Paragraph 47)

15. While the Treaty appears to be asymmetrical in giving the US more control over UK exports than vice versa, the practical effect of the Treaty will be to bring US and UK exporting arrangements closer together. (Paragraph 48)

16. In order to ensure that the Treaty is in accordance with UK export control policy, the UK Government should restrict any open or general licences it issues, to meet the requirements of the Treaty, to exclude the re-export or transfer from the US of UK

goods and technology to third countries other than to US or UK forces. (Paragraph 49)

17. The US export control system, as currently administered, discourages collaboration between UK and US industry and inhibits the swift supply of urgently needed equipment to our Forces in theatres of operation. Given how closely UK and US Forces cooperate in theatre, this is clearly in the interests of neither the UK nor the US.

We, like many others, considered that an ITAR waiver might be a way of preserving the close relationship between the UK and the US. The Treaty offers an alternative route. We have scrutinised the Treaty and we conclude that the principles it sets out offer the opportunity for the UK and US to strengthen further and deepen their defence relationship and allow greater levels of cooperation and interoperability. Industry on both sides of the Atlantic firmly supports the Treaty and we believe the Treaty accords with the Government's Defence Industrial Strategy.

The extent and nature of the benefits to the Government and the defence industry in the UK will depend on the Implementing Arrangements. In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty. (Paragraphs 50–52)

Annex: List of Abbreviations

AIA	Aerospace Industries Association
BASIC	British American Security Information Council
DIC	Defence Industries Council
DTSI	Defense Trade Security Initiative
EGAD	Export Group for Aerospace and Defence
FOCI	Foreign Ownership, Control or Influence
ITAR	International Traffic in Arms Regulations
JSF	Joint Strike Fighter
NATO	North Atlantic Treaty Organisation
SBAC	Society of British Aerospace Companies
SME	Small or Medium-size Enterprise
TAA	Technology Assistance Agreement
UK	United Kingdom
US	United States
UOR	Urgent Operational Requirement

Formal Minutes

Tuesday 4 December 2007

AFTERNOON SITTING

Members present:

Mr James Arbuthnot, in the Chair

Mr David Crausby	Mr Kevan Jones
Linda Gilroy	Robert Key
Mr Adam Holloway	Willie Rennie
Mr Bernard Jenkin	John Smith
Mr Brian Jenkins	

Draft Report (*UK/US Defence Trade Cooperation Treaty*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 52 read and agreed to.

Annexes (Summary and List of Abbreviations) agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 11 December at 10.00 am.

Witnesses

Wednesday 21 November 2007 *Page*

Mr Ian Godden, Secretary of the Defence Industries Council and Chief Executive Officer of the Society of British Aerospace Companies;
Mr David Hayes, Chairman of Export Group for Aerospace and Defence and Director of Export Controls;
Mr Jerry McGinn, US Aerospace Industries Association and Northrop Grumman UK;
Dr Sandy Wilson, President and Managing Director of General Dynamics UK; and
Ms Alison Wood, Group Strategic Development Director, BAE Systems. Ev 1

Rt Hon Baroness Taylor of Bolton, a Member of the House of Lords, Minister for Defence Equipment and Support,
Mr Stephen French, Director General Acquisition Policy,
Mr Tony Pawson, Head Defence Export Services and
Ms Gloria Craig, Director General International Security Policy, Ministry of Defence; and
Mr Paul Lincoln, Head of Defence and Security Policy, Cabinet Office. Ev 11

List of written evidence

List of unprinted evidence

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Andrew Robins
Robert Davis
Ben Hardwick
Paul Watson

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2005–06

First Report	Armed Forces Bill	HC 747 (*HC 1021*)
Second Report	Future Carrier and Joint Combat Aircraft Programmes	HC 554 (*HC 926*)
Third Report	Delivering Front Line Capability to the RAF	HC 557 (*HC 1000*)
Fourth Report	Costs of peace-keeping in Iraq and Afghanistan: Spring Supplementary Estimate 2005–06	HC 980 (*HC 1136*)
Fifth Report	The UK deployment to Afghanistan	HC 558 (*HC 1211*)
Sixth Report	Ministry of Defence Annual Report and Accounts 2004–05	HC 822 (*HC 1293*)
Seventh Report	The Defence Industrial Strategy	HC 824 (*HC 1488*)
Eighth Report	The Future of the UK's Strategic Nuclear Deterrent: the Strategic Context	HC 986 (*HC 1558*)
Ninth Report	Ministry of Defence Main Estimates 2006–07	HC 1366 (*HC 1601*)
Tenth Report	The work of the Met Office	HC 823 (*HC 1602*)
Eleventh Report	Educating Service Children	HC 1054 (*HC 58*)
Twelfth Report	Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny	HC 873 (*Cm 6954*)
Thirteenth Report	UK Operations in Iraq	HC 1241 (*HC 1603*)
Fourteenth Report	Armed Forces Bill: proposal for a Service Complaints Commissioner	HC 1711 (*HC 180*)

Session 2006–07

First Report	Defence Procurement 2006	HC 56 (*HC 318*)
Second Report	Ministry of Defence Annual Report and Accounts 2005–06	HC 57 (*HC 376*)
Third Report	Costs of operations in Iraq and Afghanistan: Winter Supplementary Estimate 2006–07	HC 129 (*HC 317*)
Fourth Report	The Future of the UK's Strategic Nuclear Deterrent: the Manufacturing and Skills Base	HC 59 (*HC 304*)
Fifth Report	The work of the Committee in 2005 and 2006	HC 233 (*HC 344*)
Sixth Report	The Defence Industrial Strategy: update	HC 177 (*HC 481*)
Seventh Report	The Army's requirement for armoured vehicles: the FRES programme	HC 159 (*HC 511*)
Eighth Report	The work of the Defence Science and Technology Laboratory and the funding of defence research	HC 84 (*HC 512*)
Ninth Report	The Future of the UK's Strategic Nuclear Deterrent: the White Paper	HC 225-I and –II (*HC 551*)
Tenth Report	Cost of military operations: Spring Supplementary Estimate 2006–07	HC 379 (*HC 558*)
Eleventh Report	Strategic Lift	HC 462 *(HC1025)*
Twelfth Report	Ministry of Defence Main Estimates 2007–08	HC 835 *(HC 1026*)
Thirteenth Report	UK operations in Afghanistan	HC 408 *(HC 1024*)
Fourteenth Report	Strategic Export Controls: 2007 Review	HC 117 *(Cm 7260)*
Fifteenth Report	The work of Defence Estates	HC 535 (*HC 109*)

Session 2007–08

First Report	UK land operations in Iraq 2007	HC 110
Second Report	Costs of operations in Iraq and Afghanistan: Winter Supplementary Estimate 2007–08	HC 138

Oral evidence

Taken before the Defence Committee

on Wednesday 21 November 2007

Members present

Mr James Arbuthnot, in the Chair

Mr Bernard Jenkin	Mr Dai Havard
Mr Kevan Jones	Mr Adam Holloway
Mr Mike Hancock	Willie Rennie

Witnesses: **Mr Ian Godden**, Secretary of the Defence Industries Council and Chief Executive Officer of the Society of British Aerospace Companies (SBAC), **Mr David Hayes**, Chairman of Export Group for Aerospace and Defence (EGAD) and Director of Export Controls, **Dr Jerry McGinn**, US Aerospace Industries Association (AIA) and Northrop Grumman, **Dr Sandy Wilson**, President and Managing Director, General Dynamics UK, and **Ms Alison Wood**, Group Strategic Development Director, BAE Systems, gave evidence.

Q1 Chairman: Welcome to this session on the UK/US Defence Co-operation Treaty. We are extremely grateful to all of you representatives from industry for coming to give us evidence about it. Dr McGinn, you have come from a long way away and we are particularly grateful to you, but we are grateful to all of you, as I say. We hope to produce a Report following this evidence session before the Treaty is ratified by the Government. At 10.30 we will be having the Minister and officials in and we have got a lot of stuff to get through. We have got lots of questions to ask you, so please do not feel that you need to answer every question that comes up because if you do we will only get through about two questions and we have got something like 12, each of them with sub-questions. The topics we are going to cover are: first, what are the current problems industry face; second, what the Treaty is and how it is going to help; third, what the implementing arrangements are and whether you know enough about them; fourth, stuff about the British "approved" community; then foreign-owned companies; dependency on the US and the impact on European collaboration; what the power of the US is over UK exports; enforcement reciprocity; prospects for ratification in the United States; and then on a completely separate issue, we will ask a question or two about DESO and its abolition. Can I ask you first please to introduce yourselves.

Dr Wilson: Sandy Wilson, Managing Director of General Dynamics UK.

Dr McGinn: Jerry McGinn**,** I am Corporate Director for US/UK ITAR policy for Northrop Grumman Corporation in Washington DC but I am here also as the Chair of the US/UK Defence Treaty Working Group for the US Aerospace Industries Association which is our trade association in the US.

Mr Hayes: David Hayes, I am an export control consultant and I am Chairman of the Export Group for Aerospace & Defence.

Mr Godden: Ian Godden, Chief Executive of the SBAC and Secretary to the Defence Industries Council.

Ms Wood: Alison Wood, Group Strategic Development Director for BAE Systems plc.

Q2 Chairman: Thank you very much. Can I ask you to summarise the sorts of problems that British defence manufacturers face in working with the US defence industry in obtaining goods and technology from the US giving concrete examples. Alison Wood, can we start with you perhaps.

Ms Wood: Yes. I think the area that we would highlight is the level of difficulty in the process if you are working on collaborative programmes. A programme that obviously comes to mind is the Joint Strike Fighter programme where you have to go through some very bureaucratic and often challenging processes to work collaboratively with parts of your own company as well as other colleagues in the industry, so you get the agreements in place that allow you to have shared technology. We have to go through several levels of clearance in order to be able to get what is put in place—technology assistance agreements—that then become the basis on which we can share data and technology. The problems are really threefold. One is the timescales that it takes to put these in place, which can go over years. Then there is the fact that they are very restrictive in the sense that they are very narrowly focused. When you do get TAAs in place or restrictions to shared technology they are about very specific topics, and that sometimes can constrain the innovation you need to put in place as a company, particularly if you are working for example on an urgent operational requirement for the Armed Forces, and you have to be very focused about then, if you build that technology into your product or into your programme, how you then subsequently take that product or programme through into the export market. There is obviously the whole separate set of UK rules and regulations around it, but you then get a similar set of filters that you have to apply for the US. The example I would best give on the Joint Striker Fighter programme is the years it has now taken us to try and establish just

the basic technology assistance agreements to work with Lockheed Martin and our partners Northrop. One of the reasons that we feel it is important that we get this new regime is place is that when the UK procures weapons systems and military platforms from the US we need to make sure that we have the industrial capability, whether it be in BAE Systems, Lockheed Martin UK, Northrop UK or GD UK, to actually do the through-life support of those aircraft and weapons in this country, and to do that you need to have transferred the technology so that the skills and the individuals and the resources are here to then support the Armed Services. That requires a different way of trying to tackle the technology transfer regime and that is why over the last few years we have been putting considerable effort in through the DIC and the SBAC to support this initiative.

Mr Godden: Just to summarise, the combination of requiring significant company resource—a slow process—and then the result being 99.9% approval. In an industry that prides itself on compliance this feels long and slow for the results that come out, and in that sense it is an attempt in the compliance industry to shorten the whole process on behalf of company resource and also for the Governments. In summary that is the benefit.

Q3 Chairman: We are not getting on to the benefit of the Treaty, we are still on the problems of the current arrangements.

Mr Godden: The current arrangement is slow and difficult. It ties up huge amounts of resource every time an application is made, it can be multiple applications in sequence for a single set of activities, and therefore there is no way of bypassing a sequential 30 to 45 delay each time to get permission to do a set of tasks which combined together would be much shorter.

Q4 Chairman: To what extent is that a function of the rules and to what extent is it a function of the number of personnel in the United States applied to the licensing system? Would any of you like to comment on that?

Mr Hayes: The number of personnel in the United States applied to the licensing system is a matter for the State Department, but I think fundamentally it is a function of the rules rather than the number of people applied to the licensing system. There does not appear to be any risk assessment approach to the licensing process. I would contrast the UK system which is essentially a risk-assessed, open system. In most cases, exports of either goods or technology to the United States would go under open licensing. In cases where they did not then the licences would be processed very quickly, typically within a week or so, by our Government, with almost total reliance then on the export control system of the United States for onward control. The US system is the antithesis of that. There is no risk assessment. Despite the fact there is a 99% plus approval rate every application goes through this lengthy process. Even after the licence has gone through the process the licence is very, very narrow and prescriptive. If you want to step outside of those bounds you have to go through the whole process again, and the United States still retains control over the goods or technology even after they arrive in the UK.

Q5 Willie Rennie: Has Britain not received priority status in recent years and has that not improved the situation dramatically?

Mr Hayes: Yes and no, respectively.

Q6 Willie Rennie: Could you explain a bit more?

Mr Hayes: Yes, after the previous negotiations Britain did receive what was referred to as expedited licensing but "expedited" is a relative term. The export licensing process in the United States is still nowhere near as rapid as the export licensing process in the UK, and even if you get the licences faster that does not remove the problem of them being too prescriptive when you do get them.

Ms Wood: That is the point. We have seen some improvement in the rate at which TAAs, the licences, are being approved but, again, it is relative. I think one of the key constraints is the fact that the licences are so narrow, for reasons we understand, and if you are looking at what we have to do now to be able to provide the innovation and the research and development that is actually going to get better products and better services out to the Armed Forces, you are actually restricting our ability to provide that support because often when you start a programme you cannot really think and know that it is just that specific piece of technology. Often you want to be able to move and look at other areas within the space and then bring that to bear on the problem, so it is that restriction that causes the difficulty because then you would have to go back and apply for the next licence, and that is really what we are trying to unpack here.

Q7 Chairman: Sandy Wilson, can you give any concrete examples of the sorts of problems that are created here?

Dr Wilson: Yes indeed. I think a particular case in point is the UORs that have been going on in the UK over the past year or so. They are very short programmes, sometimes four months, sometimes nine months, and that is almost outwith the timescale for getting TAA approval for new people to come on to an existing TAA. That has manifested itself several times, for example on the Bowman programme where we have seen new platforms appear and they need to put Bowman on them, and in order to get the person delivering that platform within the UK on to the TAA there is a rather long rigmarole in order to get that. We adopted a very proactive approach to that, if I might just explain how we tried to go round it, by going with the MoD to the State Department and trying to get a waiver on that particular programme, and that was pretty successful, and so we managed to cut the time down substantially so that we could service UORs, but that was a long effort and is a one-off and the next time a programme appears with the same kind of timescales that process will not apply to the next programme.

Q8 Chairman: Okay, thank you. Dr McGinn, would you like to make your own comment on this? Could you also comment on how it affects United States industry and, if possible, therefore United States Forces, although I recognise that is beyond your brief.

Dr McGinn: Right, I have to say I am not going to speak for the US State Department but we have worked very closely with the State Department in the licensing arena over the past two years. As was alluded to, the United Kingdom has priority for licences within the State Department as well as those programmes that are in support of the war fighters in Afghanistan and Iraq. Those kinds of programmes have the highest support but, as was evidenced by the Treaty that was signed between our two countries, this was not enough to meet the operational demands for our soldiers abroad. That is the stated intent of the Governments and the reason for the Treaty. Industry is very much in support of that effort because the collaboration that we have had with the US Government has been focused on trying to make the system more transparent and predictable and prompt to meet the needs of the war fighter. The frustrations that we have had on the US side are similar to those in the UK industry in that trying to meet the operational demands for the war fighter to combat things like improvised explosive devices and, speaking for my company, we do directed infrared counter-measures with the United Kingdom, we have had challenges of getting those systems' TAAs or licences through fast enough to meet the needs of UK forces in the field. Thus the intent of this is to help improve inter-operability and get the equipment needed to war fighters faster in the field.

Mr Holloway: Have any of you got any experience of a UOR being turned down by this rather long-winded system?

Chairman: Apparently not? It becomes less urgent presumably?

Q9 Mr Hancock: Why is there a long-winded system? I am interested to know if we are such close allies and we have got troops on the line who need equipment which is being tried and tested in both countries being put together, and yet there is a difficulty and there is a time delay, why is that? Who is the blocking force in the United States that prevents this happening quickly? That is the bottom line here. We keep being told there is a blockage; I want to know why.

Mr Hayes: I do not necessarily think it is a "who"; I think it is a "what". The current licensing system has grown up over time. It is an awkward mixture of legislation and what I would call regulatory practice. The regulatory practice is variable and sometimes not particularly well communicated to industry. Changes happen that people are not aware of. As set out at the moment it is a very, very long-winded process, as we have already heard, but that is the process which exists, and it is because of the existence of that process that we actually need something else. The existing process is not capable of responding in the time required by modern business and modern defence requirements.

Chairman: Moving on to the "something else"; Kevan Jones on the Treaty.

Q10 Mr Jones: I think the Treaty has been welcomed both from this side of the Atlantic and also from the United States. Dr McGinn, could you say something about US industry's approach to the Treaty because I understand it has changed certainly since I have been going to the United States over the last couple of years in terms of welcoming this type of Treaty approach? Is the Treaty the answer to all your problems or are there problems that it does not actually cover?

Dr McGinn: I think industry very much welcomes the Treaty. This was first and foremost an initiative by our Governments for national security reasons and that was to get the operational systems and services to the war fighters more expeditiously by getting rid of some of the regulatory burdens that had grown up over time. In that sense for industry it just allows us to better support our mutual national interests and so we are very much in support of it. As an industry we have taken an approach that this is not an industry initiative, this is not about supporting US or UK industry; it is about supporting our mutual forces on the ground. We want to help in any way that we can. We see tremendous benefits for this as industry. As Ms Wood mentioned, this will allow US companies to work with our UK branches to do collaborative research and development for both US and UK forces and likewise for UK companies and their US subsidiaries, so the collaboration potentials from this are really substantial.

Mr Godden: Can I add that obviously the Treaty does not take any step backwards so it is a forward step. However, the extent to which it is a forward step is a function of the way in which the Treaty is implemented.

Q11 Chairman: We will come on to that, Mr Godden.

Mr Godden: In that sense is it a step forward? Yes, it is a definite step forward but the restraints to that could be in the process of the exclusions and the approved lists etc. and therefore the benefits to that will come out in that process itself.

Q12 Mr Jones: So the problems will not actually be recognised until we have got the Treaty in place; is that what you are saying?

Mr Godden: How much of a benefit will not come out until the Treaty is in place. In that sense it is only speculation, but the aim of course in our opinion is absolutely fundamental.

Q13 Mr Havard: Can I ask you a basic question because when I visited the States and talked to people about this, people in industry in the States were complaining about how smart the operation in the States is in dealing with it, basic things like the number of people involved in actually dealing with

these issues. Are these mechanical problems or are they political problems in the sense that people do not want to do these things for reasons other than inefficiency in processing the paper and doing the work?

Mr Godden: My feeling is that it is a mechanical problem, as David alluded to, which is structural, but behind it somewhere there is a realisation of the benefit of speeding up the process of collaboration with companies that are elsewhere and that is in a sense—

Mr Havard: The scales have fallen from one or two eyes. I got the name of a donkey a boy fell off at one point!

Chairman: I do not think that was a question! Bernard Jenkin?

Mr Jenkin: In your view does this Treaty actually treat the two parties equally, is it a strictly reciprocal treaty? Or am I asking that question too early?

Chairman: We will come on to that later. I would like to take this in sequence if you do not mind. Implementing arrangements; Mike Hancock?

Q14 Mr Hancock: Can I just ask one question, from what you have said it would appear that this Treaty affords us the opportunity of unlocking certain stumbling blocks that there have been up to now but it also might be a more effective blocking mechanism because the Treaty, as you said, will say this can happen but it will also be a far more effective block because America will simply say, "No, that was not part of the Treaty." Are you happy that this Treaty embraces enough of the problems that have been highlighted time and time again over the last ten years to the effect that it will not be seen as a very effective blocking mechanism?

Mr Hayes: The Treaty is not an either/or vis-à-vis the existing licensing system. Where items are excluded from the Treaty then the existing licensing system will continue to apply, so nothing will be blocked by the Treaty in an absolute sense. If it is not allowable by the Treaty we can revert to the old system and apply for a technical assistance agreement or a licence.

Q15 Mr Hancock: So that is still available?

Mr Godden: That is what we mean by it is not a step back, there is nothing—

Q16 Mr Hancock: It is "as well as"?

Mr Godden: As well as.

Q17 Mr Hancock: The Government claimed that through the Defence Industries Council they would consult pretty thoroughly on this and they would take on board issues raised by industry. Are you all satisfied that they did deliver on that commitment that this Treaty would be something that they would take to industry and then work with industry in putting the British side of it effectively into place, recognising all of the issues that you have raised with them? Is there anything they have not taken on board?

Mr Godden: My observation is that in as much as they can share—and obviously these treaties have to be negotiated in secret and this is a government-to-government issue—they have shared with industry and consulted. I am certainly satisfied from what I hear from our 260 members that they feel consulted and they feel they understand what is going on, but clearly they have not seen sight of implementation issues and paragraphs.

Q18 Chairman: Ms Wood, you are nodding.

Ms Wood: I would endorse that. Within the restrictions obviously of the confidentiality of the government-to-government process, I think we have had a good and constructive dialogue and it has been a two-way dialogue in terms of understanding what would be needed to come out of the Treaty that would enable more effectiveness of the whole of British industry in the supply chain to be able to engage and get the improvements out of the Treaty, so from a company perspective we have been very content with that dialogue.

Q19 Mr Hancock: But that would depend on the outcome of the negotiations going on about the implementation arrangements. Are you happy from the UK's side there is a very positive view that those things need to be properly sorted before the Treaty is signed and that the implementation arrangements are clearly known to industry before the Secretary of State ratifies this?

Mr Godden: It is very positive but I do not know to what extent it can be shared before that process. They have consulted as much as they can, I believe.

Q20 Mr Hancock: Have they told you much about the implementation negotiations?

Mr Godden: There have been informal discussions about what the issues are on the implementation but obviously they have not—

Q21 Mr Hancock: But from your point of view, from what you have been told, do you have reservations that they are not going far enough or they are hitting a brick wall on some of the possible problems that would arise through implementation?

Mr Godden: That is not the impression they have given. The impression they have given is that there may be more issues in Washington than there are here.

Q22 Chairman: Sandy Wilson, is that your view as well?

Dr Wilson: I think we have a broad outline of what will happen. It does come down to who will be on the list of approved companies and the like. I guess if that is not terribly restrictive then this will be a very, very effective mechanism. A question I have in my mind is whether we will get a large number of SMEs onto that list, and I think that is something that should be encouraged because otherwise the supply chain will suddenly stop at the top level and the TAAs will apply to the top level but in reality for implementation they have to apply right down through the supply chain to the SME level. I have no

knowledge as to where people think that is going to stop but I would encourage it to go right the way down to the real shop floor deliverers of capability.

Q23 Mr Hancock: And that is very important for the UK. Have the Government been receptive to that point when you have made it?
Dr Wilson: Yes, absolutely.
Ms Wood: Yes.
Mr Godden: They have been making it as much as we have.
Ms Wood: We obviously do not have visibility yet on the implementing arrangements. This has been a process going on for a long while. There has always been a dialogue and they are very clear about where industry sees some of the issues on the implementing arrangements, particularly when you get into potential exclusion areas, and whilst we may not get visibility of the implementing arrangements before the Treaty is ratified, we have been very clear from our company's perspective that the MoD have understood exactly where our issues are. We have also been very clear in sharing some of the challenges we have had under the current arrangements and how that has impacted things like main programme delivery and urgent operational requirements, so I think they know what it is we are trying to tackle here. I would endorse Dr Wilson's point about the need for it to go through at the supply chain level.
Chairman: Moving on to the approved community issue; Adam Holloway?

Q24 Mr Holloway: What do you think about the criteria for people going on to the list and do you think everybody will want to join? If they do not, why not?
Mr Godden: The existing mechanism, namely List X, is well-known and understood. The ambition clearly in the UK is for that to be as inclusive a list as possible. Therefore as a minimum, because it is an existing process and existing mechanism for approval, we are satisfied that again it is not a step backwards in any way. On the question of whether it is a step forward the proof is in the pudding.

Q25 Mr Holloway: It is in the what, sorry?
Mr Godden: The proof is in the implementation itself. In terms of the actual criteria themselves we are satisfied that these are good criteria and will not be a step back in any way and will be a step forward in our view, with the right attitude.

Q26 Mr Holloway: Might there be some people who would not wish to join and, if so, why?
Mr Godden: Yes, they might not wish to join in the sense that they still might feel that it is another process to go through. It is difficult to imagine why they would think that but they may.

Q27 Mr Holloway: Moving it on then, is there a concern that perhaps smaller companies might not want to do it because it was too onerous or whatever? Is there any sense in which they would lose out?
Mr Hayes: There are overheads to becoming a List X company in the current circumstances and in relation to the approved community, and it will be a commercial decision for each company as to whether or not the benefits of becoming a member of the approved community are sufficient to justify those overheads. In the current context, there are SME companies who are members of List X which have clearly decided that it is of benefit to them. Equally there are others who will decide that the benefit is insufficient, but that has to be a matter for the companies concerned.

Q28 Mr Havard: What is the nature of these overheads? Is it just that it is difficult to do and therefore you have to put a lot of time and effort into it? There is not a standard fee, is there? The overhead is the pain and suffering of getting in the process, presumably, is it?
Mr Hayes: And meeting the necessary physical and personal security requirements and having the on-going ability to satisfy those requirements.

Q29 Mr Havard: The individuals?
Mr Godden: IT, security and management costs are the three big things.

Q30 Mr Havard: And the individual bodies.
Mr Godden: Yes.
Ms Wood: If you are an SME, to get to List X, IT standards would be the biggest issue. It is a scale issue. Again, that is something which we as prime contractors would need to work with the SMEs to help enable them to achieve that status.
Mr Havard: Thank you.

Q31 Willie Rennie: Are these not standards that we would hope to strive to achieve in the defence industry in the UK anyway?
Mr Godden: Yes.

Q32 Willie Rennie: So what is the problem?
Mr Godden: I do not think we are saying there is a problem except that it is the normal inertia of companies making commercial decisions about overheads and equipment.

Q33 Mr Holloway: Could this be a barrier to enterprise for small companies?
Mr Godden: The Treaty itself is not a barrier.

Q34 Mr Holloway: No, the list?
Mr Godden: Yes, but that exists at the moment, that is a given. Today that is the case in terms of --

Q35 Mr Holloway: Sure, but is it going to make it harder for small, enterprising companies?
Mr Hayes: I would not necessarily think so because if they are currently handling ITAR-controlled data and handling it correctly, then their IT systems should already be at or close to the necessary standard for membership of the approved community.

Ms Wood: And also if they are doing secure work for the MoD—and most SMEs provide us with high technology and high innovation—they would be at List X status anyway.

Q36 Mr Hancock: Could they do it on the back of a prime contractor?
Ms Wood: I believe they have to have their own listing, but somebody needs to check that.
Chairman: Moving on to a different subject, foreign ownership of shares in defence companies in the UK; Kevan Jones?

Q37 Mr Jones: Can I ask a question with regard to foreign companies in the UK. I am thinking particularly of companies like MBDA and Thales, to name two, who have got major holdings in the UK and major jobs in the UK. How will they be part of this community and if they are excluded in some way will that make the Treaty worth pursuing?
Mr Godden: Again, I am going to sound a little bit like a record going round in that there is nothing that is going to be worse than today. For them they have the option of going back to ITAR etc. and operating in exactly the same way they are, so in that sense there is no extra issue for them, so nobody will be worse off, but we believe the new arrangements for this are still underway and it is difficult for us to fully judge what this process will be like. That is one of the issues.

Q38 Mr Jones: Yes, and perhaps I am being unfair in asking Dr McGinn a political question; are there going to be problems in terms of the ratification of this Treaty to include the likes of Thales and others which although they are foreign owned have large footprints in the UK and actually produce a lot of equipment which will actually be beneficial under this?
Mr Hayes: The way this is approached is where a US company has foreign ownership, control or interest then arrangements are agreed with the Defense Security Service to mitigate that foreign ownership, control or interest. I do not know this for a fact obviously, but I would envisage a similar sort of system operating here whereby if there are concerns over foreign ownership, control and interest of a company in the UK, then a means is found to address those concerns which would satisfy both Governments and enable the company to participate within the constraints of that agreement.

Q39 Chairman: That sounds a bit vague. I am not entirely sure that I understand what this Treaty actually says about it.
Mr Godden: We have to say we do not know because we have not been party to what the clauses will say and are saying, so we have to fall back and say it is going to be no worse.

Q40 Mr Jones: You are representing UK industry though, Mr Godden, so would you not actually have a situation whereby it would be okay for BAE Systems and others to be part of this but to exclude foreign-owned partners of the likes of Thales and other people?
Mr Hayes: I think the same situation would exist currently in any event in relation to the handling of classified material in those companies which carried a national caveat. Although the company is foreign owned it is fair to assume that in certain circumstances they will be handling data that is classified "UK eyes only" and they must have the means for handling such data. I can see a logical case for extending similar sorts of arrangements to this kind of data.

Q41 Mr Jones: Dr McGinn, any observations from the other side?
Dr McGinn: I think I would echo the comments of David because again we have not been privy to these discussions between the Governments. I think that they are going to handle this in the way they handle the situation now in dealing with UK licences in support of operations where you have got US secret programmes that are released UK eyes only. I think a similar type of arrangement will be established.
Chairman: Huge proportions of British defence industry like EADS, Thales, Finmeccanica, GD, BAE Systems are not entirely British. This strikes me as being a fundamental issue to which nobody knows the answer and is it not rather crucial to the future of this Treaty?
Mr Havard: Can I interject.

Q42 Chairman: Because from GD UK's point of view, you will have a view.
Dr Wilson: Indeed. I think it is essential that foreign-owned companies get onto the approved list because we cannot imagine working without them in the UK. There is a wider context to this discussion however. There are Anglo-French initiatives on-going and if you wanted to take a view, that will greatly help the transport, if you like, of French technology into the UK. What this Treaty will do is work against the imbalance that exists today on getting US technology into the UK, and sometimes such US technology will be of great value to the UK operationally. I think there is a wide range of pluses for this in that it will eliminate some of the barriers that currently exist. And that might favour US-owned companies if they sit on the approved list, but then again there are other things going on in the country in terms of the Anglo-French thing which would help French companies do it. So there is a whole series of pluses and minuses if the actual Treaty became quite restrictive, which we do not know.

Q43 Mr Jones: In terms of GD, I would be very surprised if you were not on the approved list.
Dr Wilson: Indeed.

Q44 Mr Jones: But it is a bit different, for example, for Thales, Finmeccanica, MBDA and others and it would make this Treaty pretty worthless to UK plc if these companies were not on that approved list.

Mr Godden: It is absolutely our ambition that they are on there.
Dr Wilson: I think it becomes quite difficult if they are not on there because GD UK would be working with Thales UK on a variety of programmes.

Q45 Mr Jones: I am not asking you to write the little paragraph I am trying to write in the report, but what I want to offer you because you are representing UK industry is that you would actually want all UK industry irrespective of where they are owned on the approved list.
Mr Godden: Yes we would like that but obviously the Governments have to decide whether that is appropriate.

Q46 Mr Jones: Hang on, fight a bit harder, come on! Let me write in the report that you actually want all these on because, frankly, if I was Thales and I got that response I would not be paying my membership to your organisation.
Mr Godden: We want it on, and we are absolutely clear.
Mr Jones: Good, but it took some getting, did it not!

Q47 Mr Hancock: Have they given you an indication that they will support that view? Is that an issue that you have raised with them?
Mr Godden: Yes.
Ms Wood: Yes.

Q48 Mr Hancock: And what has the Government's response been?
Mr Godden: They have not promised anything or said anything back; they have listened.

Q49 Mr Hancock: But they have not said, "We are wholly supportive of that principle"?
Mr Godden: Not to me. I do not know whether to any of my colleagues.
Mr Hancock: That is a pretty difficult situation for us to be in then, is it not?
Mr Jones: That is one we need to ask the Minister.

Q50 Chairman: We will ask the Minister.
Mr Godden: I can only tell you what has happened to us.

Q51 Mr Hancock: Will this lead to a greater dependency on the part of the UK to be forced into a position of buying from the United States? Will this not have a detrimental effect on research and development in the UK?
Mr Hayes: No, because I think the whole concept is optional. Just because the Treaty exists it does not mandate its use. We are still free to shop in whatever market-places we choose.

Q52 Mr Hancock: But will it act as a deterrent then against UK/European collaboration?
Mr Godden: Not that we can see. We have debated that and not that we can see.

Q53 Mr Hancock: You have debated amongst yourselves and with Government presumably?
Mr Godden: And we have mentioned that and made the point and we do not think so.

Q54 Mr Hancock: What was the Government's response to that? Sandy, you wanted to come in, and then maybe we can come back to find out what the Government said to you about it.
Dr Wilson: I think I would just reiterate a point I made earlier that if you are producing a system in the UK you do have a choice of where you go for the technology. It might be indigenous to the UK, it might be from Europe, it might be from the US. Currently there are many advantages to not using US technology because the administrative burden on that and the way that it slows down the through-life evolution of the system—having to go back for TAA reapproval and the like—is very negative. We consciously have made decisions not to actually use US technology coming from the greater GD in certain programmes in the UK. You have to take a pragmatic view of that. Sometimes the US has fantastically good technology and it would be very useful and beneficial to the UK to have that here, and it would still be fought for in the competitive market-place that is UK defence, but I just think it is a sensible way of getting rid of a barrier that has prevented us from offering some things into the UK because it is such a difficult process.
Dr McGinn: I would like to underscore the importance of looking at this Treaty as very much a two-way street. It very much goes in both directions. I can speak for my company and we do business with a lot of UK companies for some of the systems that we build for the US and UK Governments and UK technology will allow US companies to be more collaborative with UK companies as well. It goes very much in both directions.

Q55 Mr Hancock: Have you looked at the way in which a bilateral treaty with the US like this would affect EU treaties which the UK has signed up as being in conflict with them?
Mr Godden: We have not specifically looked at that subject because I think that is a subject of law which certainly the SBAC has not, and I do not think any of the companies have, taken a judgment on how this relates to EU law.

Q56 Mr Hancock: Nobody has raised that as a potential problem? None of your European partners have raised an issue of you being—
Mr Godden: No, they have not raised it in any collective forum that I am aware of.

Q57 Mr Holloway: Would that not be quite an important point to clarify particularly from the point of view of the United States?
Mr Godden: Yes, but I see that very much as a Government point. I am not trying to duck it; I do not see how a company or our association could actually make judgments except to mention it.
Chairman: Fair point. Willie Rennie?

Q58 Willie Rennie: The US spends a much higher percentage of GDP on science and research than the UK does and some parts of the British science base are quite fragile. Is it not logical that with a bigger critical mass of scientists and science organisations and defence organisations in the US that it is going to act as a sucking mechanism where all the best science is going to be done over in the States and therefore this breaking down of the barriers will just mean it is a one-way street and it will all go over there?
Ms Wood: As we have been thinking about what the Treaty will do to create benefit, that issue has been a debate about how do we make sure that for the whole of the UK industry footprint, in which I would include the universities and the science community, that we manage that going forward to make sure that we actually benefit on a reciprocal basis and that we are able to move the technology and the people and that we put the UK industry, alongside our customer, in the position where we have got more choice. We view the Treaty as being able to have more bilateral co-operation but being able to do it by not losing UK scientists to the US but rather the reverse; having US scientists co-operate with ours and us move technology and research partnerships across. It is not without risk but it is something we believe is managed in the benefit of it. It goes back to the question of it is important to us that the whole of the UK defence industrial footprint is able to participate in this Treaty because that is the way we will be able to preserve critical mass.

Q59 Willie Rennie: Do you think universities know about this Treaty?
Ms Wood: I actually do not know the answer to that question.
Mr Godden: I am not sure either.
Dr Wilson: Just one comment, I think compared to about three or four years ago we are in a much stronger position because the Defence Industrial Strategy, with its focus on through-life sovereign control of technology and capability. And the link of that to the Defence Technology Strategy gives us a framework for managing it. It is now firmly in everybody's minds that having the R&D and the management of capability in-country is the right thing to have. I think that is a good framework.

Q60 Mr Havard: I do not want to prolong this but that is the whole point, is it not? Is this not therefore a mechanism whereby if you choose to enter it—and it will be industry that chooses to enter it—that could undermine the exact point that you have just made and government would effectively abdicate control to you on the basis of your individual needs and whether you decide to participate or not, so strategically we actually lose control rather than reinforce control and the benefits you put out about the Defence Industrial Strategy are lost?
Dr Wilson: I could not see that happening.
Mr Godden: Neither could I.
Dr Wilson: I think there is such a thrust within the Ministry of Defence on sovereign through-life control that I cannot imagine that happening, no.

Q61 Chairman: Can I make a point about the tone of what we do in select committees. What we do in select committees is we probe, we ask questions, and we therefore do our best to reveal weaknesses, and that tends to create an atmosphere whereby whatever we are asking questions about looks rubbish, but clearly your overall view is that this Treaty is a thoroughly good thing, it is a step forward. I wanted to make that point in the middle of this exchange in order to rebalance the tone.
Mr Godden: Yes, that is absolutely right.
Chairman: Bernard Jenkin?

Q62 Mr Jenkin: Thank you for that preamble to my question, Chairman, because I was almost going to say the same thing! Personally, I am a huge supporter of the principle behind this Treaty, but concerns have been expressed to us about the unequal nature of the Treaty—that effectively the US gains, by proxy or by actual fact, control over what we export in terms of technology, but we are giving them a blank cheque to export any technology that we transfer to them. Would you describe that as an unfair caricature of the Treaty?
Mr Godden: Yes!

Q63 Mr Jenkin: Can you reassure us?
Mr Godden: I think it is. I think the whole principle here is that UK-based operations will have an advantage in the US versus what they have at the moment in that for the very reasons we mentioned—the slowness and the overheads—behaviourally it means that the US is less likely to use the resources here, so in that sense it is reciprocal, there is a reciprocity about it.

Q64 Mr Jenkin: But it is absolutely true, is it not, that whatever technology we transfer to the United States—this is part of the problem of being a very unequal partner—as part of this arrangement whatever we give them we no longer control their export of that technology to another country, a third country, and we do not have a say over that?
Dr McGinn: That is not correct.

Q65 Mr Jenkin: That is not correct?
Dr McGinn: That is not correct.

Q66 Mr Jenkin: Could you show me within the Treaty text itself or is that too complicated?
Dr McGinn: The Treaty talks about an approved community and the approved community is approved US and UK entities. Within that approved community you can transfer goods and services under mutual agreement, but when things leave that approved community, either on the US side or on the UK side, then the licensing laws fall into effect, the ITAR.

Q67 Mr Jenkin: Our own licensing laws or American licensing laws?
Dr McGinn: For a UK product that went to the US it would fall under US ITAR.

Q68 Mr Jenkin: That is the point, is it not, we might have different arms export policies from the United States but once we have transferred our technology to the United States, which we are obliged to do under this Treaty, if you are in the approved community, they can export it to a country that perhaps we would not have exported it to, but we do not have the same freedom to export technology that they have given to us?
Mr Hayes: That is exactly the situation that exists today, it is no different.

Q69 Mr Jenkin: I think that is the key point.
Mr Godden: It is no different, it is just taking what we currently have.

Q70 Mr Jenkin: Except that we can choose not to export certain items to the United States now.
Mr Godden: We can choose not to do so under the Treaty.

Q71 Mr Jenkin: So how does this Treaty make any difference?
Mr Hayes: It makes it easier for goods and technology to flow from the United States to the UK.

Q72 Mr Jenkin: I understand. What you are saying is that this Treaty is necessary to enable the United States to change their arrangements; it really will not make much difference to the arrangements we already have in this country?
Mr Godden: That is close I think.
Mr Hayes: I think it is important to appreciate that we are looking at two sides of the same coin effectively. This is an export control situation from a US perspective; it is a security situation from the UK perspective.

Q73 Mr Jenkin: Can I just ask one final question on this which is the export of the technology from the approved community requires the consent of the United States, but does that then bring British technology under the control of the United States so we cannot then export British technology to a third country of our choice because it is not part of the approved community?
Mr Hayes: Only if it is co-mingled with US technology.

Q74 Mr Jenkin: So it has to be "contaminated" with US technology? I think that has been of great reassurance
Ms Wood: Again that is today's situation.
Mr Godden: It is the same.

Q75 Chairman: You said this was in the UK a security issue and in the US an export control issue, so if in the UK something is passed outside the British approved community, then the sanction is the Official Secrets Act?
Mr Hayes: Yes.

Q76 Chairman: There is no similar sanction in the United States if in the United States something is passed outside the American approved community is there, or is there?
Mr Hayes: Being passed outside the American approved community within the United States or outside of the United States?
Mr Jenkin: Outside.

Q77 Chairman: Either probably.
Mr Hayes: If it is passed outside of the US approved community outside of the United States then it would be punishable under ITAR unless there was a licence or agreement in place. If it was passed outside of the approved community of the United States, depending on how that approved community is defined, it may still be an offence under ITAR because you are required to register under ITAR if you are a manufacturer of defence articles in the United States, regardless of whether you export them, so it would be a case of the recipient company holding military and technical—

Q78 Chairman: I see so the Official Secrets Act in the UK and ITAR perhaps in the US?
Mr Hayes: Yes.

Q79 Mr Jenkin: Very briefly to make sure that we have absolutely understood it, basically we are depending on the ITAR system to be gatekeeper to British technology in the United States, but what you are saying is that we have such an intense technology-sharing relationship at the moment that really amounts substantively to no change?
Mr Hayes: Correct.

Q80 Mr Jenkin: But we will now be under an international obligation under this Treaty to share that technology which at the moment we are not under? That is correct, is it not?
Mr Hayes: No, we are not under an obligation to share technology at all. It provides an opportunity for us to do so—
Chairman: I think we have understood that. I want to move on now. The prospects of ratification; Kevan Jones?

Q81 Mr Jones: In terms of ratification in the US—and quite a few of us have had the experience of meeting Congressman Hunter—what is US industry doing in terms of ensuring in lobbying that this will be ratified throughout the Senate?
Dr McGinn: US industry, as I mentioned, has been very supportive of the Treaty in principle but US industry is also very keen to see how the

implementing arrangements will work because, as we have discussed, the real devil is in the detail, so to speak, and how this regime will be set up will govern how useful it is. We have seen the Government on the US side as forward leaning as I have seen them trying to make this a very useful regime. One previous effort was done with the Joint Strike Fighter to try to do something through global project authorisation. That did not work and therefore the Governments have tried to make this as useable as possible. We have not seen the implementing arrangements so we cannot really comment on those. So far as your question on ratification, we have had some initial discussions with staff in the US Senate and there have been some discussions with members of the Senate as well. The responses we have heard have all been very positive in the sense that they see that this is a recognition of the strong relationship we have but, that said, one thing they want to see before they approve the Treaty are the implementing arrangements. They want to see how the mechanism will work, but in our discussions the underlying assumption—and again I cannot speak for the US Senate—is that this is a good thing and the prospects look pretty strong for passage.

Q82 Mr Jones: Has US industry been lobbying hard for this?
Dr McGinn: This is a national security priority for our two Governments. That is the perspective that we have taken. It was not done as an industry initiative so we do not want to get in front of the Governments. We have taken the approach where we had some initial conversations and now we want to wait until the implementing arrangements are complete and the Senate has had time to consider them, but we will very likely be strongly supportive with members in the US Senate.

Q83 Mr Jones: That sounds like a "No" to me.
Dr McGinn: No, that is not the case.
Dr Wilson: Could I give a perspective here?
Mr Godden: I will as well.
Dr Wilson: In the UK, GD UK has worked through the trade associations to get its point of view across, and we are doing exactly the same in the US. Underlying that, because we have specific issues on ITAR and TAAs, we have been lobbying quite hard for improvements to the system in a much more general sense than this specific Treaty. We have done that directly into the State Department at the normal governmental level and we have involved the UK MoD as well in that because these are things that affect the UK. I think we have been fairly even-handed in the way that we have approached this both in the US and the UK through the trade associations which is the right way to engage with government when it is a government-to-government deal.

Q84 Mr Jones: Let us be honest, Mr Wilson, we saw the ITAR waiver and other things fail not because the two Governments did not agree but because the people on the Hill just did not want this and stopped this. Surely in terms of both trade associations and industry, if this is actually going to go through the Senate a hell of a lot of work has got to be done with the Senate because Senators I have talked to do not have a great deal of understanding of some of these issues. Although government-to-government relations might be good and everybody might be slapping themselves on their backs in the embassies saying how wonderful it is, if it does not get through the Senate, frankly, it is a waste of time, is it not?
Mr Godden: Can I comment having just come back from the US and discussing with the trade associations in the US this very point. I came back last week from Phoenix. My interpretation is that the associations are very active. Whether they are active enough, I cannot judge, but they are active, they are very positive about this Treaty and they are promoting the idea of the Treaty. I cannot say any more than that. I cannot comment not being on the Hill all the time but from the positive mood in SBAC's equivalent association, the AIA, of which Jerry is a member, my observation is they are very positive and are campaigning for it.
Mr Havard: They are being very careful about who they bankroll to be the next President as well.

Q85 Chairman: Our next witnesses are waiting. I said that I would ask you a few questions about DESO. I will ask you, Mr Godden, one question about DESO because I want to get on. The decision to abolish DESO—and this has got nothing whatever to do with the American Treaty and it will not form part of our report—which in my own personal view was a bad decision, is one which has been taken. The operation now moves to the Department for Business, Enterprise and Regulatory Reform. What in British industry's view are the key safeguards that need to be put in place in order to ensure that the new regime is as helpful as possible to the British defence industry and to the British military?
Mr Godden: We remain disappointed that that was done. However, we have moved on and the two key things from our point of view are the quality of the leadership of the new unit and the fact that it needs to remain as a unit and not be dispersed in some manner. From our point of view, the remaining unit with strong leadership reporting into the ministers is absolutely essential, and secondly, the continued support by the Ministry of Defence and the Armed Forces on the whole concept of defence exporting in the field round the world—

Q86 Chairman: —with uniformed personnel?
Mr Godden: With uniformed personnel and with equipment, ships, etc., that is essential and in fact that is probably where our worry has shifted as a result of the budget cuts which have been imposed on that Ministry. Our concern is strong leadership of a separate unit within UKTI and a continued commitment by the Ministry of Defence, tough as that may be within the budget cuts, to the support of defence exports. Those are the two key points.

Chairman: That is very helpful. It being now two minutes past your witching hour you are just about to turn into pumpkins, so if I may say thank you very much indeed for a very helpful session. You have managed to get through a lot of ground with great discipline. We are most grateful to you all for coming.

Witnesses: **Rt Hon Baroness Taylor of Bolton**, a Member of the House of Lords, Minister for Defence Equipment and Support, **Mr Stephen French**, Director General Acquisition Policy, **Mr Tony Pawson**, Head Defence Export Services and **Ms Gloria Craig**, Director General International Security Policy, Ministry of Defence, and **Mr Paul Lincoln**, Head of Defence and Security Policy, Cabinet Office, gave evidence.

Q87 Chairman: This is a continuation of the session into the UK/US Defence Trade Co-operation Treaty. May I begin, Minister, by welcoming you to your first meeting of this Select Committee, so new into your job. You are particularly welcome since you and I were Whips together and that is a community which nobody ever can break. I understand that you would like to begin by saying something to the Committee.

Baroness Taylor of Bolton: Thank you, Chairman, and thank you for those comments. I do look forward to working with the Committee. I am afraid that before I introduce the team to the Committee this morning I have to say that there was a loss of an RAF Puma helicopter near Baghdad in Iraq last night and two Service personnel were killed. Their next of kin have been informed. Two other personnel were seriously injured and they are being treated in hospital. Obviously we cannot speculate about the cause of the incident but an RAF Board of Inquiry has been convened and is en route to Iraq to start that investigation. I thought it right to tell the Committee because obviously this will become public news and you have an interest in all of these issues.

Q88 Chairman: I am grateful. We on this Committee have travelled regularly on those Pumas in Baghdad and we were and remain utterly astonished at the things that they do and the perils that they face, so thank you for telling us. Minister, would you like to begin by introducing your team and then would you like to go on to tell us how the Treaty is likely to work and what the arrangements will be?

Baroness Taylor of Bolton: Can I introduce the team. Tony Pawson is head of the Defence Export Services Organisation. Gloria Craig is Director General International Security Policy and has been leading for the MoD on the transfer of the defence trade promotion function of the MoD to UK trade and investment. Stephen French is Director General of Acquisition Policy—all these wonderful titles—and he has been leading within the MoD on the Trade Treaty. Paul Lincoln is Head of Defence and Security Policy from the Cabinet Office, who has been leading on the negotiation of the Treaty. They are here to answer detailed questions as well as add any other information that they think is appropriate. Obviously I am new to this position but I am quite impressed with what I have inherited in terms of the discussions that have taken place on the Defence Trade Co-operation Treaty. I think everyone will recognise that we have very close links with the United States and that defence relationships between the UK and the US are very good. We are always seeking to improve them, not least for the benefit of our front-line troops. Part of the benefit that will come from going down the route that is being suggested is that access to the best technology would help us to support even more our troops on the front-line. We do believe that the Treaty represents a major opportunity to improve our ability to operate alongside the United States. It is a long-standing policy of both sides that that is the direction in which we should go and we think that both UK and US forces operating together will benefit from further co-operation. Obviously the threat that we are facing is an evolving one, it is changing, no-one anticipated ten years ago the nature of the threats that we have today, so flexibility and being up-to-date are absolutely essential to everyone. At present, in regard to UK/US defence trade, or indeed any trade, there are barriers, there are administrative hurdles that have to be overcome, and we think if we tackle those administrative barriers properly and can remove those barriers, it will allow the UK and the US defence industries to co-operate in new ways. As I said earlier, there is a great deal of co-operation at present but we think that there is scope for more and we think that there is real benefit to come from this Treaty on both sides. Discussions have been going on for some time, it is not a new issue, but I think that the approach that has been adopted this time is one that those working on it are quite confident can lead to some agreement. We had visitors from the States last week talking about some of the detail (because there are still some detailed arrangements that have to be worked out). There is agreement in principle. Prime Minister Blair and President Bush did sign the Treaty so there is agreement in principle and there is goodwill on both sides. Most of the implementing arrangements have been agreed but there are still some outstanding issues which officials have been working on very closely with their American counterparts.

Chairman: Thank you very much, Minister. I think it would be right, because you said you were impressed by what you had inherited, for us to express our gratitude to your predecessor who had worked incredibly hard and very effectively on this Treaty and also to Tony Blair who signed the agreement with the President. Key to the Treaty will be the implementation arrangements; Mike Hancock?

Q89 Mr Hancock: Minister, you actually said that the implementation arrangements were nearly completed. When would you envisage that process

being completed and when would you expect to publish them? We heard from the defence industry prior to you coming in that they were wanting to know and wanting to see what had actually been finally decided. Can you update us on when you would expect to complete them and when you would expect to publish them?

Baroness Taylor of Bolton: As I said, we did have officials from the States over here last week. I did meet them but my officials obviously spent a great deal more time with them. Officials are going over to Washington next week to try to finalise some of those arrangements. There are a couple of issues which are outstanding which will require some discussion and we are hopeful that we will make progress, but we cannot at this stage absolutely guarantee it because we have to protect our position on these issues. It is looking optimistic. In terms of the actual publication of the implementing arrangements, it is not anticipated that they will be a published document. Obviously we will have to be willing to discuss these with the Committee and one possibility might be to share with the Committee in confidence what actually is agreed once those are concluded, but it is not anticipated that that will be a published document.

Q90 Mr Hancock: Would that be different to what the Americans will do? We heard previously that the anticipation was that the American Senate, in particular, would not agree to ratify this Treaty without seeing the published implementation arrangements. So how can it be that we would only get them in an unpublished form through a confidential meeting, whereas—

Baroness Taylor of Bolton: There will be a Memorandum of Understanding when this is completed. Perhaps Paul would like to comment.

Mr Lincoln: Indeed. We are still in discussion with the US on exactly the form in which we will place those implementing arrangements to either the Senate or to the Committee here. Clearly, we are prepared to share that. Of course, the difference is—and there will be concerns by industry on whether or not we need to share those as well—the implementing arrangements set out the commitments between the two governments are not necessarily the commitments which we place directly to industry. We will, of course, share and work up in detail with industry the exact requirements which need to be put in place with them. So, clearly, those will be done in detail with those who will be affected by this.

Q91 Mr Hancock: My question was that we were told that the Senate made it quite clear that they would only ratify this Treaty subject to full documentation on the implementation arrangements. As far as I know, they offered no caveats to that, it was as straight as that, but you are now suggesting it is different to that.

Mr Lincoln: I cannot speak for my US counterpart about the arrangements which they have come to with Congress. They will be speaking to them to give them briefings, I believe, starting Monday next week, to talk through, in exactly the same way as we doing now, where we have got to on any outstanding issues. However, it will be for them to decide whether or not to give detail, but I would expect, quite clearly, we would not expect the situation to be different on each side of the Atlantic, with one side putting the Treaty implementing arrangements into the public domain and the other side not.

Q92 Mr Hancock: Would the implementation arrangements be simply an addition to the Treaty or would they have to be subject to further ratification?

Mr Lincoln: As we envisage it now, the implementing arrangements will be a Memorandum of Understanding between the two governments which, as such, would not require further ratification.

Q93 Mr Hancock: But if that Memorandum of Understanding is not a public document how will industry know that this Treaty is beneficial to what they hoped it would deliver?

Mr Lincoln: Having the Memorandum of Understanding between the two governments is very different, as I said, to what we then put to industry and say: "These are the requirements which will be placed on industry as a result of this Treaty", which they will have very public access to.

Q94 Mr Hancock: Would you expect the British Government to ratify this Treaty without those implementation arrangements being made public, at least to this Committee?

Mr Lincoln: I am not going to answer that.

Baroness Taylor of Bolton: I did say that it was clear to me that the implementation arrangements—

Q95 Mr Hancock: Before ratification.

***Baroness Taylor of Bolton:*—**would have to come to this Committee.

Q96 Mr Hancock: Before ratification.

Baroness Taylor of Bolton: I cannot see any reason why not, but I would take advice on that before I made an absolute promise. Can I just go back to one point you said about industry knowing? I think it is important to stress that industry has been involved in the background to a lot of these discussions and it is not envisaged that we will be agreeing to anything that will take industry by surprise or which will cause them difficulties. Their approach and their concerns, if there are any—their situation—has been taken into account in all of these discussions. So industry will not be unsighted or surprised by the kinds of things that are being discussed.

Q97 Mr Hancock: Were there issues that they have raised during the consultation on this that you have not been able to get a satisfactory response from the US on?

Mr Lincoln: I am sorry. Could you repeat the question?

Q98 Mr Hancock: Were there issues raised by industry in this country on the implementation arrangements on which you have not been able to negotiate a satisfactory conclusion with your US counterparts?
Baroness Taylor of Bolton: There are two issues that we have not absolutely got conclusion on, and they are not issues that industry would be concerned about, as opposed to government. They are issues we have got to work through.

Q99 Mr Hancock: So, for the record, would it be fair to say that all of the issues raised by British industry in respect of the implementation arrangements for this Treaty you have been able to satisfactorily conclude with your US counterparts?
Mr Lincoln: I think it would be fair to say that we have taken account of industry's concerns throughout this and discussed with them—

Q100 Mr Hancock: That is not an answer, is it, to the question?
Mr Lincoln: I am sorry. There was one question in particular, which you spoke about earlier with industry, relating, for example, to a list of exclusions which would apply, which is clearly a key issue to both government and industry, which is one of the outstanding areas we need to discuss with the US. Our intention, as was the position when the Treaty was signed, was that that list of exclusions would be as small as possible, such that the benefits which can be derived from both governments' Armed Forces on operations and industry, both on the UK and US side, can be maximised as far as possible. We will have continuing discussions with the US on that.

Q101 Chairman: Minister, you said you could not see any reason why the implementation agreement should not come back to this Committee before ratification, but you would take advice on that.
Baroness Taylor of Bolton: Yes.

Q102 Chairman: One issue that you will need to be aware of is that the Leader of the House has told us that she is happy to extend the period of ratification of this Treaty to allow our Committee to conduct an inquiry, but that she wants any report from this Committee to be received by 12 December. Now, that would mean, if you were to come back with the implementation arrangements, that it would need to be very quick, or it would mean that the ratification of the Treaty would need to be delayed, which might not matter if the ratification of the Treaty in the United States was also likely to be significantly later than that. I would ask you to consider that with your officials when considering whether to bring the implementation agreement back.
Baroness Taylor of Bolton: Yes. I do not think that there is any opportunity for ratification in the United States this side of Christmas. So in terms of getting out of line, I do not think a marginal delay would cause difficulties, but I would not wish to pre-empt the right of the Leader of the House to make recommendations on the timing of Government business, and therefore I will look at that. I do not think that that will cause a problem.
Chairman: Indeed not. However, what you have just said about the ratification in the United States will be a disappointment to us, but we will come back to that. Moving on to the British approved community.

Q103 Mr Holloway: One of the criteria for getting into that is this business about foreign ownership. At what level of foreign ownership will a company in the UK be ineligible within the British approved community?
Baroness Taylor of Bolton: As I understand it, it is not simply a question of the percentage of ownership or control, it is far more complex than that, and because I want to be very precise I am going to ask Paul to answer because we do already have that provision within this system that we operate, and it is that similar system with additional requirements which will operate under this Treaty. It is not just a simple issue of the percentage of foreign control.
Mr Lincoln: We have discussed with industry before that the baseline standard for becoming part of the approved community would be the current arrangements for the List X communities and facilities, which are currently operated by the MoD's Industrial Security Service, and the arrangements which fall underneath that. Those already take account of a level of foreign ownership, control and influence within companies, including the percentage of UK nationals at board levels overseeing the security-cleared facilities. That will be our baseline point for departure for discussions on a case-by-case basis with any company.

Q104 Mr Holloway: Have the US put in any sort of nationality restrictions in terms of the people who work on these programmes here? For example, people with a joint registered Iranian or Chinese past?
Mr Lincoln: Again, our baseline standard, which we have discussed with the US, is that they must have the appropriate UK security clearance and need to know, which is the current method, of course, of reserving access to security-controlled material within our existing arrangements. However, it would be wrong to say there are still some issues to be worked through on access to third-party nationals where the UK has a difference in approach for its risk management at the individual level compared with that for the US, which tends to do that in a more blanket level of denying access. Rather than, perhaps, rehearsing the arguments here, that is one of the outstanding issues which we want to come to close with the US next week.

Q105 Mr Holloway: Again, if there was, perhaps, something that could only be handled by UK citizens, could that put us up against EU law?
Mr Lincoln: We have been very careful in all our negotiations to make sure that we do not discriminate against any commitments we have with the EU, and the Treaty itself says that we will

maintain our international obligations and commitments to any international body. Similarly, the Americans have other international commitments which they will not be in a position of breaking either.

Q106 Mr Holloway: Finally, would university research departments, or whatever, be approved communities?
Mr Lincoln: There is a potential for that to be the case. There are currently some existing university facilities (I think we need to be careful to say "there are facilities within universities" rather than "universities" as a whole) who currently carry out defence work, who are cleared through the appropriate security regime in order to meet the List X status, and subject to them applying and meeting the criteria we are prepared to put that case forward.

Q107 Mr Havard: If I could ask you about what is involved and what is not involved. We are being told in a memo from the Ministry of Defence that: "Some of the most sensitive technologies are expected to be excluded from the Treaty as well as technologies specifically controlled under existing international arrangements". What are these "sensitive technologies"? What is this exception process? What is not in the Treaty as far as sensitive technologies are concerned?
Baroness Taylor of Bolton: The things that are covered by national treaties anyway are not going to be altered at all in terms of the excluded list. That is one of the issues still under discussion. Do you want to update on that again?
Mr Lincoln: Certainly. From the outset we realised that there are some defence articles which the US for sensitive reasons would not be prepared to transfer without a licence. Our expectation is that they fall into a small number of categories, which would include stealth and sensitive communications technology. That is not to say that they cannot still be transferred without a licence to the UK, as they are done currently. Similarly, both countries have international obligations under things such as the Missile Technology Control regime, which limit our ability to transfer goods without a licence, and then there are the EU treaty regulations which, of course, exclude certain goods for the UK, and we would not be able to enter into a negotiation of those because that comes under European competence.

Q108 Mr Havard: It also references something called the US Foreign Military Sales Programme, which I am afraid I am not familiar with, but apparently does not apply. Perhaps you could enlighten me about that? How significant is that, if at all?
Mr French: It is a mechanism whereby the UK when buying equipment that is used by the US forces buys direct from the US Government, who have an arrangement with the commercial companies. Therefore, there are a number of things that we buy through FMS, as it is called, at the moment. They come through on a route which effectively bypasses the licensing system and would continue like that. So it is a direct sale from the US Government to the UK Government.

Q109 Mr Havard: Thank you very much. There are press reports that, however, there are going to be another set of qualifications, which is that equipment worth more than $25 million and spare parts and services worth more than $100 million would be outside the scope of the Treaty and still require Congressional approval. Is that the case—that there is this monetary qualification?
Baroness Taylor of Bolton: That is not because of this Treaty; that is existing US law, and that will stay the same.

Q110 Mr Havard: I will ask you some questions in a moment about Joint Strike Fighter in relation to this. I think it is getting clearer in my head, but what is involved in the Treaty and what is not involved in the Treaty is becoming quite a complex thing for people to understand, I think. That is why I ask the question about whether there are these exceptions. Can I just ask you about Joint Strike Fighter, because quite clearly from the Committee's point of view and others, we have asked questions in the past about the significance of technology transfer, and it has been vested in this debate about ITAR waiver and, also, now the Treaty. However, we appreciate it is more complicated than that. This seems to be only part of the thing that deals with the problem that we are really concerned about, which is having operational sovereignty over the fleet of JSF aircraft if we are going to have them. This is an issue that the previous Minister dealt with, and said that they had come to a Memorandum of Understanding. So what I want to be clear about is which technologies, in relation to the F35 Joint Strike Fighter, are now going to be vested in this Treaty process, or is this Treaty process actually irrelevant as far as that is concerned? Are all those issues covered by the Memorandum of Understanding that was specifically struck about the F35?
Baroness Taylor of Bolton: The Joint Strike Fighter is a multinational programme and, therefore, as such, as a whole, it is not covered by this Treaty. However, aspects of the Joint Strike Fighter are actually where we have bilateral projects with the Americans. If it is a UK/US aspect of the Joint Strike Fighter programme, in terms of any development, then it can come in with this Treaty—it does not have to but there is potential for that—but it is not, as a multilateral project, one that automatically all comes within this Treaty.

Q111 Mr Havard: Do we think that the US Government will seek to exclude the Joint Strike Fighter from the provisions of this Treaty?
Baroness Taylor of Bolton: If you are talking about all these aspects, because it is a multilateral programme involving a number of other countries, then the project per se is not in total covered by the

Treaty. However, some aspects of the development could be, if the companies involved choose it. Do you want to elaborate?

Mr French: The JSF project itself, being multilateral, is not covered under the Treaty. There may be some bilateral UK/US projects within that which would come under the Treaty, but on your major point, all the details of securing operational sovereignty were done through that separate MoU that we agreed before, and those are unaffected. So the Treaty has the potential to add more benefits to a subset of the Joint Strike Fighter project but because it is a multilateral project it is not covered under the basic criteria of the Treaty which is a joint US/UK collaborative project.

Q112 Mr Havard: Is there a list of defence equipment covered by the Treaty and a list that is not, then?

Mr Lincoln: There is a two-stage argument to that. The list within the Treaty states the type of programme and projects which must be covered in order to fall within the scope—so those are things which are for joint operational use, those which are collaborative US/UK programmes, mutually agreed HMG only and those which fall for US-only end use. Those are the four areas which are covered by the scope of the Treaty. Within that you then have to look at what would be the exclusions in terms of the list which we have just discussed, which would then be a subset of that area, in terms of defence material which could be transferred between the two countries.

Q113 Mr Havard: As I understand it, parts of this were covered by something called the Global Projects Licence, as far as JSF is concerned. There is a whole architecture of different things here that relate to one another, of which the Treaty is quite clearly only part. There has certainly been confusion in my mind. I have been trying to sort of list this structure of agreements and what is in them and what is not in them, and it is quite a difficult exercise to do. If I am having difficulty with it then Joe Public is having difficulty with it in understanding where we are on this question about JSF, in relation to all these things. That is why I asked the question, and I asked the question about the Memorandum of Understanding because you talked about a Memorandum of Understanding, Mr Lincoln, earlier on, in relation to the Treaty as well. So there is a Memorandum of Understanding about the F35 and we have a different and separate Memorandum of Understanding about the Treaty, as I understand it. Is that correct?

Baroness Taylor of Bolton: That is correct.

Mr Havard: Then, underneath that, there is a highly classified supplement to the Memorandum of Understanding about the F35 which actual deals with the issues of operational sovereignty. Is that right? Thank you.

Q114 Mr Jones: Can I ask, in terms of a component that goes into JSF programmes, if I say to you a UK component, call it "widget X', goes into the programme under this Treaty, once it is actually part of the JSF programme what happens to the ability of the company in the UK that produces widget X to export that outside of the JSF? Is it confined to what it can actually do or does it get authorisation for what it has to do with it from the US?

Baroness Taylor of Bolton: As I understand it, it is still subject to export controls were it to be exported to another third party.

Q115 Mr Jones: That is not the answer then.

Mr Lincoln: I am sorry—you are talking about a UK widget?

Q116 Mr Jones: It goes into JSF, and if it comes to be part of, obviously, JSF, it is done under this Treaty. Does it then put any restrictions on the UK company being able to export that widget to another third country?

Baroness Taylor of Bolton: That is not American technology that you are talking about; you are talking about a British widget?

Mr Lincoln: The difference here, Mr Jones, is that if it is a British widget it is not something which is coming under this Treaty, because it relates to material which must have been exported from the US originally into the UK.

Mr Jones: No, no, no.

Q117 Chairman: Can you expand on that? So this Treaty applies only to material which is exported from the US into the UK?

Baroness Taylor of Bolton: Technology.

Mr Lincoln: A material technology. The terms there are that the material technology must have come from the US into the UK and we have then done something with that, but if it is just a pure UK widget that has been developed in the UK without US technology then this would not apply to any restrictions on UK technology in that respect.

Q118 Mr Jones: What happens if it becomes part of a bigger widget? Let us say you have widget A and widget B, and widget A is British and widget B is US, and it comes together under this Treaty into a vital piece of JSF. Does that then restrict what the manufacturer in the UK can do with widget A?

Baroness Taylor of Bolton: I do not think it restricts widget A but it might restrict widget B.

Mr Lincoln: It might restrict widget B. We can give you some quite detailed examples—

Chairman: Before we disappear up extraordinary places, Willie Rennie.

Q119 Willie Rennie: Just returning to the Congressional approval for the $25 million or $100 million on parts—technology and so on—on sales of goods out of the US, what limitation is that going to place on this Treaty? How many goods come under that kind of value? Is it going to prolong the process?

Baroness Taylor of Bolton: This is not a new limit, remember; this is what the present—

Mr French: This is the current Congressional notification and agreement under the ITAR. A number of these notifications happen each year, but it is a handful. We envisage that most of the technology that will be covered will not get that high. The $25 million is almost for a single item. It is the $100 million which is the broader material. So it is a high threshold which might cover that.

Q120 Mr Havard: Can I be clear on the JSF, that as far as this Treaty is concerned (and if it is not ratified by the US Congress it really will not make a difference) it may be an enabler that might make it easier but it will not be a showstopper if it is not agreed. Is that right?

Baroness Taylor of Bolton: I think that is correct. It may facilitate the speeding up of certain aspects.

Q121 Chairman: Paul Lincoln, you said that it was for technology that was exported from the US to the UK. Does the Treaty cover also technology exported from the UK to the US, or is it a one-way Treaty?

Mr Lincoln: This is not a one-way Treaty but what this does do, in essence, is create for the US system something which becomes very akin to our open general export licensing system. So we are trying to reduce the bureaucracy, particularly on the US side of the Atlantic, in order to facilitate those transfers.

Q122 Mr Jones: Can I come on to intellectual items covered? I understand that those that are currently on the US munitions list, apart from certain highly sensitive technologies—would everything on the list actually be covered by this Treaty? If, in future, the US Government take things off the list for any reason, will the UK Government be consulted beforehand?

Baroness Taylor of Bolton: Basically, the content of the US munitions list is, and will remain, a matter for the US Government. We cannot influence that except in terms of international influence on all treaties about controls. So we do not have any influence on that. I am sure that people in the American defence industry do, from time to time, and the more they co-operate the more they would be wanting to maximise their impact, but in answer to the straightforward question, no, we do not influence that list.

Mr Lincoln: I would supplement that, in that we do have regular discussions with the US on a range of export licensing issues, as to what the substantive lists are, and we do that through international fora. There is also a consultation mechanism under this Treaty under which we will, at least annually, review the operation. That will include what will be on the exclusions list if we thought there was a problem with the operation of it.

Q123 Willie Rennie: There is a list of excluded EU goods from the Treaty. Can you explain what these goods are?

Baroness Taylor of Bolton: Basically, they are dual-use goods.

Mr Lincoln: They fall under one of the annexes of the EU dual-use regulations and they are goods which could be potentially used for civil purposes, not just military purposes, and for which we are not able as a government to enter into negotiations because they form the European competence.

Q124 Willie Rennie: In terms of the relationship between the US and the UK in future, will this Treaty lead to the UK procuring more defence equipment from the US? Do you think that will happen?

Baroness Taylor of Bolton: Not necessarily because we do acquire a great deal. The biggest difference, from my understanding, is that some of the agreements to allow us access to some of that technology will go through more quickly. At the moment, in terms of the export licences that have to be applied for in the US for information to come to Britain (I think there are about 8,500), over 99% of those are actually approved and granted but there is very often a very significant time delay, and it is to cut down on that time delay that I think will be one of the benefits of this Treaty in particular.

Q125 Willie Rennie: The thing that I am most concerned about is that if this Treaty is going to make it easier to have collaboration between researchers in this country and the US, you will get technology in the kind of widget description that Kevan was talking about earlier on, where you effectively get a whole lot of technology that is mixed up together and, therefore, the US will have a stranglehold because they have tougher regulations about how they can export, as we have experienced before, but because they have those tougher rules it will make it more difficult for us to collaborate with other countries outside those two countries.

Baroness Taylor of Bolton: I really do not think that is what is envisaged.

Mr Lincoln: I do not think that is the case. I believe that industry would say that that would not be the case either, in that the way in which they currently deal with US companies and US technology is they do already, as a matter of course, comply with those conditions which they get under licence from the US.

Q126 Willie Rennie: If you are going to get more mixed up technology, the logic is it is going to be more difficult for us to collaborate elsewhere, surely.

Baroness Taylor of Bolton: Not necessarily because, as I say, there is a great deal that happens already; it may just alter the pace of some of that happening, and that has to be to everybody's advantage.

Mr Lincoln: There are also controls in place in most companies, not because those come through intellectual property rights or commercial reasons. Those controls are very tight in terms of making sure that where you do contaminate (I think was the word used) you are quite sure about how that contamination has happened, and where the respective rights lie within that.

Willie Rennie: I just wonder if we are creating a big barrier around the two countries that will restrict activity between us and other countries. That is my concern.

Q127 Mr Jenkin: This is a related question of the potential for the United States to control UK exports. This all rests on Article 9 which is quite clear: "Her Majesty's Government shall, with certain exceptions, that shall be mutually agreed and identified, etc, require supporting documentations including United States Government approval of the proposed retransfer or re-export". That is a new obligation on the United Kingdom in international law, is it not?
Baroness Taylor of Bolton: On any technology that we have and want to export there has got to be some control. We have it over our own and we do not have the right now to transfer technology that we acquire from anywhere else.

Q128 Mr Jenkin: At the moment that is expressed in executive agreements or commercial agreements; it has not actually been expressed in a treaty before.
Mr Lincoln: There is an existing treaty, which is called the General Security Agreement of 1958, which also does set out our dealings with the US on security matters and the implementation agreement, which does say that when you have got material which has been provided in confidence from the US you should ask their permission beforehand before you provide that to a third party. So, on a security basis, those are provisions which already stand.

Q129 Mr Jenkin: So those that complain that this is handing over control of United Kingdom defence exports to the United States are missing the point entirely; these obligations already exist, in fact, and we would not have the American technology over here in the first place unless we had already agreed to arrangements that are exactly the same as in this Treaty.
Mr Lincoln: We have some of those arrangements in place already and, as I say, companies say that they comply with all those agreements with the US already.

Q130 Mr Jenkin: Just very broadly, what is the objective in terms of interoperability? How will this improve interoperability between the United States and the United Kingdom Armed Forces? What is the upside? I am sure there is plenty of it.
Baroness Taylor of Bolton: The upside is that if we have got those technologies and things moving more quickly and we have got people working on them then they can work with Americans who are working to the same standards on the same issues, and they can have confidence in each other that they are able and allowed to do that.

Q131 Mr Jenkin: But this is the main reason for doing this, is it not?
Mr Lincoln: If we are offered interoperability then we would expect that, in due course, Armed Forces working together on the frontline would be able to share information, technology and repair equipment together, etc, on that front line, in a more effective and cost-effective manner.

Q132 Mr Holloway: Just on interoperability, we are told that previously there have been problems on the ground caused on this, and the Treaty is going to solve that. What sort of problems have there been previously?
Mr French: There are some occasions when the ability to address problems on the ground has been delayed as the information that needs to be transferred at the operational level has been subject to licence, and thus the time of being able to do that, and there is some reticence in some areas to do that as a matter of course. We feel that this Treaty should take away that issue.

Q133 Mr Holloway: In what sort of areas? ECM, or more basic stuff?
Baroness Taylor of Bolton: I think it could be any—widget B, as much as anything else.

Q134 Mr Holloway: Just in terms of the last few years in Iraq and Afghanistan, what sorts of equipment has this involved?
Baroness Taylor of Bolton: I cannot be specific because I do not know, but the examples that were given me were repairs on equipment that had technology that was not ours; we did not have a licence for it and there were people there who could have repaired it but could not repair it with British people present because the British people were not empowered to work on that because they were not covered by the licence. If the basic licence covered everybody then—
Mr Holloway: That is understood, I was just wondering, so we can visualise the sort of equipment we are talking about.

Q135 Mr Jenkin: Apache helicopters?
Baroness Taylor of Bolton: Quite possibly.
Chairman: In the middle of the earlier session I made a point, which I shall make again, that it is the process of a Select Committee that in cross-questioning people about anything we tend to probe at what might be perceived as the areas where we do not know enough or where things might be going wrong, or weaknesses. We are not, thereby, intending to suggest that this entire Treaty is a bad thing, because I do not think, for a moment, we will come to any such conclusion. The fact that we are questioning these things does not mean that we think that the arrangements that have been entered into are bad ones. I just needed to set that tone.

Q136 Willie Rennie: The US spends a greater percentage of its GDP on research compared with the UK. Is there not a danger, if these barriers come down, that the US will effectively suck in what are

the best researchers over to that side of the Atlantic and we will end up having sometimes a fragile research community in the UK damaged by this?
Baroness Taylor of Bolton: I think everybody is very conscious of the need for a good research base here. However, I do not think that by having this Treaty we will alter US perceptions about what they should be doing. They have spent a lot of money, they continue to spend a lot of money and I would suspect they will spend a lot of money regardless of whether this Treaty goes ahead.

Q137 Willie Rennie: That is my worry, in some ways; effectively, it will act as a kind of suction on the UK research base.
Baroness Taylor of Bolton: I see no reason why it should make any difference. I think they are intent on spending it and will spend.
Mr Lincoln: I do not see that we see that, necessarily, in the same light. We would think there is an opportunity here, also, for US technology, research and development to do further collaboration within the UK. If you consider that the US are the largest foreign investor in the UK in any case, and in defence as well, and they exploit our technology on both sides of the Atlantic as well, we would expect that there would be some expertise and knowledge which comes here too.

Q138 Willie Rennie: Do you think universities and the rest of the research sector in the UK know about this Treaty and are ready to respond to the implications?
Baroness Taylor of Bolton: As was mentioned earlier, there are parts of universities which are already covered by List X, so in a sense they are part of "the system", but they will be aware both of the discussions and of the potential.
Mr Lincoln: That said, of course, we will be looking at how we do communicate more widely once we have come to a final agreement with the US on the implementing arrangements as to making sure that those people who may or may not benefit from the terms of the Treaty will be aware. I would expect industry prime contractors who use those universities or subcontractors, etc, to be explaining to them the benefits also throughout the supply chain.

Q139 Chairman: So, instead of a List X company, there would be List X elements within the university. Is that correct?
Baroness Taylor of Bolton: I think that is the position at the present time—that universities are not given List X status; it is certain facilities within certain universities that get that status.
Mr French: That is true for companies. There are not List X companies, there are List X facilities of companies.
Chairman: I am with you.

Q140 Mr Havard: Can I just say that one of the answers given to us, when we asked this question about the potential for research and development technology to be skewed towards the US rather than not vested in the UK, was that, in fact, the Treaty will help to avoid that, because at the moment the temptation is that people have to put their money into the US to do the research (one answer), and the other answer is that the Defence Industrial Strategy and all the plans to develop home-grown, as it were, capacity through that is another safeguard. You are also going to have a technology plan, as I understand it. Is your answer to all of this that all these things will actually avoid this problem? Is that the hope? Is that the test that I have to put on this Treaty, as to whether it will actually help to do that or whether it will actually not help?
Baroness Taylor of Bolton: I think the tests that you put on this Treaty are long-term: whether we do improve interoperability and whether we do have a system where, when we have companies co-operating with the United States and asking for an export licence at present, which do take time, that system is speeded up, it would be to the advantage of British companies. In terms of research and development, I do not think that there is one answer to how we make sure that we maximise our effort on that. Part of it is resources, part of it is how those resources are organised, and part of it is getting co-operation. There is not one answer but there has to be determination and a commitment to make the most of our opportunities to develop the talent that is in this country.

Q141 Mr Havard: Can I ask a cheeky question, which is: am I going to see the revision, then, of the next stage of the Defence Industrial Strategy and the Technology Plan together published on 12 December, before we go off for Christmas?
Baroness Taylor of Bolton: I think the date that was previously suggested was 13th, and I have just written to you, Mr Chairman, to say that as I have come into this position I want to review the whole situation, so we will not be publishing anything on 13th. I think we need to make sure that anything we publish on the Defence Industrial Strategy dovetails in with decisions we are taking on the planning round. I think it would be foolish for me, having just come into this, to make statements on 13th in advance of other work that is going on.

Q142 Chairman: Minister, you are aware of how highly regarded your predecessor was.
Baroness Taylor of Bolton: I am.

Q143 Chairman: One of his great attributes was not just his knowledge of industry but his ability to force things through the Ministry of Defence at a pace which was understandable to industry but quite astonishing to the Ministry of Defence. I look forward to receiving your letter but I am afraid I will receive it with sadness.
Baroness Taylor of Bolton: I think that it would be wrong to get consideration of the second phase of the Defence Industrial Strategy out of kilter with the planning round. Certainly, from what I have seen, to simply reiterate what was said the first time round

would not take us very much further forward, and to give indications to industry on a more specific basis outside the planning round might not be a wise thing to do. So I want to consider that further, not because I do not want things to happen, and not because I do not admire what my predecessor did in many respects. Some of the urgent, operational requirements that he managed to get moving very quickly, as you say, were probably a great shock to the MoD, but so far as DIS 2.0 is concerned I think it needs further consideration.

Mr Jones: Can I just reiterate what the Chairman said, Minister? I just hope that you have not actually started wearing the grass skirt already and gone native within the first few weeks, because one thing I think industry is looking towards, which your predecessor did do, is not just to bring clarity to the decision-making process but, actually, give clear deadlines that industry can work to. I think that is important. So if it is going to be delayed, I hope that we can certainly have a date very quickly in the New Year and that you do not get sidetracked (which I always thought would happen, frankly, if your predecessor left) and that civil servants—I know they would be very brave to take the honourable Baroness on—do not make attempts to dilute the pace at which change has been happening over the last few years.

Q144 Mr Havard: Can I ask a sub-question to what I asked earlier? Is the Technology Plan coming with it then? Are they going to come together?

Baroness Taylor of Bolton: I do not want anything to get out of kilter; I want to be making sure that we have a comprehensive strategy overall which does not leave anything hanging and being added.

Q145 Mr Havard: That is a yes, then, is it?

Baroness Taylor of Bolton: I am not committing myself to any publications on any dates at this stage. I think it is two weeks today that I came into this job and, whilst I do appreciate deadlines and I do not like delaying things unnecessarily, I think it is important to get these decisions right. As I said, I do very much admire what my predecessor did; I said that in the House two weeks ago during my first debate, and I meant it. He has a lot of respect and, as you said, Mr Chairman, he probably was a bit of shock to MoD and got things moving there. I think that the impact of that will remain. I hope I have not yet got the grass skirt (perhaps I will get it when Mr Jones gets his) but I think we have got to have an absolutely comprehensive look at what we are doing. We have got an important planning round coming up and I think we have got to make sure that industry does not think we are doing things quickly just for the sake of it and then we make changes later. I want us to have a consistent approach and I think that is the way in which industry will have confidence in what we are telling them.

Q146 Chairman: All of this, of course, is completely irrelevant to the UK/US Treaty, but you tempted us and we fell. Let us get back to enforcement of the Treaty. On the issue of enforcement, the UK and the US Governments will co-operate on enforcement if there are breaches of this Treaty. How will that work in practice? Will US law enforcement officers have any jurisdiction in the UK? Will UK law enforcement officers have any jurisdiction in the US?

Mr Lincoln: There are a whole series of existing mechanisms which are in place between the UK and the US through existing treaties, all of which potentially will apply to enforcement matters on the Treaty itself. On the specific example you said—will we have US police, or whoever, coming over to the UK—only in such situations as we would currently envisage that happening now.

Q147 Chairman: So no change?

Mr Lincoln: So no change to the existing mechanisms in that respect. The primary mechanism for enforcement of the Treaty is using the MoD's industrial security service, which is already adept at compliance with companies for security matters. That is a system which has been in place for some time.

Chairman: Thank you. Is this Treaty going to be ratified? Kevan Jones.

Q148 Mr Jones: Obviously, we have attempted before to try and get ITAR. A lot of work was expended on it and, obviously, it came up against a problem in Congress. What steps, Minister, are you going to be taking to ensure this Treaty is ratified? For example, are you, yourself, going to visit the United States to lobby for it? Although I understand (there is a timetable in the memorandum that you sent us) that there is a brief window of opportunity before December, it is unlikely, frankly, with the way the Congress works. So what is the process of trying to put maximum lobbying on, for example, the Senate to ratify this? Also, if it does not get ratified, what is option B?

Baroness Taylor of Bolton: You are quite right to say that this has been tried before but it has not been tried in this way before, and I think this new approach is what is giving some optimism that there might be a realistic opportunity to hear. As we mentioned earlier, we did have officials from the United States here last week. I did meet with the main official there and we want through quite a few of these issues that were outstanding that we were talking about earlier, in terms of the actual list of exclusions and things of that kind. So we have done that so far. My officials are going next week to follow up on those discussions in detail, both on the issue of nationality and making sure that our system of classification and vetting is fully understood, so that people can have more confidence in that. I, myself, am trying to get there in, possibly, a fortnight's time. You will appreciate that with Parliamentary responsibilities, especially in the Lords, and some of the other commitments that I have it is not easy, but we think we may have identified two dates. I have written to some of the main players in the Senate to express our view of the benefits that could accrue and, hopefully, that will be a part of highlighting the

importance that we attach to this to the people who will be making that final decision. We do not yet know when Congress will rise for Christmas (the dates are not fixed quite as ours are); we know that they are coming back on 15 January, and we are hopeful that they will be responsive to the position that we are setting out. It is in the interests of the United States, in terms of their relationships with us; that they have an interest in interoperability as well, and so we are hoping that we can explain that fully.

Q149 Mr Jones: Can I ask you all to consider (because Mr Rennie and I went last year to talk to Senators about issues around technology transfer) doing two things: one, use our report when it comes out as a lobbying document from our Parliament's position, in terms of the Hill? Can I also suggest that, possibly, the Ministry look at the British and American Parliamentary Association and individual Members of Parliament who have got contacts on the Hill to actually try, if they are visiting, and reinforce the message, but also possibly just write to their contacts on the Hill about how important this Treaty is?
Baroness Taylor of Bolton: I think they are both suggestions that we would not be averse to. Obviously, we do want to ratify as quickly as possible ourselves, and that will also be good leverage, and that is where we have to be careful about the timings in terms of your report and other things which are happening. We will try to co-operate to make sure that we make the timeframe as tight as possible, but I think that using colleagues to try to emphasise the importance of this Treaty is no bad idea. I am not averse to that. Lord Drayson, some time ago, did write to some people within the House about this, but I think it is certainly something we will follow up. It is getting to a critical stage, so it might be appropriate to do something in the near future.

Q150 Mr Jones: If you could actually ask, perhaps, individual Members of Parliament or Members of the Upper House who have got contacts to write on this too—because we all have friendships with individual Senators—it might also help the process.
Baroness Taylor of Bolton: I think it might well.

Q151 Chairman: Kevan Jones asked about a plan B.
Baroness Taylor of Bolton: Plan B. We cannot make a plan B when we are hoping that plan A will work. It is not as if we cannot get the technology, it is the delay; it is not that we cannot get interoperability, it is just far more complex and causes delays. So, at the moment, we are absolutely concentrating on trying to deal with the two outstanding issues, which we do not think are insurmountable. We think that there are good reasons for thinking that we can convince those who are making decisions in the United States that the protections that we have on security and our vetting classification are very strong and very significant, and we think that by discussing the excluded list we can possibly get agreement on that. We are still hopeful.

Q152 Chairman: So when you say you cannot make a plan B when you are working on plan A, there is no plan B.
Baroness Taylor of Bolton: There is no plan B. We are very intent on making sure that this works. As colleagues have pointed out, this has been tried in the past and there have been difficulties, but this is a new approach to the problem, by getting this kind of agreement for transfer in this way. Hopefully, this new approach, with different mechanisms around security protection of material, will give confidence that it will work. So our efforts, I think, should be concentrated on explaining why we are adopting a new approach and how it is secure, because it is that bottom line—security—that probably has to be underlined as being critical to this working.

Q153 Chairman: Minister, I think that concludes the questions that we want to ask about the UK/US Treaty. There are one or two questions which we would like to ask about the Defence Exports Services Organisation. Therefore, we are most grateful to Tony Pawson and Gloria Craig for coming here today. The decision to abolish DESO was obviously taken above all of our pay grades, yet it is one which has caused deep concern amongst industry. I, myself, having been in your position, or something like it, in the past, found DESO to be an exceptionally useful and valuable organisation for the Ministry of Defence, for the Government and for the country. Although you did not take this decision, you are now in a position where you need to be able to justify it. So how would you justify it?
Baroness Taylor of Bolton: I think I would justify it by saying that UK Trade and Investment does take the lead on exports across the whole picture, and you could argue that the old system was actually an anomaly with defence exports out of that. If it was simply transferring the DESO role to new civil servants who had no experience of this in the past and were going to reinvent the wheel of how to do defence exports, I think I would be more concerned, but that is not what we are talking about; we are actually talking about a lot of people who have been working on defence exports for a very long time within MoD going to UKTI, and I think they will take with them their expertise and they will work in their situation with people who are working on exports across the board and will, therefore, gain their expertise as well.

Q154 Chairman: However, what they will not take with them is constant contact with people from the military in uniform, which is one of the things that industry earlier on told us was one of their key concerns. Does that matter?
Baroness Taylor of Bolton: It matters that they have contact and it matters that we have arrangements for people in the military to play their part in terms of talking about defence contracts that we have or those with other countries, where they can talk about how equipment works, or what equipment we need. The suggestion is that when people are transferred there should be not just a bock transfer

and that is the end of it, but that there should be rotations of individuals so that some of that expertise is, in fact, maintained. I think that that would be helpful to those who are working in the new section, but it will also mean that the links are kept with MoD, and there will be new working arrangements to make sure that there is proper contact between the departments. It is envisaged, actually, that there will be service level agreements between the two departments setting out what each department will do for the other. I do not know, Tony, if you want to emphasise anything else within that.

Mr Pawson: Clearly, DESO has got a great track record and I think it is a great place to work and will continue to be a good place to work, because what you are doing is contributing to both security and prosperity. That, in a sense, is a great motivator. For the new organisation to work, as the Minister has said, we do need the expertise transferred across. The plan is that the military personnel in the core of DESO will transfer across on the same sort of basis as now. There will be a mixed economy in relation to the civil servants—some will be on permanent transfer, some will be on loan—to ensure a sort of refreshment of that. UKTI is a large organisation, it does have a large number of people compared to DESO overseas, which we will be able to leverage for the future. Clearly, the defence branding is very important indeed. The plan, as you probably know, Chairman, is that there will be a separate element of UKTI that will deal with defence and security issues; that those links back to MoD, as the Minister has said, are planned to be maintained and, therefore, with the support of the MoD, support (of course, proportionate to what is under consideration) should, I understand, be fully forthcoming and therefore will go forward on that basis.

Q155 Chairman: Will the MoD be a sponsoring department with the FCO and the Department of Business, Enterprise and Regulatory Reform?

Baroness Taylor of Bolton: No. There was discussion about that but that was thought to make the situation more complex, and that is why there will be a service level agreement between the two departments about what each should be doing for the other. I understand (it was before my time) that the idea of it being a sponsoring department was considered but it was thought that that would make the situation even more complex.

Mr Holloway: Forgive me, I do not understand. What was the reasoning behind this?

Chairman: It was an anomaly.

Q156 Mr Holloway: What was the reasoning behind this change -beyond that it was an anomaly?

Baroness Taylor of Bolton: It was thought that by bringing all export potential together and expertise together that could maximise the effort. As I say, there was a great deal of experience within those two departments about trade and exports of this kind, and it was felt that the defence exports side of MoD could benefit from having that expertise with them and working with them on an ongoing basis.

Mr Holloway: Does Mr Pawson think that was a good idea?

Chairman: I do not think that is a fair question to ask.

Q157 Mr Jenkin: Howard Wheeldon published an article in *Jane's Defence Weekly*, in which he pointed out the success of DESO, to which you referred; that we take 20% of the global defence exports market and, obviously, clearly thinks that this is a grave error that will undermine the success of these efforts. What measures is the Government putting in place to assess the success or failure of this change? If it turns out to be detrimental to the effectiveness of UK defence exports, would you at least leave the door open to possibly reversing the decision in order to restore what has been an extremely effective working relationship?

Baroness Taylor of Bolton: I do not think that anybody would welcome that sort of ping-pong and decisions being made to move back quickly.

Q158 Mr Jenkin: The criteria for success?

Baroness Taylor of Bolton: In terms of the success, I think we will see defence exports in the future at a very high level. I think that the comments you made about the success of the past are very valid and one that those involved should be very pleased with, but I think the Committee should understand that the Government would not want us to take a step backwards in terms of our achievements there. Government Ministers would not make that decision without a genuine belief that this was one way of improving the situation in the future. That was part of the reasoning behind this decision: they thought that it was the right thing to do, and the Prime Minister made that decision. We are now working with everybody involved, working with the two sponsoring departments, working and having very careful discussions with industry to make sure that they feel involved and know what support MoD will give to defence exports, and we are hopeful that when we are able to finalise some of these arrangements (this is very early days) we will in fact have the confidence of industry that we will be offering the kind of support that will be helpful to them and maintain the success in this area.

Q159 Mr Jenkin: But this does contradict what was in the Defence Industrial Strategy, and it, presumably, is one of the reasons why you wish to delay it.

Baroness Taylor of Bolton: No, not at all.

Q160 Mr Jenkin: I thought you might say that.

Baroness Taylor of Bolton: You were right, I did say it! The reason I want a delay is because I want to dovetail everything together and hold discussions on the new planning round. Having been here two weeks I am not prepared to make snap decisions. So I want to look at what we are doing on the planning

round, hence the decision on the Industrial Strategy. We are confident that we can get agreements between the departments. We are confident that we can get the service level agreements about the kind of support that we will provide. We have been working them up in some detail between the departments and my colleague, Lord Jones, and I have been looking at these issues in some detail. We will be moving to making a decision about those before long.

Q161 Mr Jones: Is it not a fact, Minister, that honestly the forces of conservative—both with a big "C" and a small "c"—are whipping this up into a situation whereby they think if they keep squawking hard enough the decision will be changed, but is it not a fact that this actually gives industry and MoD some great opportunities which should be grasped rather than just this silly argument of keep going on? Is it not also a fact of life, whether they like it or not, that DESO and the MoD brought a little bit of this on themselves, in the sense that what this also gives an opportunity to do is a little more transparency to the position of arms exports, which I would personally support? As someone who supports the arms industry in this country as being very important to the UK economy, it will actually give public confidence too, which was not there before.
Baroness Taylor of Bolton: I think you are absolutely right to say that this decision will not be changed. The decision has been made and it has been made because it was thought right to put defence exports in with all other exports within the department—
Mr Jenkin: Political correctness.

Q162 Mr Jones: It is not at all.
***Baroness Taylor of Bolton:*—**that has the expertise. I do not think we should underestimate the expertise that the department has throughout the world on issues of this kind. I think, therefore, that with the MoD supporting the work of that department, where appropriate and as specified in the service level agreements that we are going to establish, that will put the industries in a very strong position.

Q163 Chairman: One final question on this: Minister, you say the department has the expertise. UKTI does not usually do government-to-government contracts, but defence agreements are usually government-to-government contracts. How are UKTI going to adapt themselves to that new role?
Baroness Taylor of Bolton: I hesitate to disagree with you but it is not the case that the majority of contracts now are government-to-government. We do have government-to-government projects, and it will be possible for us to maintain the position of having a Memorandum of Understanding government-to-government, but the day-to-day responsibility will have to be worked out in detail. You can have government-to-government relationships and agreements in the new system and there will be occasions when that happens, but they are not the usual projects, and government-to-government projects these days are considered to be exceptional.
Mr Jenkin: Is that in numbers of projects—
Chairman: I think we have finished now.

Q164 Mr Jenkin: Is that in numbers of projects or is it in value terms?
Baroness Taylor of Bolton: Certainly the number of projects is very small.

Q165 Chairman: Minister, thank you very much for coming before this Committee so soon into your regime, and for, if I may delicately say so, answering questions so thoroughly competently.
Baroness Taylor of Bolton: Thank you.

Q166 Chairman: We are grateful to all of your team. It is a very important issue. Can we remain in contact, please, about the timing of further discussions with this Committee about implementation arrangements and about the timetable for ratification by the UK?
Baroness Taylor of Bolton: Yes. I think that we will have to try to keep things very tight on that, and we will keep you as informed as we can.
Chairman: To you and your team, thank you very much indeed.

Written evidence

Memorandum from Dr Alexandra Ashbourne

The Build-up to the Defence Trade Co-operation Treaty from 2000

The State Department and the Department of Defense (DoD) have traditionally been at odds over the best way to ensure America's security. The DoD believes that sharing some technology with its closest allies is a benefit, whereas in general, the State Department believes that such a policy can only threaten America's national interest.

But enabling more effective and efficient transatlantic [especially US–UK] defence industrial co-operation and technology transfer was a key objective in the final year of the Clinton administration.

In January 2000, a Declaration of Principles was signed between the US and UK to facilitate technology transfer, among other matters. Its weakness, however, was that it was Department of Defense-only agreement, and it is the State Department which retains overall control technology transfer policy and in particular of the US Munitions List, the list of all goods and services which require an export license.

Mindful of the weakness of the Declaration of Principles, the Defense Trade Security Initiative was announced in May 2000. This was a joint State Department and DoD initiative, which contained 17 key points, one of which was the promise of an ITAR waiver (the International Traffic in Arms Regulations — ITAR—covers the transfer of certain defence products which need export licenses, and the waiver would have eliminated the need for such a license in a variety of cases.) But the DTSI met with strong objections from an inherently protectionist US Congress, which was reluctant to endorse it in the run up to an election, principally out of the fear that a liberalised export control regime would in some way threaten US security and jobs.

After the inevitable period of limbo following the election of George Bush, the Pentagon raised the issue again, with support from the White House and a reasonably enthusiastic Secretary of State, Colin Powell. National Security Presidential Directive 19 (NSPD 19) was drafted in 2002 by the Under Secretary of Defense (AT&L: International Technology Security), Dr John Shaw. This advocated the granting of an ITAR waiver to the UK as a first step towards relaxing some export controls.

But the Bush Presidency's effort to drive through this policy came up—yet again—against a particularly protectionist Congress: typified by the attitude of the Senate Armed Services Committee and the House International Relations Committee. Congressman Duncan Hunter (the son of a famed US protectionist) and Senator Joe Biden are two of the most outspoken advocates of blocking any attempt to liberalise defence trade. Their staffers are equally protectionist.

Nonetheless, in this penultimate year of the Bush Presidency, a further effort to facilitate US–UK defence trade has been made with the signing of the Defence Trade Co-operation Treaty. I firmly believe that in the last seven years the senior figures of the US Administration (whether Clinton's or Bush's) have all been supportive of measures designed to liberalise export controls with the UK (if not necessarily with other European countries), but time and again have seen their efforts thwarted by Congress, which inevitably has different concerns and priorities.

The Defence Trade Cooperation Treaty—Current Status and Prognosis

There is widespread scepticism in Washington DC over whether the US-UK Defence Trade Co-operation Treaty will deliver concrete results. A number of senior analysts believe that it is unlikely to be ratified by Congress within the lifetime of this Administration (ie until next November). They think that the current administration is in limbo, that the President's endorsement of the Treaty to the Senate is actually a liability, because of the enmity towards him held by many members of the US Congress, and that support for the Treaty carries no votes in next year's election.

The Assistant Secretary of State, the Hon John Rood, who tried in vain to explain and defend the Treaty at a briefing in September at the Royal United Services Institute, is very new in post (he has only been in the job for a little over one month). Furthermore, his priority at the moment is the delicate US-Russian negotiations on missile defence, ahead of defence trade controls reform.

The Treaty's success or failure will be down to a combination of two key factors: the content of the so-called Implementation Agreements (the substance of the Treaty) and the willingness of the Senate to ratify it.

The content of the Implementation Agreements is supposed to be released imminently. In theory, it should cover some or all of the issues which were raised at the RUSI briefing (for example how supposedly "foreign" companies based in the UK, such as MBDA or Thales UK, will be incorporated into the British "Approved Community"). What also needs to be clarified is the qualifications which will be necessary for companies to be included in the Approved Community and whether those will impose unmanageable restrictions on doing business with non-US firms for the companies concerned. But this is all still unknown.

It is clear that the passage of the Treaty through the US Congress would be aided by concrete, high-level support from the UK. Some senior officials in the Pentagon and State Departments would like Prime Minister Gordon Brown to make a public statement in support of the Treaty. At the very least, they would like publicly-stated approval to come from figures such as the MinDES (perhaps if he visits in December, as he is currently scheduled to do), the Permanent Secretary or the Chairman of the HCDC.

There is a strong perception in Washington DC that the Treaty is taken for granted in the UK. That is, to some extent, correct. There is strong support in the UK's defence community for easing transatlantic defence industrial co-operation and, unlike in the USA, there is certainly no obvious lobby in Parliament advocating making it even more difficult to conduct defence trade business with the US.

But on the other hand, some other Pentagon and State Department officials warn that the British defence community must not "frighten the horses" by lobbying too hard for the Treaty's ratification, or Congress will panic. There is a fear within Congress (both the members of the Senate/House of Representatives and among their staffs) that this Treaty will mark the beginning of the slippery slope towards a widespread relaxation of US export controls. This would be unpalatable to Congress, either now or in the next Administration. America is not ready to totally abandon protectionism, especially in the defence sector.

A leading analyst in Washington has raised a further obstacle to the ratification of the Treaty: the probability that the Treaty could fall victim to "inevitability": everyone automatically assumes it will fail, therefore it will. I am certainly not the only analyst examining this issue who is sceptical about its likely success, but in some ways that is a vicious circle.

Another obstacle to the ratification of the US-UK Treaty is the US-Australian Defence Trade Co-operation Treaty which is also being negotiated at the same time as that between the US-UK. That could exacerbate the "don't frighten the horses" feeling within Congress. There is a strong sense that it would be easier to ratify the US-UK Treaty if it were perceived to be a deal between the US and its closest ally rather than one of a series of worldwide negotiations with all the concomitant "risks" that could create for America's national security.

Summary

I am supportive of the Treaty in principle, but I am extremely sceptical that ratification will happen in the short term. This is due in part to the stage of the electoral cycle in the US (with a year to go, Washington DC is already firmly in election mode) but also because I have found no evidence of the seismic shift which would need to occur in Congress to ensure ratification. Pork-barrel politics—local not global (and a certain degree of protectionism) remains the dominant influence in both the Senate and House of Representatives. One should also bear in mind the growing hostility in Congress towards the President. There is a sense that if the President endorses something (in this case the Treaty), Congress will block it out of spite. None of the above is conducive to the ratification of what would be a ground-breaking Treaty. But I would be delighted to be proved wrong.

About Dr Alex Ashbourne

Alex has spent the past decade studying transatlantic defence industrial co-operation and in particular the debate surrounding the issue of technology transfer to the UK, firstly as the defence analyst at the Centre for European Reform and latterly as a defence consultant running her own company. She is the author of "Europe's Defence Industry: a Transatlantic Future?" (CER 2000), as well as part of a Stimson Center report for the US Congress on multi-lateral export controls (2001) and numerous articles and conference papers on the subject. A dual citizen (UK-US), Alex travels frequently to Washington DC to discuss the subject with Pentagon and State Department officials, as well as Congressional staffers and analysts.

This submission is analysis based on a combination of 10 years' experience, coupled with a fortnight's visit in October 2007 to Washington DC. Any part of this submission may be used as admissible evidence for the Committee.

5 November 2007

Memorandum from BAE Systems UK

Introduction

The notice announcing the Defence Committee's intention to hold an enquiry into the UK-US Defence Trade Co-operations Treaty invited views from industry and others on the Treaty and its implementing arrangements. The purpose of this memorandum is to set out BAE Systems' views on the published Treaty. The associated implementing arrangements are not yet available to industry and are not therefore addressed in this paper.

SUMMARY

BAE Systems fully supports the aims of the UK-US Defence Trade Co-operation Treaty and believes that once implemented it will significantly improve the ability of defence companies in the United Kingdom and the United States, working with the two governments, to leverage their respective skills and technologies in meeting the needs of our armed forces, now and in the future.

BAE SYSTEMS

BAE Systems is the third largest global defence company, the largest British defence company and the 6th largest US defence company. Of its 96,000 highly skilled people, 43,500 work in the US and 32, 400 in the UK. Prior to the acquisition of Armor Holdings earlier this year the US accounted for 36% of overall sales and the UK accounted for 38%.

THE TREATY

The preamble to the Treaty recognises that, in order to develop closer security and defence co-operation between the UK and the US and, in support of that objective, to be able more effectively to capitalise on the strengths of the security and defence industries in both countries, there is a need for a new bilateral framework to facilitate the movement and defence material and technology within an approved community of organisations while, at the same time, ensuring that there are proper safeguards in place to prevent unauthorised access to such material and technology.

BAE Systems is confident that the arrangements proposed in the Treaty—subject to the implementing arrangements still under negotiation between the two governments—will make it possible for companies within the approved community to co-operate more effectively and more quickly, to share their collective skills and knowledge in support of the armed forces of the two countries and to do so within a security environment, based in the UK on the Official Secrets Act, that will ensure that shared information and technology is properly safeguarded.

Our primary objective is to ensure that the capabilities that exist not only within our own operations in the UK and the US but also in the wider UK and US defence industries are fully exploited to deliver the most capable and effective platforms and systems to the British and US armed forces and their ability to operate together. But we also believe there will be real benefits both to British and American taxpayers and to the U K and US companies within the approved community in terms of making more efficient and effective use of their combined investment in the technologies and skills that will be needed to ensure the UK and the US have the battle-winning capabilities of the future.

BAE Systems firmly believes that the UK–US Defence Trade Co-operation Treaty provides an opportunity that must be seized to mirror the closeness of the political, security and military relationship between the UK and the US in the way in which the two defence industries work together. This will be to the advantage of the armed forces, the governments and the industries of both countries.

BAE Systems hopes that Parliament and Congress will give the Treaty full and early endorsement.

14 November 2007

Memorandum from the Royal Aeronautical Society

SUMMARY

- The US and the UK have been seeking to reform US technology trade regulations for many years. Both sides, including the vast majority of defence companies in the US and the UK, were in favour of reforming a US system that was largely no longer "fit for purpose".
- Reform would benefit both sides, leading to increased interoperability, more effective and efficient operations for multinational defence companies with potential improvement in procurement.
- The Implementing Arrangements should recognise the new industrial landscape of European defence companies and the importance of foreign-owned but UK located and operated companies to the British defence industrial base.
- The Treaty would in time further re-enforce the already strong trans-Atlantic axis in the UK defence industrial base carrying some increased risk of dependence on US technology.
- The risks of dependence can be contained by an adequate investment in UK technology acquisition and valued links with the European defence community can be maintained by participation in joint programmes.

— The window for ratifying this Treaty will be very narrow and the Society urges the Defence Committee to impress their American parliamentary colleagues with its importance to the mutual security of both countries.

MEMORANDUM

1. The Royal Aeronautical Society (RAeS) is the Learned Society for the Aerospace and Aviation community. Based in London, it has a worldwide membership of over 19,000, with over 13,000 in the UK. Its Fellows and Members represent all levels of the aeronautical community both active and retired. Through its various Boards and Committees, it can draw upon considerable experience and expertise in aviation matters. In addition, the Society has over 160 Corporate Partners.

2. Attempts to improve the regulatory framework governing US–UK cooperation in Defence Trade have a long history. The most recent phase began with the Declaration of Principles of 2000 under the Clinton Administration and subsequently picked up by President Bush and his team. Initially, the main focus of negotiations was to secure for the UK a waiver to the US International Traffic in Arms Regulation (ITAR). This waiver would have applied only to unclassified technology and data.

3. Both sides, including the vast majority of defence companies in the US and the UK, were in favour of reforming a US system that was largely no longer "fit for purpose". The ITAR regulations not only hampered the free flow of trade between two closely aligned nations and defence companies increasingly operating as trans-Atlantic if not globalised entities, but also deleteriously affected inter-operability between the armed services of the two countries. However entrenched opposition from a small number of influential Congressmen and some elements of the US government blocked even these modest attempts to reform the process. It will thus be important to ensure that the Treaty does not simply act as a vehicle for the US to seek to apply a version of ITAR extraterritoriality.

4. Failure to reform the ITAR system has not, however prevented the development of closer ties between UK and US defence companies. Indeed, the degree of interpenetration has steadily increased over the last five years. The UK is by far and away the largest source of inward investment in the US defence industrial base. This is headed by BAE Systems and Rolls-Royce, but every leading UK-based defence company has some direct stake in the US market. The Treaty will need to recognise the new landscape of defence companies in Europe with those such as Thales and Finmeccanica making very significant inward investment in the UK where they operate as on-shore companies. Similarly, US firms have taken advantage of the relatively open regime for ownership of UK defence industrial assets to invest here and to participate in MoD contracts.

5. Equally, the UK has a substantial stake in the F-35/JSF programme with British firms obtaining on merit substantially more work than the UK's notional share. However, while technology transfer on the JSF is covered by a wider programme based on a set of regulations (the so called Global Projects Licence) this has still required negotiating a series of individual agreements that have been increasingly fraught as the transfers required access to more sensitive materials.

6. In short, while the US has gradually relaxed some of the rules governing the operation of UK subsidiaries, a more comprehensive approach to ITAR reform would improve industrial efficiency to the benefit of governments and taxpayers on both sides of the Atlantic.

7. The Treaty approach has been designed to take account of concerns within Congress in relation to earlier proposed ITAR reforms and to reassure the Hill that its provisions will safeguard US technology. The UK government appears confident of obtaining the necessary two-third majority of the Senate needed to ratify the Treaty. It is understood that steps have been taken to keep the House of Representatives informed and to maintain support for reform in the Lower House. It also appears to be the case that all key US agencies, including elements hitherto opposed to reform, are working hard to secure agreement on the necessary implementing arrangements which will have to define very clearly details of processes, procedures and authorisation to be undertaken by the MoD to conform to US law and practice.

8. The timetable for ratification is extremely tight; given the US electoral cycle will absorb most political energies from March onwards. Formulating Implementing Arrangements acceptable to both parties clearly involve detailed negotiations around the practical arrangements for the new bilateral regime and these must be completed before the Senate Foreign Relations Committee examines the Treaty. A comparable Treaty directed at Australia may complicate matters, adding further pressure to pass through Senate Foreign Relations Committee hearings and to reach the Senate floor by the end of February. With the best will in the world, this appears to be a very challenging target.

9. Assuming that the Treaty placed before the Senate does broadly satisfy UK interests, ratification would significantly improve relations between the defence communities on both sides of the Atlantic. At a governmental level, it would further deepen the already close relationship that links the US and UK defence science establishments—a relationship that already includes cooperation on some of the most sensitive aspects of defence technology. The Treaty would further improve the interoperability of US and UK armed forces by removing most of the restrictions on the transfer of information and technology for use in time sensitive contexts. Overall, it should fulfil most of the requirements demanded by the MoD to ensure operational sovereignty of US sourced equipment and technology.

10. The implications for the UK located defence industry would be equally profound. The Society understands that the MoD will be expected to approve and to vouch for companies allowed to operate within the terms of the Treaty. Once within the approved community, the Treaty would allow companies a much freer exchange of technology, information and cleared personnel. This would include both UK and foreign-owned UK domiciled companies, although it is not entirely clear what specific restrictions the US may expect to be put in place to ensure adequate controls over transfers to third parties. Any transfer from the UK to a third party would continue to require US ITAR approval.

11. The Treaty would in time further re-enforce the already strong trans-Atlantic axis in the UK defence industrial base. There are still several important established European programmes, but with a few exceptions (notably the naval shipbuilding programme), there are few new European ventures in the offing. In the aerospace sector, the JSF will have an increasingly dominant role in UK business plans. The Treaty may not make it harder to cooperate with Europe, but given the relative size of the markets, the availability of R&D money and a more straight forward political context, the UK defence business default position would inevitably tend even more towards American options. It would create an assured defence industrial and technological community on both sides of the Atlantic within which the prospects cooperation would be more easily explored and solutions identified that would inevitably create a momentum for more specific, hardware related activity.

12. This would have several advantages for both the UK and the US, as the Treaty is a two-way process. UK located firms should certainly be better placed to access the US market, as well as adding to the confidence with which the MoD could negotiate with US companies. It would help all transnational defence firms within the approved community more effectively to deploy corporate resources in an optimal manner. This is potentially a significant competitive advantage for these companies. The existence of the Treaty might also take some of the pressure off UK firms to locate R&D investment in the US and to create employment overseas. Assuming the restrictions on non-UK owned but UK located companies were not too stringent, the Treaty could encourage even more inward investment into the UK as a means of accessing the US market.

13. On the other hand, ever closer ties with the US, particularly if they are at the expense of cooperating on a more equal basis on technology acquisition with European partners, could increase the UK's reliance on the US and its potential vulnerability to near total dependence on the US for core defence technologies. This would not happen overnight, but with the US option set as the default position, the continuing temptation to turn away from Europe would build as a consequence of a series of individual corporate choices.

14. However, on balance the Society believes that the Treaty will enhance the defence industries of the US and the UK, as well as contributing to the improvement of procurement options for both sets of armed services. The risks of dependence can be contained by an adequate investment in UK technology acquisition and valued links with the European defence community can be maintained by participation in joint programmes, as has historically been the case. The window for ratifying this Treaty will be very narrow and the Society urges the Defence Committee to impress their American parliamentary colleagues with its importance to the mutual security of both countries.

14 November 2007

Memorandum from the Ministry of Defence

Aim of the Treaty

1. The aim of the Treaty is to further strengthen and deepen the UK and US defence relationship, allowing greater levels of cooperation and interoperability that will help support our Armed Forces operating side by side around the world. The Treaty will allow both nations to better leverage the respective strengths of their security and defence industries.

Benefits

2. The Treaty will deliver a range of benefits to both the UK and US Governments and both countries' defence industries. In the summary, these are:

(a) A major improvement in the ability of the UK and US to work together to support our forces fighting together on operations.

(b) Allows UK and US companies and other entities to share information and expertise in order to develop new capabilities that can overcome the threats faced by troops on the ground, both today and in the future.

(c) Greater cooperation between UK and US companies will help deliver greater efficiency, as duplication of effort in collaborative programmes is reduced through better information sharing.

(d) Removal of the need for individual US export licences for the majority of defence and security exports to the UK. The current process can be time consuming and adds significant delays to UK procurement projects that have US content.

(e) In addition, there will be a considerable reduction in the administrative effort needed by defence companies to apply for and by the US Government to process licence applications.

(f) The Treaty will help to provide a wider supplier base for both the UK and US Governments whilst continuing to control defence material.

Treaty Mechanism

3. The Treaty will create a framework for closer defence and security co-operation between the UK and US, reducing the barriers to exchanges of defence material within a trusted community (the Approved Community), while ensuring that there are proper safeguards against unauthorised release beyond that community.

4. Currently, all defence and security equipment being exported from the US requires an export licence, under the US Government's International Traffic in Arms Regulations (ITAR). Licences are required for all equipment listed on the US Munitions List, leading to around 8,500 applications each year for transfers of UK–US material alone. This equates to around 12.5% of the total number of applications the US deals with each year. Over 99% of UK applications are currently approved, however they can take weeks or months to approve, leading to delays and complications in UK procurement programmes.

5. Under the Treaty, the need for the majority of individual US export licences will be removed. Instead, material will be able to transfer from US to UK Government entities (eg the MOD), approved companies and other approved entities without further authorisation. This will remove a major administrative burden from the US Government, reducing associated costs and allowing the US to focus on licence applications of greater concern.

6. US material will be protected using security measures and for certain material, issuing it with a specific Treaty-related security caveat. It will be protected from unauthorised release by the UK's current security processes, in accordance with the existing security arrangements between the UK and US covering classified material (the General Security Arrangement and its Security Implementing Arrangement). All applicable laws, including the Official Secrets Act will apply. These arrangements already include tried and tested processes for protecting classified material from each country that have been operating successfully for over 50 years.

7. Defence material being moved under the Treaty will also be clearly marked or accompanied by appropriate paperwork to identify it as being sent under the terms of the Treaty. The UK Government's Manual of Protective Security will also be updated to include the new handling procedures for Defence material exported under the Treaty.

8. UK companies or other entities wishing to use the Treaty will need to apply and be approved to join the Treaty UK Approved Community. Applicants will be assessed against several criteria, including:

(a) Membership of the UK 'List X' group, the group of establishments that have been cleared by the UK Government as being able to handle classified material.

(b) An appropriate level of Foreign Ownership, Control or Influence (FOCI), as decided by the UK and US Governments.

(c) Past performance on export controls, judged against UK and US records of violations.

(d) Any potential national security risks for the US, due to interactions with countries proscribed in US law and regulation.

Treaty Scope

9. The Treaty will cover defence and security material required for:

(a) US and UK combined military or counter-terrorism operations.

(b) US and UK cooperative security and defence research, development, production and support programmes.

(c) Mutually agreed specific security and defence projects where HMG is the end-user.

(d) US Government end-use.

10. Some of the most sensitive technologies are expected to be excluded from the Treaty, as well as technologies that are specifically controlled under existing international arrangements. Certain goods which are controlled by EU regulation will also be excluded. In these cases, the existing export licence system will remain, to allow appropriate Governmental approval to be given.

11. There will be no obligation for companies to use the Treaty, and they will continue to be able to apply for US licences if they choose.

12. Should a member of the Approved Community wish to transfer material outside the community (whether to a recipient in the UK or overseas), permission must be obtained from the US Government.

Impact on UK Export Controls

13. The Treaty will not impact on the UK's current export control laws. All exports of controlled goods from the UK to the US will still require appropriate UK authorisation. However, items subject to international arrangements such as the Missile Technology Control Regime will continue to require a license. The UK's system of Open General Export Licences (OGELs) already allows for the movement of the majority of defence material without the associated bureaucratic burden of the current US system.

14. To ensure US material cannot be re-exported from the UK without US Government permission, the current UK mechanism for the release of classified material by contractors, the MOD form F680, will be updated. The company will have to provide proof of re-export permission before the MOD will grant authority for a company to proceed with such a release.

Management Structure

15. The Treaty will be managed in the UK by the Ministry of Defence and in the US by the Department of State. In the UK, detailed governance arrangements are being developed, however it is envisaged that a Management Board will oversee the Treaty's implementation and operation to ensure it is effective. Practical management of the Approved Community will be carried out by the Industry Security Service (ISS), part of Defence Equipment and Support(DE&S). The British Defence Staff (US) and MOD Integrated Project Teams will assist in maintaining an up to date list of joint UK-US operations, projects and programmes that the Treaty applies to.

16. Companies will be able to identify which projects and operations are covered by the Treaty (probably via a secure website). In addition, a clear Point of Contact will exist within MOD to deal with specific queries.

Enforcement

17. The security management processes and procedures associated with the MOD List X group will be the principal mechanism for compliance and enforcement of the terms of the Treaty. MOD ISS has existing procedures for approving company security procedures and physical security protection, and this system will be extended to cover the Approved Community.

18. Items received in the UK under the Treaty will be for HMG or USG end-use. In the UK they will be handled exclusively by either HMG personnel or the pre-cleared personnel of non-governmental entities that, together, comprise the UK Approved Community.

19. Membership of List X requires that the company report all suspected material losses or information compromise to ISS and the relevant Home Department police force. This obligation will apply to the Approved Community.

20. Home Department police will review on request circumstances of any incident and lead the investigation where criminal activity is suspected under a range of legislation including the Official Secrets Act, Fraud and Theft Acts. The police will advise the Crown Prosecution Service if there is a case to answer. ISS is fully engaged on police investigations and will coordinate associated actions including damage assessment.

21. If no Police involvement is required, then ISS will require the Company to undertake an initial investigation and to report the findings within 24 hours. An ISS investigator is assigned to monitor progress and assist the company in any disciplinary processes that may be involved or to lead action to recover lost materials.

22. In addition to any prosecution or disciplinary action against individuals, sanctions or penalties arising from loss or compromise of protectively marked material could include loss or suspension of List X status accompanied by removal of material and cancellation of contracts.

23. Review of procedures always runs in parallel with the disciplinary/legal process to ensure that risk of any future loss or compromise in similar circumstances is minimised. Follow up inspections are made to assure compliance with revised procedures.

24. It is noted that the US Government will consider any transfer that breaches the terms provided for in the Treaty as a breach of Arms Export Control Act (AECA) and associated International Traffic in Arms Regulations(ITAR).

25. Where there are breaches of the terms of the Treaty, the UK and US will cooperate, where relevant, on investigations, in accordance with existing law enforcement cooperation agreements and with the principle set out in the existing GSA.

Progress to Date

26. The Treaty was signed in June 2007 by Prime Minister Blair and President Bush. Since then, both Governments have been engaged in negotiating the detailed Implementation Arrangements (IAs) and are working to complete expeditiously by the end of the year.

Implementing Arrangements

27. The Implementing Arrangements describe the way the principles embodied in the Treaty will be practically achieved. The Implementing Arrangements will be contained in a supporting MOU between the UK and US.

28. UK Industry (through a Defence Industries Council working group) have been kept up to date with progress on the development of the Implementing Arrangements and their comments and concerns have been taken into account during the negotiations. Their views have proved helpful in identifying elements of the Implementing Arrangements that may have proved difficult to implement.

29. Once Implementing Arrangements are finalised, the MOD will develop appropriate processes and procedures to manage Treaty business. Wherever possible, these processes will be based on existing arrangements that are already in place and are proven to work. Industry will be fully engaged in the development of the new processes.

30. There will also be a coordinated communications programme to build awareness and understanding of the Treaty and the new Implementing Arrangements. Training on the new procedures, both within Government and Industry will also take place.

31. There will be a clearly defined mechanism to help companies and other entities that are eligible, and wish to take advantage of the Treaty, to move from their existing export licence arrangements to those envisaged under the Treaty.

Ratification in the US

32. In the US, a resolution covering the Treaty must be voted on by the Senate before it can be ratified. A two-thirds majority is required to secure the vote. A narrow window of opportunity exists for the Senate to address the Treaty before the first session of the 110th Congress comes to a close in December 2007, but that will depend on securing time in an already heavily compressed schedule.

15 November 2007

Memorandum from the Defence Industries Council

You invited evidence from industry to support the Committee's inquiry into the UK1US Defence Trade Co-operation Treaty. I am writing on behalf of the Defence Industries Council (DIC), which is the senior body which seeks to provide Government with a perspective on strategic defence industrial issues and includes the four national defence Trade Associations (the SBAC, DMA, Intellect and BNEA).

The DIC was pleased to welcome the signing of this Treaty, and believe it will help to strengthen defence co-operation between the United Kingdom and the United States.

Once ratified and implemented, the Treaty will provide the means to more effectively leverage the strengths and innovation of the UK and US defence industries to provide state-of-the-art material and support to the men and women of the Armed Forces of both nations and to contribute to their enhanced interoperability on the battlefield, now and in the future.

The DIC has consulted with its membership and the Trade Association membership to seek views on the Treaty. There appears to be wide spread support across industry for the objectives of this Treaty and a strong desire that legislatures in both countries will give early approval so it can be brought into effect. To illustrate this support, twenty major defence companies, many with strong transatlantic links, agreed to a joint statement welcoming the treaty. These companies were:

BAE Systems	MBDA
BNEA	Kembrey Wiring
Cobham	QinetiQ
DMA	Raytheon Systems Limited
EADS UK	Rockwell Collins
Finmeccanica	Rolls-Royce
GE Aviation	SBAC
General Dynamics UK	Thales UK
Intellect	Ultra Electronics
Lockhead Martin UK	VT plc

It will be important for the Treaty's success that the implementation arrangements are developed in consultation with industry. We are working closely with the Export Group for Aerospace and Defence (EGAD) and have held a number of informal discussions with the MOD to clarify the proposed approach for implementation. We will wish to ensure that these arrangements do not create an unnecessary additional administrative burden on companies, and that they are consistent with the positive spirit of the Treaty. To safeguard against any unintended consequences we hope that the Government will look to share with Industry the emerging draft implementation arrangements at the earliest possible opportunity, so that we can offer considered advice. We believe the MOD recognises the value of such an engagement.

We have arranged for a DIC led team to provide oral evidence to the Committee, which will comprise:

Ian Godden	Secretary DIC and CE SBAC
David Hayes	Chairman, EGAD
Dr Jerry McGinn	AIA and Northrop Grumman
Sandy Wilson	CEO, General Dynamics UK
Alison Wood	Group Strategic Development Director, BAE Systems

If you have any further questions in advance of the oral hearing please do not hesitate to contact me.

14 November 2007

Memorandum from British American Secutiry Information Council and Saferworld

This submission was jointly written by Dr Ian Davis and Jessica Smith (BASIC), and Helen Close and Roy Isbister (Saferworld). It also benefited greatly from advice and contributions from two colleagues in Washington DC: Matt Schroeder (Federation of American Scientists) and Rachel Stohl (Center for Defence Information).

The British American Security Information Council (BASIC)

BASIC is an independent research and advocacy organisation that analyses government policies and promotes public awareness of defence, disarmament, military strategy and nuclear policies in order to foster informed debate. BASIC has offices in London and in Washington and its governing Council includes former US ambassadors, academics and politicians. Further information is available on our website: http://www.basicint.org.

Saferworld

Saferworld is an independent non-governmental organisation that works to prevent armed violence and create safer communities in which people can lead peaceful and rewarding lives. Further information is available on our website: http://www.saferworld.org.uk. Registered charity no 104843. A company limited by guarantee no 3015948.

Executive Summary

The *UK–US Defence Trade Cooperation Treaty* is the latest in a series of attempts by the UK and US administrations and defence industries to bypass some of the requirements related to country licensing exemptions legislated by the US Congress. Unfortunately, negotiations for the Treaty have been conducted behind closed doors, without consultation with key Congressional or Parliamentary representatives or officials, and the current draft is effectively being presented to the UK Parliament and the US Senate as a *fait accompli*.

This submission considers the possible wider implications of the Treaty, with a particular focus on the quality of arms transfers control in the UK. The analysis raises a number of concerns.

Under the Treaty, the UK and US governments will establish "Approved Communities" of facilities, entities and personnel (from government and from industry). Members of the US Approved Community will then be able to "Export" articles, services and related technical data on the US Munitions List (other than certain as-yet-unspecified items that may be exempted) to members of the UK Approved Community free of export licence procedures, if destined for:

- an end-use by the US Government;
- specified UK–US collaborative military and counter-terrorism activities;
- specified UK Government end-uses; and
- specified UK–US cooperative projects.

UK exports which have no origin within the terms of this Treaty (ie that do not contain any goods or technology first "Exported" without licence by the US under the Treaty) will continue to be controlled according to the existing UK export licensing regime.

Asymmetries within the Treaty

In a number of areas the Treaty restricts UK freedom of action more than that of the US, and appears to privilege US interests over those of the UK. For example, the US will have effective discretion over which items are covered by the Treaty, and the US will be permitted to monitor the end-use of weapons developed under the Treaty whereas the UK will not. Serious consideration should be given to whether such an uneven arrangement should be set in the stone of a bilateral Treaty.

Impact on UK independent procurement, export and deployment decisions

The Treaty is intended *inter alia* to encourage more joint UK–US procurement projects and greater interoperability. Given that the UK is inevitably the junior partner in this context, the Treaty may well have the consequence of eroding UK operational sovereignty. It may also be the case that reducing the bureaucratic burden on US companies exporting to the UK may disadvantage the UK defence industrial base relative to the US.

Impact on UK arms transfer controls

There are substantive differences between US and UK arms transfer controls, both at the level of bureaucracy and in terms of policy on arms transfers to specific destinations. The UK is committed to privileging concerns about human rights and regional peace and security over any other considerations; the US has more freedom of action to prioritise national security and foreign policy interests. And there are occasions where a markedly different policy operates at the level of recipient country. For example, the US appears far more likely to award licences for transfers to Colombia and Israel than does the UK. Conversely, the UK operates a more liberal policy regarding strategic exports to China and Iran than does the US.

Given the asymmetrical nature of the Treaty and the power imbalance that exists between the two countries (referred to above), the prospect exists that over time and in those cases where the Treaty is relevant, UK arms transfer control principles and objectives may be subordinated to those of the US.

Transparency and accountability

It seems that the impact of the Treaty on public and legislative oversight of arms transfers in both the UK and the US is likely to be negative. Any reverse in recent gains in transparency and accountability in this area would be most unfortunate, especially coming from two of the world's leaders in transparency and in arms transfer control outreach.

The principle of case-by-case licensing

The principle that national governments are responsible for authorising all transfers of strategic goods from their territory on a case-by-case basis underpins the arms transfer control regimes in the UK and US, and both countries have successfully promoted this with other states. But at the same time, both countries have introduced or are considering, unilaterally or with other states, exceptions to these approaches. This Treaty is one example of such an exception. The UK and US need to be careful that they do not through their actions undermine the progress that has been made internationally.

The UK's relationship with the EU

It is not yet clear what implications this Treaty might have for the UK's relations in this area with the EU and its Member States. The EU Code of Conduct on Arms Exports can be seen as the start point for the UK's international obligations on arms transfers, however the UK is demonstrating a reluctance to deal with its EU partners on a par with its potential obligations under this Treaty. The UK has responded to proposals by the European Commission to remove licensing requirements for intra-Community transfers of defence products by suggesting instead that the EU "concentrate efforts on improving the present approach to export control".[1]

[1] "United Kingdom: Response to the consultation paper on the intracommunity circulation of products for the defence of member states", http://ec.europa.eu/enterprise/regulation/inst_sp/docs/consult_transfer/doc_uk.pdf.

Introduction

1.1 The *UK–US Defence Trade Cooperation Treaty* is the latest in a series of attempts by the UK and US administrations and defence industries to bypass some of the requirements related to country licensing exemptions legislated by the US Congress (see Section 38(j) of the US Arms Export Control Act). The two governments are keen to allow controlled goods and technology to move more freely between the two countries and facilitate collaboration on joint defence projects, despite previous proposals being stymied by the US Congress.

1.2 It is important to note that this Treaty is aimed primarily at liberalising the US regime for certain exports to the UK. Licensing procedures for UK exports to the US would in large part be a continuation of current practice, whereby many of the transfers of the controlled goods and technology to the US are already authorised under open or general licences.[2]

1.3 The Defence Committee, which has previously made clear its support for the US streamlining its process for exporting strategic items to the UK[3], has set itself the task of considering "whether the Treaty will be effective in removing barriers to defence trade and technology transfer, and in improving cooperation between the US and UK Armed Forces".[4] However it is critical that ***all*** the implications of the Treaty are explored, not least its possible impact on the efficacy of arms transfer control in both countries. This enquiry by the Defence Committee represents the first opportunity to examine these implications. Negotiations for the Treaty have been conducted behind closed doors, without consultation with key Congressional or Parliamentary representatives or officials, and is being presented to the UK Parliament and the US Senate as a *fait accompli*.

1.4 Unfortunately, analysis of the Treaty is made more difficult due to the absence to date of any information regarding the Implementing Arrangements, which will be critical to its operation. Nevertheless, this submission does consider the possible wider implications of the Treaty, with a particular focus on the quality of arms transfers control in the UK. The analysis herein raises concerns that the Treaty:

- may establish UK interests as subordinate to those of the US;
- may place asymmetrical limitations on the UK's freedom of action;
- could undermine the ability of the UK Government to make independent procurement, export and deployment decisions;
- risks weakening UK arms transfer control policy to certain countries;
- may undermine transparency and accountability (in both the UK and the US), thus complicating detection of misuse and diversion and hindering compliance and law enforcement efforts; and
- appears to be consistent with several other initiatives and developments that, if contributing to an ongoing trend, have the potential to compromise the valuable principles of national decision-making and case-by-case licensing in the UK, the US and elsewhere.

Background and Scope of the Treaty

2.1 The US export control system, through its International Traffic in Arms Regulations (ITAR), includes bureaucratic obligations that defence companies have long claimed are unduly onerous. As one way of reducing this burden, industry and successive administrations have looked at exempting close allies from the ITAR. Such exemptions have had a difficult history. The longstanding exemption applied to Canada has been highly controversial, and has also led industry to press for its extension to other close allies. In 2002, the US Government Accountability Office reported that countries prohibited from receiving US defence articles had acquired them via Canada, and that, as a result, the State Department had shortened the list of items that could be shipped licence-free.[5]

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[2] Open Individual Export Licences (OIELs) allow a specified exporter to make multiple shipments of specified items to specified destinations and/or consignees and are usually valid for five years. Open General Export Licences (OGELs), provided the shipment and destinations are eligible and the conditions are met, allow the export or trade of unlimited quantities and values of specified goods by any company and remain in force until revoked.

[3] The failure to secure an ITAR waiver for UK-bound technology transfers led the UK Defence Committee to warn that there was a "real risk that the close relationship between the UK and the US could be harmed" (ITAR Waiver Defence Committee Comment, Defence Committee, 24 November 2005, http://www.parliament.uk/parliamentary_committees/defence_committee/def051124_no_09.cfm).

[4] Defence Committee Press Release, 15 October 2007, http://www.fas.org/asmp/campaigns/control.html.

[5] "Defense trade: lessons to be learned from the country export exemption", Report to the subcommittee on readiness and management support, committee on armed services, US Senate, *Government Accountability Office*, GAO-02-63, March 2002, http://fas.org/asmp/resources/govern/gao02-63.pdf. The report documented 19 criminal investigations and seizure cases regarding unlawful re-export of US goods transferred to Canada under the exemptions. This included the diversion of controlled goods to China, Iran and Pakistan. For example, a US company transferred communication equipment from the US to its Canadian facility under the exemption and then re-exported the equipment to Pakistan without US Government approval.

2.2 Nonetheless, licence-free exports to "governments of treaty allies and qualified companies within those countries that have export controls comparable in scope and effectiveness to those of the US" had already been endorsed by the Clinton administration's Defence Trade Security Initiative of 2000, from which began several years of negotiations with the UK and Australia to secure exemptions akin to the Canadian model.

2.3 Despite the failure of the UK and Australia to meet all the criteria in US law, the Bush administration sought "legislative relief" from the remaining requirements with the support of the Senate Foreign Affairs Committee. However, the House Foreign Relations and Armed Services Committee blocked this compromise. At least partially in response to Congressional opposition, the Bush administration abandoned the executive agreements and repackaged the exemptions in the form of a treaty. As a treaty needs only Senate—and not House of Representatives—approval, this approach can be seen as an innovative way of avoiding that part of the legislature which is most stalwart in its defence of export controls and easing this Treaty's path to ratification. Its negotiation and signing took place without consultation with legislative committees or key senators.

2.4 Under the Treaty, both governments will establish "Approved Communities" of facilities, entities and personnel (from government and from industry). Members of the US Approved Community will then be able to "Export" articles, services and related technical data on the US Munitions List (USML) (other than certain as-yet-unspecified items that may be exempted) to members of the UK Approved Community free of export licence procedures, if destined for:

(a) an end-use by the US government;

(b) specified UK–US collaborative military and counter-terrorism activities;

(c) specified UK government end-uses; and

(d) specified UK–US cooperative projects.

2.5 Articles covered by the Treaty may be "Transferred" within the approved communities of both countries without prior authorisation. Note that as yet no details have been published as to the process for determining who or what shall be admitted into the Approved Communities. Neither has any concrete indication been given as to the size of these Approved Communities, however, the US Assistant Secretary of State John Rood predicted that for the US it would be of a sufficient size to eliminate "a vast majority" of the 13,000 export licences issued for US exports to the UK in 2005–06.[6] Any re-export to a third country would require permission of the original exporting country. Any unauthorised transfer outside the Approved Community would be subject to prosecution. Goods exported through the US Foreign Military Sales Program and that can have a civilian or military purpose ("dual-use" goods) and are not mentioned in the USML are not covered by this Treaty and would still require an export licence.

2.6 Meanwhile, UK exports which have no origin within the terms of this Treaty (ie that do not contain any goods or technology first "Exported" without licence by the US under the Treaty) continue to be controlled according to the existing UK export licensing regime.

2.7 As listed above, the Treaty specifies in general terms how the weapons developed under the Treaty can be deployed, though this will apparently be further developed in the Implementing Arrangements. Note that while the Treaty places no restrictions on US end-use, the US would have veto rights over UK end-use of goods subject to the Treaty (for more on this see next section).

Asymmetries within the Treaty

3.1 While this new arrangement would certainly go some way toward simplifying the licensing requirements between the UK and the US, there would still exist marked differences, with the UK's freedom of action considerably more limited than that of the United US. Codifying these differences by Treaty would have the unfortunate consequence of institutionalising them.

3.2 There are several instances in the Treaty that require the UK to consult the US on UK matters but do not require the US to reciprocate. These include:

— the UK ***and the US*** collectively decide the makeup of the UK Approved Community (and greater restrictions are placed on the make-up of the UK Approved Community than on the US Approved Community);

— the UK is to consult the US if it wants to export outside the Community; and

— the UK must consult the US before any UK-only deployment of weapons developed under the Treaty.

3.3 In addition:

[6] U.S., Britain Draft Defense Trade Treaty, *DefenceNews.com*, 21 June 2007, http://www.defensenews.com/story.php?F=2851478&C=america.

— the Treaty continues to oblige the UK to transfer items falling under its scope in accordance with the UK's existing open licensing structure, which is more liberal than those proposed for US "Exports" under the Treaty;[7]

— the US is permitted to monitor the end-use of weapons developed under the Treaty whereas the UK is not;

— as it is based on the USML, the US decides which goods are to be covered by the Treaty and has the power to amend this list; and

— reference is made to the application of the UK Official Secrets Act, whereas there is no corresponding reference with regard to the US.

3.4 The clear implication of all these asymmetries is that UK interests are subordinate to those of the US. Serious consideration should be given to whether such an uneven arrangement should be set in the stone of a bilateral Treaty.

Possible Impact on UK Independent Procurement, Export and Deployment Decisions

4.1 Recent UK procurement decisions such as the two new aircraft carriers and the renewal of the Trident nuclear weapons system, are reflective of an ongoing trend in UK defence policy towards global power projection.[8] Concurrently, UK armed forces are operating side-by-side with the US in Iraq and Afghanistan, and the need for greater interoperability with US forces has become apparent. As this Treaty is intended to encourage more joint UK–US procurement projects and greater interoperability, UK operational sovereignty may well be eroded. No safeguards against this risk are presented in the Treaty.

4.2 UK defence exports have been highly subsidised by the taxpayer through the Defence Export Services Organisation (DESO), Export Credit Guarantees and other governmental promotional activities. The distorting effect of government-sponsored exports on UK defence procurement is well documented.[9] However, the proposed closure of DESO may dilute this form of defence industry influence over government policy, in which case this Treaty has the potential to establish an even greater dependency of British defence firms on the preferential procurement of the UK and US governments.

4.3 Paradoxically, perhaps, the Treaty may even place some British defence companies at a competitive disadvantage. Current arrangements whereby the UK can export to the US licence-free, but imports are subject to ITAR, actually favours British defence companies. While it may be beneficial for UK industry that the US market is opened up, this benefit will be massively offset by the hugely increased competitiveness of US defence firms in the UK. Without government guarantees, the UK defence industrial base may find itself severely disadvantaged by this agreement.

4.4 The US government is also likely to demand increased access to information about UK arms transfers. Some reports reveal that the US will create an enhanced Blue Lantern end-use monitoring program just for UK exports and will spot-check a percentage of weapons transfers to make sure they are where they are intended and being used according to the stated purpose. If the Treaty is ratified in the United States, such enhanced end-use monitoring will be critical to detecting and preventing diversions.

4.5 In addition, the ongoing US Department of Justice investigation into alleged bribery payments made by BAE Systems to a member of the Saudi royal family is indicative of the level of scrutiny that may be demanded.

Impact on UK Arms Transfer Controls

5.1 There are substantive differences between UK and US arms transfer controls, both at the level of the system bureaucracy and in terms of policy on arms transfers to specific destinations. The UK is committed through the Consolidated EU and National Arms Export Licensing Criteria to apply to all its licensing decisions a set of universally standards.[10] These include factors such as human rights, the internal situation in the recipient country, regional peace and security and sustainable development. While these criteria do provide for the UK Government to "take into account the potential effect of the proposed export on the UK's defence and security interests"[11], it is explicitly stated that "this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability."[12] Furthermore, there

[7] These "blanket" or open authorisations account for the majority of current transfers from the UK to the US. They are more liberal than the proposed system for US Exports in that they tend to place no limits on end-use or end-user within the destination country (in this case the US).

[8] For a more detailed discussion, see Paul Dunne, Samuel Perlo-Freeman and Paul Ingram, *The Real Cost Behind Trident Replacement and the Carriers*, BASIC Research Report 2007. 3 October 2007, http://www.basicint.org/nuclear/beyondtrident/cost.pdf.

[9] See, for example, our discussion of this in *Escaping the Subsidy Trap*, published by BASIC, Oxford Research Group and Saferworld, September 2004, http://www.basicint.org/pubs/subsidy.pdf.

[10] For the full text of the Consolidated EU and National Arms Export Licensing Criteria see UK Strategic Export Controls: annual report 2006, p72–74, http://www.fco.gov.uk/Files/kfile/ANNUAL%20REPORT%20POLICY%20TEXT.pdf.

[11] The Consolidated EU and National Arms Export Licensing Criteria, Criterion 5.

[12] Ibid.

is also explicit reference to the priority of all the criteria over consideration of national interests such as "economic, financial and commercial interests . . . potential effect[s] on any collaborative defence production or procurement project . . . [or] the protection of the UK's essential strategic industrial base."[13]

5.2 The US, too, has a range of criteria which it applies in the licensing decision process, and there is some similarity between these and the criteria used by the UK. Factors to be taken into account include counter-proliferation, human rights, counter-terrorism. However these essentially restrictive-type criteria are not formally prioritised over more permissive rationale for arms transfers such as supporting foreign policy, national security and the US defence industrial balance.

5.3 This stronger focus in the US on foreign policy and national interest (as rationale for both approving and refusing transfers) appears to be reflected in the general US policy with regard to exports authorised to allies in the "war on terror". In a number of instances there appears to have been a shift in policy post-9/11, whereby some strategic transfers that might previously have been regarded as inappropriate due to for example human rights or anti-proliferation concerns related to the recipient state are now viewed differently. A prominent example is Pakistan, which was prohibited from receiving most US security assistance prior to the 9/11 attacks. Now it is one of the largest recipients of US military aid, including arms transfers.

5.4 In addition to this philosophical difference between the arms transfer control regimes in the two countries, it would seem that there are occasions where a markedly different policy operates at the level of recipient country. For example, the US appears far more likely to award licences for transfers to Colombia and Israel than does the UK. Conversely, the UK operates a more liberal policy regarding strategic exports to China and Iran than does the US.

5.5 It is anticipated that the Treaty would have little initial impact on UK arms transfer policy or practice. Nevertheless, given the clearly asymmetrical nature of the Treaty and the extra limitations it places on the UK's freedom of action, the prospect exists that over time and in those cases where the Treaty is relevant, UK arms transfer control principles and objectives may be subordinated to those of the US. This should be resisted, and safeguards should be put in place to ensure it does not happen.

Transparency and Accountability

6.1 There is a serious risk that the Treaty will have a negative impact on the transparency and accountability in the US. The State Department currently publishes reports on controlled items licensed for commercial export to the UK. These reports are often the only source of data on such exports for Congress and the public. It is unclear if items exported under the exemptions would be included in the current annual reports and, if not, whether the State Department is planning a similar report for the exempt items. While this potential reduction in US transparency may not be of immediate concern to the UK Defence Committee, it is significant given that the UK Government has championed greater transparency in its negotiation of multilateral arms transfer controls (eg in the EU Code of Conduct and the Arms Trade Treaty).

6.2 With regard, however, to the current level of transparency regarding UK arms transfers to the US, this is poor, as most of these are authorised under open licences. The nature of open and especially general licences is such that very little meaningful information is currently provided (they typically permit multiple deliveries of a wide range of items to listed recipient countries, without limits on quantities, values or end-users). However transparency will suffer even further for those items "Re-exported" or "Re-transferred" licence-free to the US under the Treaty. Moreover, given that at the same time the UK Government has been urged by the Quadripartite Committee to improve the level of reporting provided in connection with open licences, this move to further reduce publicly-available information is unhelpful.[14] The UK, like the US, is widely regarded as being among the leaders in terms of promoting a more transparent trade, further underlining the unwelcome message this Treaty sends to other states.

6.3 In summary it would seem that the impact of the Treaty on public and legislative oversight of arms transfers is likely to be negative, more so in the US than in the UK. In recent years progress has been made in legitimising the right in this area of the electorate to know what the Government is doing in its name, and levels of transparency have increased. Any moves in the opposite direction are most unfortunate, especially when they come from two of the world's leaders in transparency and in arms transfer control outreach.

The Principle of Case-by-case Licensing

7.1 The principle that national governments are responsible for authorising all transfers of strategic goods from their territory on a case-by-case basis is now well established, with the UK and US both promoting this approach internationally. At the same time, states, including the UK and the US, have been devising strategies intended to minimise the licensing workload without compromising the quality of decision-making, or in other terms to concentrate effort on those prospective transfers that are most in need

[13] Ibid., Other Factors.
[14] The Quadripartite Committee, *Strategic Export Controls: 2007 review*, p 35, para 42, http://www.publications.parliament.uk/pa/cm200506/cmselect/cmquad/873/873.pdf.

of investigation, eg by using a single licence to cover multiple transfers (providing certain conditions are met). The UK's open licensing system has been devised for this purpose, and other EU member states, eg Germany, are looking at introducing their own version of open licensing.

7.2 The US has, as previously mentioned, for a long time granted Canada an ITAR waiver, and has more recently introduced, through Global Project Authorisations, streamlined licensing arrangements for foreign contractors involved in the Joint Strike Fighter programme.

7.3 Other licensing practices or recent developments that have involved or propose a shift from either the principle of national control or of case-by-case licensing include:

- The Framework Agreement Concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry (2000), whereby the six largest arms producers and exporters in the EU agreed to streamline licensing requirements for selected joint-production arrangements.[15] Under the Agreement, states can issue a single Global Project Licence to cover all transfers made among the participating companies in a joint-production deal involving companies operating with their joint jurisdiction.
- At the EU level, the Community General Export Authorisation, which allows for multiple transfers of specified dual-use items and technology to listed destinations outside the EU by any exporter providing certain conditions are met.
- A European Commission proposal on intra-community trade in defence products, which would liberalise licensing requirements for EU military-list goods being transferred within the borders of the EU.[16]
- A European Commission proposal to recast the European Council regulation setting up a Community regime for the control of exports of dual-use items and technology. This would liberalise licensing requirements for EU dual-use goods being transferred within the borders of the EU.[17]

7.4 The proposed Treaty is another example of this type of arrangement. While any single example may not give concern regarding the abovementioned principles of national responsibility and case-by-case licensing, should this trend continue, we may reach the point where these could be seen as coming under some level of threat. Indeed, it would be unwelcome if certain other states took this lead from the UK, the US and the EU and began to develop similar procedures. Any such moves must therefore be very carefully thought through.

The UK's Relationship with the EU

8.1 One of the implications for the proposed Treaty that should also be taken into consideration is the possible repercussions for the UK's relationship with its EU partners. Recent developments within the EU indicate new trends towards an easing of the current licensing requirements between the Member States and greater development of European defence capabilities and joint projects.

8.2 Proposals by the EU Commission to remove licensing requirements for intra-Community transfers for strategic products and technologies, alongside the work of the European Defence Agency to encourage greater EU competition for the defence procurement market and through joint research and technology programmes all indicate an easing of the boundaries between Member States. However the UK has voiced its concerns over relaxing licensing requirements for Member States stating "in the view of the UK it would be better to concentrate efforts on improving the present approach to export control".[18] This is in marked contrast to the UK's decision to favour the US with more relaxed licensing controls.

Conclusions and Recommendations

9.1 BASIC and Saferworld support the idea of improving arms transfer procedures in order to maximise the efficiency of the process. However, we question whether the system proposed in this Treaty, ie the introduction of exemptions, is most appropriate way to achieve this efficiency. Export controls should not be bypassed to simply reduce the workload of government; rather resources should be spent on ensuring that the export control system works as efficiently as possible to maximise its benefits for UK and US collective security. Improving State Department and BERR licensing processes and increasing resources, including licensing personnel, may be a better way to address licensing delays and other inefficiencies.

[15] The six countries are France, Germany, Italy, Spain, Sweden and the UK. A copy of the Framework Agreement is available at http://www.fco.gov.uk/Files/kfile/33.01%20Framework%20Agreement%20between%20the%20French%20Republic,1.pdf.

[16] Details regarding the proposal are available at http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm. Saferworld has produced a submission has part of the consultation on this proposal, available at http://www.saferworld.org.uk/publications.php?id=201.

[17] Details regarding the proposal are available at http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/conf260107_en.htm. Saferworld has produced a submission has part of the consultation on this proposal, available at http://www.saferworld.org.uk/publications.php?id=285.

[18] "United Kingdom: Response to the consultation paper on the intracommunity circulation of products for the defence of member states", http://ec.europa.eu/enterprise/regulation/inst_sp/docs/consult_transfer/doc_uk.pdf.

9.2 We also have doubts about the implications of entering into such a bilateral Treaty with the US where there exists such an unequal relationship in terms of defence and defence equipment supply issues. The specific provisions of the Treaty privilege US interests and power over that of the UK, and there must be questions about the impact this will have on the UK's ability to maintain an independent course on some aspects of arms production, procurement and transfer policy and practice. The Treaty may also complicate the relationship between the UK and its European partners and the implementation of the EU Code of Conduct on Arms Exports.

9.3 The Treaty is also likely to have a negative impact on transparency, oversight and accountability, unless specific steps are taken to ensure that information flows—which are a useful side-effect of licensing processes—are maintained, and then communicated to the elected representatives and electorates in both states. Both the UK and US Governments are formally committed to promote transparency and democratic oversight with respect to arms transfers. We urge the two governments to address this in the as-yet-unpublished Implementing Arrangements to the Treaty.

9.4 Finally, the Treaty is but one of several current initiatives to move away from making decisions about arms transfers on a case-by-case basis by the relevant national authority. It would be unfortunate if this Treaty should one day come to be seen as a step on the road to undermining this valuable, internationally-accepted principle.

9.5 If the Committee approves in principle the removal to some of the national barriers to UK–US trade in strategic items, then the Implementing Agreements to the Treaty must be sufficiently robust to meet that goal without compromising global security and undermining arms export controls and international transparency measures. Thus, the Implementing Agreements will need to be strict, specific, and subject to approval and further revision only with Senate/Parliamentary approval.

15 November 2007

Memorandum from Export Group for Aerospace & Defence (EGAD)

The Export Group for Aerospace & Defence (EGAD) welcomes the Treaty, and its associated aim of improving interoperability between the Armed Forces of our two countries. This aim is entirely consistent with meeting operational needs in current and future conflicts, and in reducing the risks which are created or exacerbated by the lack of true interoperability. We also welcome recognition of the role which Industry has, necessarily, to play in enabling that interoperability.

We look forward to seeing the detailed implementing arrangements, and providing input to those areas which may be of concern to Industry, such as limitations on the scope of the Treaty and the regulatory interface between US and UK/EU legal requirements. This is a very significant step forward for the Armed Forces. Industry, on both sides of the Atlantic, must do everything possible to ensure that we are in a position to provide the essential support to both nations' Armed Forces in a manner which is much more streamlined than is currently the case, without materially diminishing the effectiveness of the counter-proliferation controls on which we all depend.

15 November 2007

Memorandum from Mr Austin Crick

I write to submit this letter in opposition to the "UK–US Defense Trade Cooperation Treaty", published 24 September 2007, currently before the Defence Committee for Inquiry; and to explain my reasons for doing so.

Firstly, I would like to make it clear that is I am a "private citizen"; am not representing any institution, company, lobbying organisation, or government; do not have any other interest other than the "British National Interest" in mind; and write in my capacity as a Political Scientist, one who takes a great interest in Defence and International Relations.

It is within this context, and for these reasons, that I make the following points in opposition to the signing of this Treaty, in its present form; and urge the Committee to reject or make amendment to the Treaty.

In summary of my objection to the Treaty, I make the following points.

The Treaty is:

- A **"one-way" unrestricted transfer** of United Kingdom defence technology, know-how, and personnel to the US and its allies (Israel): "blanket or open authorization" (Article 8, (2)).
- Unequal, unfair, and **totally one-sided** in favour of USA interests, against those of the United Kingdom.
- A **potential means** by which UK defence technology or secrets may be stolen, or sold without UK government approval, or in violation of United Kingdom and International Law.

— Not in the **National Interest** of the United Kingdom of Great Britain and Northern Ireland.

In putting forward my objections, I submit to the Committee that in all of our nations Agreements and Treaties, with other nations, the principle of equity, fairness, and respect; and the protection of "national advantage", and the advancement and protection of the "national interest", should be the heart and basis of any such agreement: the upholding of "National Sovereignty"; "National Self-determination" and an "Independence Military"; the protection of "Intellectual Property Right"; the maintenance of "Technological and Military Superiority"; and "Sovereign Security".

Fundamental to achieving and maintaining these things, is the principle of equity, fairness, and respect, and "National Interest", governing the establishment of every Treaty. This treaty fails to meet all of these criteria, and I will speak plainly, and briefly, with reference to the Treaty itself, as to why I make this assertion:

1. The Treaty is **totally one-sided** and absolutely not in the United Kingdom "National Interest". It contains the kind of terms and conditions, a victor nation, would give to a nation it has defeated in war; or those handed out to Third World dictatorships, and corrupt regimes. Providing for unrestricted access to their "resources", offing them little or nothing in return.
2. This Treaty provides for the transfer of UK defence technology, to countries where such transfers would not be in the United Kingdom **National Interest**. The "Approved Community" and "movement of defense articles for the end-use of the United States Government without the requirement for individual export licensing" [see Preamble] and "Re-export" and "Retransfer" [see Definitions] its speak of means Israel. Israel is notorious for selling on "restricted" USA military technology, and technology secrets, in violation of their treaty obligations, to that country. If this Treaty is passed, and UK defence technology is pass on to Israel (as is the very strong probability), the UK defence industry will soon see "knock-off" UK designed defence technology (resulting from their transfer to Israel) on the "black market" and in the hands of potential adversaries. Israel gets away with this practise, in the US, because of the Israeli Lobby. The damage done to UK armed forces (army, navy, air force) in the field, and the UK Defence Industrial base, will be devastations. This is a threat to **UK National Security**!

— 3.This Treaty provides a comprehensive framework for Exports and Transfers, without a license or other written authorization, of Defense Articles, whether classified or not, to the extent that such Exports and Transfers are in support of the activities identified in Article 3(1)." [see Article 2] ie the purpose of the Treaty is the transfer of United Kingdom defence technology, know-how, and personnel to the US and its allies (Israel). Exports and Transfers "in support of the activities identified in Article 3(1)". Being "security and defense research, development, production, and support programs that are{identified pursuant to the Implementing Arrangements" [see Article 3, (b)].

4. Although the Treaty contains the provision that "(4) This Treaty shall not prevent the issuance of a defense export license or other authorization should an entity eligible to Export or Transfer Defense Articles under this Treaty seek to obtain an individual defense export license or other authorization for a particular transaction, in which case the terms of any such license or authorization granted shall apply instead of the terms of this Treaty." [see Article 3, (4)]; and the provision that "(1) All Re-transfers or Re-exports of Defense Articles shall require authorization by Her Majesty's Government. In reviewing requests for such authorization, Her Majesty's Government shall, with certain exceptions that shall be mutually agreed and identified in the Implementing Arrangements (such as the operational use of a Defense Article in direct support of deployed United Kingdom Armed Forces), require supporting documentation that includes United States Government approval of the proposed Re-transfer or Re export. The procedures for obtaining United States Government approval and Her Majesty's Government authorization shall be identified in the Implementing Arrangements." [see Article 9, (1)]. **All of this is negated by Article 8 (2)**: "(2) All Defense Articles Exported pursuant to this Treaty to be Transferred in accordance with Her Majesty's Government's blanket or open authorizations." [see Article 8, (2)]. In effect allowing the USA to transfer or sell United Kingdom defence technology to whomever they like (ie Israel).
5. Article 4 United Kingdom Community (ie UK Defence Community) provides for **full USA open access to UK facilities** (secret research facilities, and military bases), personnel (army, navy, air force, security services), non-governmental entities and facilities (universities, and research institutes), and employees of UK defence industries [see Article 4]. In reciprocation Article 5 United States Community (ie USA Defence Community) **only provides for limited UK access** to USA government departments {and agencies, and their personnel (USA Civil Servants), and non-governmental entities and facilities (universities, and research institutes), including their employees [Article 5]. No UK access to USA facilities (secret research facilities, and military bases), personnel (army, navy, air force, security services). **A completely one-sided arrangement that provides the USA with completely open access to the UK Defence Industrial base; and only "limited" and highly "restricted" access to the USA Defence Industrial base, by the UK**.
6. To emphasise the inequality of the "Imperial relationship", the United Kingdom must deal with the USA though the Department of State (their Foreign Office), not the Department of Defence

(DoD), as a colonial dependency would with its Imperial master. The USA on the other hand can deal with the United Kingdom Ministry of Defence, without restriction. This arrangement has the **advantage for the USA** that, if, or most likely when, they breach these unequal terms, a forest of bureaucracy can be placed in the way of the UK government, before they have to do anything to resolve it (close the gate after the horse—ie UK defence technology secrets—have bolted over the hills and far away!) [see Article 15, (a) and (b)].

7. Article 8 "Dispute Resolution" ensures that the **UK government has absolutely no legal redress whatsoever** if UK defence technology or secrets are stolen or sold without UK government approval: "Any disputes between the Parties arising out of or in connection with this Treaty shall be resolved through consultations between the Parties and shall not be referred to any court, tribunal, or third party." [see Article 18].

8. Unusual for a treaty, this Treaty, has no time limitation on its duration, or any prescribed period of review: "(1) This Treaty shall, subject to paragraph (2), be of unlimited duration." [see Article 21, (1)]. Further any withdrawal by the UK from the Treaty due to National Security or "extraordinary events" will still allow the USA full and open access to UK defence technology, secrets, facilities, and personnel for a period of six months (after they have been notified of such a withdrawal from the Treaty): "The Parties shall commence consultation within 30 days of the provision of the notice of intention to withdraw with the aim of allowing the continuation of this Treaty. If, after such consultation, the notifying Party does not agree to the continuation of this Treaty, the withdrawal of the notifying Party shall take effect upon the expiry of six months from the provision of the notice of intention to withdraw". [see Article 21, (2)]. In a "worst case scenario", this would be more than enough time to continue abuses, if UK defence technology or secrets are stolen or sold without UK government approval; with the UK government impotent, during that six month period.

Obviously the whole document was written by the United States of America, in and for their "national interest"; none of it is in the UK "National Interest"; the interest of UK Defence Industries; or the British people.

The British people have little enough belief in the United Kingdom Parliament to defend, protect, and further, the British "National Interest" against the abuse of our sovereignty, dignity, material resources, and armed forces. If this Treaty is allowed to pass the Defence Committee, in its present form, without rejection or without fundamental amendment: the consequence for United Kingdom Defence; the UK Defence Industries; United Kingdom "Independence and Sovereignty"; and the confidence and trust of the British people, in the Defence Committee, Parliament, and politics in general, will be harmful if not dire.

I strongly urge the Defence Committee to reject the "UK–US Defense Trade Cooperation Treaty", for these reasons.

14 November 2007

Memorandum from Northrop Grumman UK

Executive Summary

1. This submission records the views of Northrop Grumman UK on the Treaty, its implementing arrangements and its effectiveness in removing barriers to defence trade and technology transfer, and improving cooperation between the US and UK Armed Forces.

2. Northrop Grumman has a long standing relationship with and presence in the UK dating back more than 20-years and today the UK remains a critically important market for the company as a supplier base and a source for technology partners.

3. In January 2006 the chairman and chief executive officer of Northrop Grumman Corporation, Ron Sugar, launched the company's corporate office in London to consolidate its UK business development and customer interface activities and to grow its business both in the UK and in other international markets. His commitment to furthering U.S.–UK defence trade cooperation during his tenure as chairman of the board of governors of the Aerospace Industries Association (AIA) and the company's response to the priorities articulated in the UK Defence Industrial Strategy led to the appointment in March 2006 of a U.S.-based Northrop Grumman executive to work to help foster the improvement of U.S.–UK technology sharing. This executive has worked closely with U.S. and UK officials since that time and is now leading the U.S. industry effort on behalf of the AIA in support of the U.S.–UK Defence Trade Cooperation Treaty. Representing the AIA, he will give evidence to the House of Commons Defence Select Committee on 21 November 2007.

4. Northrop Grumman strongly recommends that the UK Government endorses the Defence Trade Cooperation Treaty. Northrop Grumman recommends that UK and U.S. officials work to make the Treaty regime as user-friendly as possible so that U.S. and UK companies can employ its provisions to greatest effect and for the maximum benefit of U.S. and UK security and defence forces in the months and years to come.

Background

5. Northrop Grumman is a global defence and technology company and provides products, services and solutions in systems integration, defence electronics, information technology, advanced aircraft, shipbuilding, and space technology. With headquarters in Los Angeles, California, the company has annual revenues in excess of $30billion (£15billion) and employs more than 120,000 people in 25 countries serving international military, government and commercial customers.

6. Northrop Grumman has a long standing relationship with and presence in the UK dating back more than 20-years. The UK remains a critically important market for the company as a supplier base and a source for technology partners. Northrop Grumman's annual spend in the defence and aerospace industry supports thousands of jobs around the UK generating intellectual property and facilitating exports.

7. In January 2006, Northrop Grumman consolidated its UK business development and customer interface activities establishing a new corporate office in London to best serve its UK customer base and to grow its business both in the UK and other international markets. In November 2006, the company created the UK-registered company entity Northrop Grumman UK Ltd to facilitate the growth and expansion of Northrop Grumman activities in the UK defence, security, civil government and commercial sectors.

8. There are more than 700 Northrop Grumman employees in locations across the UK at Chester, Coventry, Fareham, London, New Malden, Peterborough, RAF Waddington and Solihull, providing avionics, communications, electronic warfare systems, marine navigation systems, C4I and mission planning, robotics, IT systems and software development. Northrop Grumman has responded to the challenges set to industry in the December 2005 Defence Industrial Strategy (DIS) in numerous ways during the past two years. This has included the investment in new technology facilities: Chester, providing specialist technical support and repair for its directed infrared counter-measures (DIRCM) systems installed on RAF front-line aircraft; Fareham, for the development and demonstration of command and control technology and systems for military and civil applications; and Peterborough, providing technical support and repair for its electronic warfare automatic test equipment.

Removing Barriers to Defence Trade and Technology Transfer

9. Northrop Grumman UK welcomes this Treaty. It is an important step in strengthening bilateral defence co-operation between two close allies and defence partners. The treaty would reduce the barriers to the exchange of defence goods, services and information-sharing, which will speed response to operational requirements. The U.S.-UK Defence Trade Cooperation Treaty could go a long way towards fundamentally reshaping U.S.–UK security and military collaboration in the coming years.

10. Any agreement should first and foremost protect what needs to be protected. It is imperative to protect sensitive technologies and to prevent defence equipment from falling into the hands of state or non-state actors inimically opposed to U.S. and UK interests. Discussions on the negotiations of the Treaty Implementing Arrangements have made it very clear that the governments are concerned with ensuring that Treaty collaboration is properly limited to a "trusted community" of U.S. and the UK companies and individuals and that stringent criminal penalties will be imposed for any violation.

11. The Treaty is correctly focused on increasing the capabilities of U.S. and UK forces. It would put bilateral defence trade definitively on a par with our close intelligence and nuclear relationships. Where the U.S. and the UK currently share very sensitive information in the areas of signals intelligence and nuclear weapons, this relationship would now be extended to many aspects of the defence industrial relationship. This would enable real burden-sharing by building stronger, more interoperable partners. The UK, for instance, has technology and experience in defeating improvised explosive devices (IEDs) that can assist in that critical area. U.S. technology, on the other hand, will help the UK conduct operations in concert with U.S. forces in the future.

12. Any treaty regime should enable true collaboration—going in both directions—across the Atlantic. A partnership between designated U.S. and UK entities, for example, would create more opportunities for U.S. companies to work together with our UK partners (as well as with UK branches of our own companies) to address rapidly some of our toughest common problems, such as defeating IEDs in Iraq and enabling NATO operations in Afghanistan. For example, the Treaty will enable Northrop Grumman to better support programmes such as DIRCM and the ground forces location and tracking system, Coalition Force Tracker. These programmes, and many others, could become much more responsive to the needs of U.S. and UK soldiers in a Treaty regime. As this makes clear, a Treaty regime will lead to more innovation and to the development of more effective systems for both U.S. and UK forces.

RECOMMENDATIONS

13. Northrop Grumman UK strongly recommends that the UK Government endorses the Defence Trade Cooperation Treaty.

14. Northrop Grumman UK recommends that UK and U.S. officials continue to work with U.S. and UK industry to make the Treaty regime as user-friendly as possible so that U.S. and UK companies can employ its provisions to greatest effect for our security and defence forces in the months and years to come.

15 November 2007

Supplementary memorandum from the Ministry of Defence

During the evidence session last week on the US/UK Defence Trade Treaty, you asked me to consider whether the Committee could have the opportunity to scrutinise the finally agreed Implementing Arrangements (lAs) before completing your Report and making any recommendation with regard to the ratification of the Treaty. You reminded me that the Leader of the House had only granted an extension of the Ponsonby period until 12 December 2007.

I have now considered your request, and on reflection I think it is not possible to recommend to the Leader of the House that there be any further extension.

As was set out in our Memorandum and oral evidence, the Implementing Arrangements neither effect existing legislation nor call for new. We have set out the principles we are following in negotiating the lAs and I explained the boundaries we put on the discussions with the US, going beyond which would lead me to advise that we do not proceed to bring the Treaty into force.

As your Committee itself emphasised, it is critical that we work hard to ensure that the Treaty is not stymied by failure by Congress to endorse the efforts of the US Administration through ratification by a vote in the Senate. I am going on the Hill myself next week to help persuade members to give the Treaty priority in their calendar. But the most significant lever will be our own Parliamentary ratification. To delay will only increase doubts in Congress and prejudice the Treaty's success.

However I am keen that you be kept fully in the picture with regard to the progress of the negotiations on the lAs and would be very happy for you to receive an informal briefing from officials on their return from the latest negotiating session in Washington.

Rt Hon Baroness Taylor of Bolton
Minister for Defence Equipment and Support

27 November 2007

Submission from the CBI

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. We welcome the Defence Committee's inquiry into the UK-UK Defence Cooperation Treaty.

The Treaty's scope is limited and it does not address wider bilateral export control issues; however, it is to be welcomed.

We understand that the US State Department is shortly to introduce a change in policy whereby sharing data under Technical Assistance Agreements with employees from NATO, EU, Australia, New Zealand and Japan will be automatically approved. We would wish to see this proposed policy relaxation being explicitly applied to data transfers made under the Treaty.

The CBI has been liaising with the Export Group for Aerospace and Defence (EGAD) and supports their submission.

29 November 2007

Memorandum from Thales UK

UK–UK Trade Cooperation Treaty

I am writing to you to make.a point about the implementation arrangements for this treaty, about which the House of Commons Defence Committee took evidence in their session on 21 November.

It is not absolutely clear what role foreign ownership will play in defining which companies may be members of the "approved community". If a company meets the criteria for List X status in the UK, and is trusted by HMG to be a supplier of sensitive defence items, then foreign ownership should not be a bar. MoD officials have given verbal assurances on this point but it needs to be clarified.

If companies which are an established part of the UK industrial base were to be excluded, this would not only be regrettable in its own right but would hinder cooperation with other companies, within the "approved community", whom they supply or with whom they cooperate.

I am copying this to Michael O'Connor, Assistant Secretary of the Defence Industries Council

3 December 2007

Memorandum from Finmeccanica UK

1. The US–UK Defence Trade Treaty has its roots in the initiative after the 2003 Iraq war to ensure that US and UK armed forces could share capabilities through equipment and technical transfer so as to make them more effective when operating together in combat. The Finmeccanica UK Group of companies is an important part of the domestic defence manufacturing community that provides the UK's armed forces with their combat capability. This is reflected by all Finmeccanica sites' List X accreditation. It would not be in the spirit of the Treaty, and would be irrational, to exclude from the Implementation Arrangements companies in the UK's domestic defence capability landscape simply because of third-country ownership. This is exemplified by Finmeccanica's sales in the UK of £1.7 billion exclusively in support of the UK's armed forces and those of allies. Finmeccanica could not accept, given its place in major UK equipment programmes such as Typhoon, Tornado, Merlin and Apache, that we might be treated as some special case, amounting to being labelled as a second class citizen.

2. Finmeccanica has also underwritten with the UK MOD Special Security Arrangements to support national security interests by guaranteeing continuity and security of supply.

3. From a business perspective, Finmeccanica has made significant inward investment decisions based on the principle that, because of our position in key UK domestic programmes, we would be afforded the same treatment as other companies in this community, regardless of ownership. It was on this basis that Finmeccanica has invested £1.5 billion in high technology facilities in the UK and maintains a high-skill workforce of some 9,000 or 12,000 if our interest in MBDA is included. The creation of a two-tier industrial landscape would undermine the rationale for this very significant investment and high level of activity.

4. For the above reasons, it is not only within the spirit of the original intent, but essential for practical, political and industrial terms that Finmeccanica's aspirations in the UK be included in the scope of the Treaty arrangements.

30 November 2007

Memorandum from the Aerospace Industries Association

I write on behalf of the 275 member companies of the Aerospace Industries Association of America (ALA). Our association is the premier trade association in the United States representing major aerospace and defense manufacturers. ALA is pleased to support the signature and implementation of the Defense Trade Cooperation Treaty between the United Kingdom and the United States. We believe the treaty is an important step in strengthening bilateral defence cooperation between our two countries.

Please find enclosed the formal prepared testimony (Annex) of Dr Jerry McGinn to the House of Commons Defence Committee hearing on Treaty scheduled for 21 November. Dr McGinn is the Chairman of AlA's U.S.–UK Defense Treaty Working Group and currently serves as Director of U.S.–UK International Traffic in Arms Regulations (ITAR) Policy for Northrop Grumman Corporation.

We hope that Dr. McGinn's testimony will facilitate the completion of the Defence Committee's inquiry into the Treaty.

19 November 2007

Annex

Testimony to the House of Commons Defence Committee
Dr John G (Jerry) McGinn,
Northrop Grumman Corporation
Chair, AIA U.S.–UK Defense Treaty Working Group
21 November 2007

Good morning. My name is Dr Jerry McGinn. I am a U.S.-based executive with Northrop Grumman Corporation and I am pleased to appear before you today as the designated representative of the Aerospace Industries Association of America (AIA). On behalf of the member companies of AIA, I am pleased to express U.S. industry's support for the signature and implementation of the Defense Trade Cooperation Treaty between the Governments of the United Kingdom and the United States. This Treaty is an important step in strengthening bilateral defense co-operation between two extremely close allies and defense partners. The Treaty would reduce the barriers to the exchange of defense goods, services and information-sharing, which will speed response to operational requirements. In short, the Treaty could go a long way towards fundamentally reshaping bilateral military collaboration in the coming years.

The partnership between the United States and the United Kingdom will always occupy an important and unique strategic role as we confront together the security challenges of today and tomorrow. This "special relationship" is central to stated U.S. national security objectives as articulated in the U.S. *National Security Strategy* and the 2006 *Quadrennial Defense Review* and in UK strategy documents.

U.S. and UK forces are operating together in Iraq, Afghanistan, and many other theaters, and it is essential that they operate together seamlessly. Commanders in the field require export control systems that facilitate cooperation at the tactical level. On a more strategic basis, both of our countries have, and will continue to have, an enduring need for effective and efficient technology sharing to better support our war-fighters with the best technology for the best price. Such cooperation also ensures a secure environment for strategic industrial partnerships that support the competitiveness of the industrial base of both of our countries.

The United Kingdom and the United States have a long tradition of sharing extremely sensitive information in areas such as nuclear weapons, intelligence, operations, and technology development. This collaboration has extended from the Manhattan Project and the development of anti-aircraft radars in the Second World War to the current Trident submarine program and the sharing of imagery and signals intelligence in Iraq and Afghanistan. The Treaty would apply a similar collaborative environment to arguably less sensitive defense articles and services.

The Treaty signals the fundamental recognition in the U.S. government that the U.S. export control system must be more predictable, efficient, and transparent in order to enhance U.S. national security. UK export licenses are almost universally approved, but the process is cumbersome and certainly not reflective of the close bilateral relationship. In 2005 and 2006, for example, U.S. companies submitted 13,000 license applications for defense articles destined for the United Kingdom. 84% of these applications were for unclassified items. 99.9% of all these applications were eventually approved after weeks and months of processing. We have underscored with our government the need to conform our export controls to the nature of the bilateral relationship. In addition, the Treaty structure would enable the United States Government to better focus on the prevention of sensitive exports to potential adversaries by reducing the State Department export license caseload.

An important breakthrough here is the application of the Official Secrets Act in the context of the Treaty. By doing so, the Treaty establishes strong protections against improper diversion of U.S. and UK technology. The provisions of the Treaty creating approved communities of companies, restriction of Treaty treatment to approved programs and end uses relating to U.S. and UK defense, and strict record-keeping and auditing requirements also will play critical roles in safeguarding sensitive technology.

U.S. industry is encouraged by the progress to date on developing the Treaty's implementing arrangements. We have had numerous interactions with U.S and UK officials about the Treaty and its implementing arrangements and it is clear that the Governments desire to make the Treaty as practical and usable as possible. To that end, we believe it is critical to develop clearly understood and appropriate rules and requirements to achieve the Treaty's objectives, particularly in areas such as research and development, technology exclusions and compliance requirements. This will enable U.S. and UK companies to employ the Treaty provisions to great effect for the benefit of our militaries in the months and years to come. We understand that traditional licensing systems will always be open to us, but we are committed to the development of a Treaty that represents a more predictable, efficient, and transparent alternative for governing technology exchange.

Assuming that the Treaty is approved by Parliament and ratified by the U.S. Senate, we foresee a number of positive changes for both of our countries. There will no longer be a need for an export license for the transfer of most defense articles and services (hardware, technical data, defense services, etc) between the U.S. and the UK approved communities. This Treaty regime will enable true collaboration—going in both directions—across the Atlantic. A partnership between designated U.S. and UK entities, for example, would create more opportunities for U.S. companies to work together with our UK partners (as well as with UK

branches of our own companies) to rapidly address some of our most persistent operational challenges such as IED defeat and counter-terrorism. The Treaty will also reduce requirements that delay the deployment of systems and related parts and components to our warfighters. As this makes clear, a Treaty regime will lead to more innovation and to the development of more effective systems for both US and UK forces.

In summary, the U.S. defense industry is strongly supportive of the Treaty and its potential contributions to our national security. AIA's US-UK Treaty Working Group will continue to remain engaged with the U.S. government on this important national security priority and we are keen for its favorable consideration and implementation in both countries in the coming months. We very much look forward to your Committee's report and thank you very much for the opportunity to present a US perspective on the Treaty.

Memorandum from EADS UK

We fully share the concerns raised by some of the members of your Committee during a recent evidence-taking session about the Treaty's effectiveness for key elements of the UK industrial defence base/companies with a significant presence in the UK but whose main shareholding is held elsewhere.

EADS, with its substantial Airbus, Astrium and Newport businesses (together around 16,000 people) fits into this category. Given the importance of Airbus military products like the FSTA, or A400M, to strategic airborne capabilities of the future, we would be concerned if EADS, or indeed some of our frequent partner companies in the UK, whether American like GD, or French like Thales (mission training systems) were not included on the list of approved UK companies. We can only applaud the work of the Committee in highlighting these issues, and hopefully influencing those negotiating on behalf of the Government.

3 December 2007

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