



House of Commons
Business and Enterprise,
Defence, Foreign Affairs and
International Development
Committees

**Scrutiny of Arms Export Control
(2008): UK Strategic Export
Controls Annual Report 2006,
Quarterly Reports for 2007,
licensing policy and review of
export control legislation**

First Joint Report of Session 2007-08

Eighth Report from the Business and Enterprise Committee of Session 2007-08
Twelfth Report from the Defence Committee of Session 2007-08
Eighth Report from the Foreign Affairs Committee of Session 2007-08
Eighth Report from the International Development Committee of Session 2007-08

*Report, together with formal minutes, oral and written
evidence*

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The Committees on Arms Export Controls

The Business and Enterprise, Defence, Foreign Affairs and International Development Committees are appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Enterprise and Regulatory Reform, the Ministry of Defence, the Foreign and Commonwealth Office, the Department for International Development and any associated public bodies.

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Committee staff

The staff who currently work for the Committees on their joint inquiries into strategic export controls are: Glenn McKee (Clerk) and James Bowman (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Committees on Arms Export Controls, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8367; the Committee's e-mail address is quadcom@parliament.uk

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Conclusions and recommendations

1. We conclude that the Government is to be commended for bringing forward the Export Control (Security and Para-military Goods) Order 2008, to prevent the export of, and trading in, sting sticks. (Paragraph 6)
2. We conclude that two weeks to comment on the draft Trade in Goods (Categories of Controlled Goods) Order 2008 was wholly inadequate. We recommend that the Government ensure that interested parties have at least two months to comment on the drafts of the third tranche of secondary legislation implementing the Government's conclusions on the outcome of its Review of Export Controls. (Paragraph 14)
3. We recommend that the Government take steps to demonstrate the effectiveness of the export control system. (Paragraph 23)
4. We conclude that it is necessary to extend extra-territorial controls to cover the export of, and trading in, small arms, MANPADS and cluster bombs and we welcome the Government's decision to do this in the Trade in Goods (Categories of Controlled Goods) Order 2008. (Paragraph 27)
5. In the absence of a wide-ranging and enforceable international arms trade treaty we conclude that there is an overwhelming case for the UK to extend its extra-territorial controls further. (Paragraph 30)
6. We reiterate the recommendation we made last year that the Government bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List and that all residents in the UK and British citizens overseas be required to obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List. In order not to undermine the employment prospects of British citizens working for reputable organisations, we further recommend that the Government issue general licences covering British citizens working overseas and engaged in categories of trade between specified countries or in certain activities such as advertising. (Paragraph 31)
7. We conclude that the Government should make its decision whether or not to include the control of transport and ancillary services within new Category B provided by the Trade in Goods (Categories of Controlled Goods) Order 2008 on the basis of evidence made available to the Committees, including any practical experience in other countries of implementing such provisions. In addition, the Government should consider not only the services to include but the nature of the control and the duties and liabilities that can reasonably be placed on those providing ancillary services. (Paragraph 33)
8. We reiterate our recommendation made previously that the Government establish a register of arms brokers. (Paragraph 36)

9. We conclude that the Government is right to seek to introduce an end-use control on torture equipment through the EU. If this is not possible, we recommend that such a control should be introduced by the UK. (Paragraph 38)
10. We reiterate our recommendation that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, we recommend that the contracts include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts. (Paragraph 40)
11. We recommend that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo. (Paragraph 42)
12. We conclude that we should return to the issue of the “single action” clause—empowering the Government to refuse the transfer of an unlisted item—once the Government has pursued the matter through the EU and we recommend that in its response to this Report the Government state its current position in negotiations with the EU. (Paragraph 44)
13. We conclude that a military end-use control applying to non-controlled goods is evolving. We welcome this development. We recommend that the Government bring forward proposals for a systematic military end-use control regime. (Paragraph 46)
14. We recommend that the Government consider as part of a package of proposals for a military end-use control regime whether (i) the ML6 category of the Military List should be amended to cover utility and transport vehicles supplied for military, security or police use, including those supplied as complete items or in kit form, and (ii) the ML10 category should be amended to cover utility and transport aircraft supplied for military, security or police use. (Paragraph 47)
15. We conclude that we should continue to monitor the number of seizures made annually by HM Revenue and Customs and we recommend that the Government continue to supply this information in annual reports on strategic export controls along with an explanation for the trend in seizures. (Paragraph 50)
16. We reiterate our recommendation made previously on two occasions that the Sentencing Guidelines Council conduct a review of the guidelines on sentences for breaches of export control and we press the Council as a matter of urgency to include the review in its programme for 2008-09. We are deeply dismayed to have to make this recommendation again. (Paragraph 52)
17. We recommend that the Government suspend as a matter of course any person or company convicted of breach of export controls from the use of the Open General Trade Control Licence for a period no less than the length of their sentence and, if the Government establishes a register of brokers, he or she be struck off the register. We also recommend that those who have committed minor breaches have this recorded against their names in the register. (Paragraph 55)

18. We conclude that we should monitor the trend and type (in particular, intent, lack of awareness or neglect of duty of care) in the number of misuses of open general licences next year. We recommend that this information should be included in the Government's annual reports on strategic export controls. (Paragraph 57)
19. Where breaches of the requirements to use open general licences are persistent and an exporter shows no inclination to bring his or her administrative arrangements up to the required level, we recommend that the Export Control Organisation automatically remove the exporter's entitlement to use open general licences. (Paragraph 58)
20. In responding to this Report we recommend that the Government set out the arrangements and programme for reviewing and updating open general licences. (Paragraph 59)
21. We conclude that the use of civil penalties for the breach of export controls appears to offer a method of strengthening the UK's export controls. We conclude that we should consider this matter further when the Government has completed its consideration of the use of civil penalties for the breach of export controls. We recommend that the Government inform the Committees and the House of the outcome of its deliberations at an early date. (Paragraph 63)
22. In responding to this Report we recommend that the Government provide an assessment of the effects on the integrity of the UK's export control system of waiving the requirement on exporters applying for OGELs to wait for an acknowledgment of their applications from the Export Control Organisation before exporting goods under the licence. We further recommend that the Government take steps to ensure that the integrity of no part of the UK's export control system is jeopardised by the illness or unavailability of staff. (Paragraph 67)
23. We conclude that there is no overwhelming case in favour of creating an export enforcement agency in the short term. (Paragraph 70)
24. We conclude that the transfer of some functions of the Defence Export Sales Organisation (DESO) from the Ministry of Defence to The Department for Business, Enterprise and Regulatory Reform provides an opportunity to separate the functions of promoting defence sales from that of licensing exports in both departments. (Paragraph 74)
25. We conclude that all of the departments concerned with the scrutiny of export licences need to keep under review whether the cutbacks in defence attaché posts is having a detrimental effect on the UK's export controls. (Paragraph 76)
26. We recommend that within six weeks of the publication of this Report the Home Office supply a memorandum responding to the matters we raised on the import of arms in our Report last year. (Paragraph 78)
27. We recommend that the Government publish future annual reports on strategic export controls by the end of March of the following calendar each year. (Paragraph 80)

28. We recommend that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls. (Paragraph 83)
29. We recommend that the Government in responding to this Report set out any conclusions it has reached arising from its examination of the practices followed in annual reports issued by other EU Member States and provide an indication of the timetable for the completion of the work. (Paragraph 84)
30. We recommend that the Government in responding to this Report set out the timetable for bringing a fully searchable and regularly updated database of all licensing decisions into operation and publish details of its functionality and operating arrangements. (Paragraph 85)
31. In responding to this Report we recommend that the Government explain whether in issuing export licences for armoured personnel carriers and water cannons to Libya it made an exception to its policy to refuse an export licence if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria and whether it will carry out end-use monitoring in the case of these exports to Libya. (Paragraph 90)
32. In responding to this Report we recommend that the Government explain whether it carries out any Criterion 8 assessment of the impact of exports to private companies in countries on the Department for International Development's list of countries where sustainable development is most likely to be an important factor and whether it checks that an application made by a private company from a country on the list is unconnected with the government of the country. (Paragraph 91)
33. We have concluded that in the case we raised about the Open Individual Trade Control Licence which appeared to cover exports to Ivory Coast we should accept the Government's offer of a confidential briefing. (Paragraph 93)
34. We recommend that the Government send us a "Restricted" report on outreach no later than its response to this Report and clarify the timetable for the production of future reports. (Paragraph 94)
35. We recommend that when it produces guidance for those handling or dealing with exports—both for civil servants and British citizens or companies—the Government set out concisely and clearly the extra-territorial provisions in statute and common law on bribery and corruption as well as the penalties for breaching the law. (Paragraph 110)
36. We reiterate our recommendations that an assessment in the Criterion 8 methodology be applied by the Government to test whether the contract behind an application for an export licence is free from bribery and corruption, to maximise the integrity and accountability of the procurement process, and that the Government publish the methodology in the annual report on strategic export controls. (Paragraph 112)
37. We recommend that as a first step the Export Control Organisation require those applying for export licences to provide a declaration that to the best of their

knowledge the export contract has not been obtained through bribery or corruption and that where an agent has been used due diligence checks have been carried out. We recommend that those who knowingly make a false declaration be liable to prosecution and revocation of all export licences. In addition, we recommend that in a case where subsequently an exporter is convicted of corruption the Government revoke all his or her export licences. We also recommend that the Government amend the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence. (Paragraph 117)

38. We recommend that the UK Government consider how to improve the transparency of the Salam Project. We also recommend that the Public Accounts Committee gives consideration to publishing all reports to it from the National Audit Office in respect of the Salam Project. (Paragraph 121)
39. We recommend that the Government provide in its response to this Report a statement setting out the progress made by government departments and agencies investigating current allegations of bribery in relation to arms exports. (Paragraph 123)
40. We recommend that the Government continue to press determinedly for the revised EU Code of Conduct on Arms Exports to be adopted as a legally binding Common Position under Article 18 of the Treaty of European Union. (Paragraph 126)
41. We recommend that in responding to this Report the Government explain whether the conclusions and recommendations from the peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items have led to changes in the operation of the export control system to improve its effectiveness. (Paragraph 127)
42. On the basis of the evidence given by the Secretary of State for Defence and by the Foreign and Commonwealth Office we conclude that the Government has reached the view that neither the Defence and Security Procurement Directive nor the Intra-Community Transfers Directive as published on 5 December 2007 will lead to a weakening of the UK's export control system. This is an issue that we shall keep under review. (Paragraph 133)
43. We recommend that the Government provide us with a report on the outcome of its contacts with the Slovenian Presidency and EU States within the Working Party on Conventional Arms Exports (COARM) to consider how best to ensure that the EU Code of Conduct is applied in a uniform manner across the all Member States. (Paragraph 135)
44. We conclude that the Government is to be commended and supported in its efforts to achieve a comprehensive and effective international arms trade treaty. (Paragraph 137)
45. We recommend that the Government bring forward legislation in the next session to ratify the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol). (Paragraph 140)

46. We conclude that the British Government and the EU should maintain their arms embargo on China. (Paragraph 146)
47. We recommend that the Government adopt a policy that, where a country is subject to an international arms embargo, the UK Government does not provide official sponsorship for the representatives of the State under embargo to attend arms fairs in the UK. (Paragraph 148)
48. We recommend that in responding to this Report the Government explain whether it pressed for a restriction in the Convention on Cluster Munitions agreed in Dublin in 2008 that would allow it to develop a new generation of anti-tank cluster shell. (Paragraph 152)
49. We conclude that the Government is to be commended for its support for, and agreement to enter into, the Convention on Cluster Munitions agreed in Dublin in 2008, which bans all types of cluster munitions, including so-called “smart” cluster munitions. (Paragraph 153)

1 Introduction

1. Since 1999 the Business and Enterprise (formerly the Trade and Industry),¹ Defence, Foreign Affairs and International Development Committees have worked together to examine the Government's strategic export control system and policies. This arrangement, which is now known as the "Committees on Arms Export Controls", enables the House of Commons to conduct ongoing scrutiny of a complex and controversial area of government policy.

2. Until March 2008 the arrangement was known as the "Quadripartite Committee", a name which arose from the fact that *four* select committees are involved in the work. While those who dealt regularly with the Committee understood what the Quadripartite Committee did, we considered that the name was confusing to those who were not familiar with its work. We therefore decided to drop Quadripartite and instead use a title that describes the work we do. From 10 March "Quadripartite Committee" was replaced with "The Committees on Arms Export Controls".²

3. Our Report this year follows the pattern of earlier years: a review of the policy, enforcement and the annual and quarterly reports on strategic export controls published since our last Report, combined with a detailed examination of a number of aspects of export control. We concentrate in detail on two issues which have featured in our, and our predecessor Committees', previous Reports. The first is the Government's Review of Export Controls, which we covered at length in last year's Report. This year's examination follows up the issues we raised last year. The second area examined in detail is the question of bribery and corruption in arms exports, which our predecessor Committees first reported on in May 2004.³

The Government's Review of Export Controls

4. As we noted last year,⁴ in line with Cabinet Office guidance, the Government started post-legislative scrutiny of the orders and regulations—"secondary legislation"—made under the Export Control Act 2002 in 2007 as these orders and regulations had been in force by then for three years.⁵ The review process started in June 2007 when the Government published a consultation document, 2007 Review of Export Control Legislation,⁶ and the latest indication is that the final tranche of legislative changes arising

1 In November 2007 the Trade and Industry Committee was replaced by the Business, Enterprise and Regulatory Reform Committee (*Votes and Proceedings*, 25 July 2007, pp 208–209), the name of which was shortened to the Business and Enterprise Committee in March 2008 (*Votes and Proceedings*, 11 March 2008, p 370).

2 See "Quadripartite Committee renamed the Committees on Arms Export Controls", Quadripartite Committee press notice 2007-08 No. 03, 4 March 2008.

3 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2003–04, *Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny*, HC 390, Ev 34

4 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2006–07, *Strategic Export Controls: 2007 Review*, HC 117, para 2 and following

5 HC Deb, 16 March 2006, col 521WH; HC Deb, 4 May 2006, col 1751W

6 *Export Control Act 2002: 2007 Review of Export Control Legislation: A Consultation Document*, Department of Trade and Industry, June 2007 at <http://www.berr.gov.uk/files/file39949.pdf> (hereafter the "2007 Consultation Document")

from the Review should be enacted in April 2009.⁷ The Review is being carried out by the Export Control Organisation (ECO), in consultation with other interested departments and parties.⁸ The Government explained that the Review would be carried out according to Better Regulation principles as set out by the Cabinet Office⁹ and “will provide a useful opportunity to take stock of existing controls”.¹⁰ The review process therefore looks likely to take about two years and, with the encouragement of the Government,¹¹ we are keen to make a full contribution. Hence we are returning to the issues thrown up by the Review in this Report.

5. Responses to the Government’s 2007 Consultation Document were invited by 30 September 2007. In our Report, published in August 2007, we were able to set out conclusions and make recommendations to the Government which addressed those matters on which the Government had invited views. In addition, we set out conclusions and recommendations on matters which we considered needed to be addressed as part of the Review but which were not addressed in the 2007 Consultation Document. The Government published its Initial Response to the 2007 Consultation on 6 February 2008.¹² We invited evidence from interested parties on the Review and took oral evidence from Malcolm Wicks MP, Minister for Energy, Department for Business, Enterprise and Regulatory Reform (BERR), who has responsibility for export controls and the Review. Both industry¹³ and the non-governmental organisations¹⁴ were complimentary about the review process—in particular, the Government’s “willingness to engage with external stakeholders in a serious and open manner”¹⁵—and both, though the non-governmental organisations had reservations about the scope of the Review,¹⁶ welcomed the Initial Response.¹⁷ The Minister told us that he would “continue to involve the Committee as fully as we can in the review and we will shortly send the Committee the draft legislation to implement the next set of changes [and later] in the year we will send the Committee the draft legislation to implement the further changes”.¹⁸

7 Q 134; Ev 68

8 HC Deb, 4 May 2006, col 1751W

9 Departments of Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry, *Strategic Export Controls: HMG's Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry*, Cm 6954, October 2006, p 3

10 Cm 6954, p 1

11 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2005–06, *Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny*, HC 873, para 17 and Q192

12 *Export Control Act 2002: Review of Export Control Legislation (2007) Government's Initial Response to the Public Consultation*, Department for Business, Enterprise and Regulatory Reform, 6 February 2008, at <http://www.berr.gov.uk/consultations/page39910.html> (hereafter the “Government’s Initial Response to the 2007 Consultation”)

13 Ev 47

14 Ev 54, paras 5-8

15 Ev 54, para 5

16 Ev 54, 56, paras 8-9, 21

17 Ev 47

18 Q 134

6. The outcome of the 2007 Review of Export Controls will consist of three tranches of legislation. The first, which is now in force, was the Export Control (Security and Para-military Goods) Order 2008¹⁹ which extended the controls to cover the export of, and trading in, hand-held, spiked batons, known as “sting sticks”. In our Report in 2006 we called for such a change.²⁰ **We conclude that the Government is to be commended for bringing forward the Export Control (Security and Para-military Goods) Order 2008, to prevent the export of, and trading in, sting sticks.**

7. The second order is the Trade in Goods (Categories of Controlled Goods) Order 2008, which extends extra-territorial controls on trading in arms. It will come into operation in October 2008. Although we raised no objection to the Order, we had concerns about the length of time we were given to comment on the Order, which are set out at paragraph 14 below, and see also Annex 1.

8. The third tranche of legislation is likely to be less straightforward than the first or second and it has not yet been finalised. According to the Government, not only will it consolidate the earlier changes but “a further change—to extend extra-territorial trade controls to light weapons—will come into effect in 2009, and it is possible that other changes may also be announced.”²¹ The main focus of our work on the 2007 Review of Export Controls is therefore on the contents of the third tranche of secondary legislation.

Allegations of bribery and corruption

9. In 2003 our predecessor Committees requested and received—in June 2003—a memorandum²² from the Ministry of Defence (MoD) commenting on allegations that since the 1970s its defence exports services organisation had condoned and facilitated defence exports to the Middle East which were tainted with corruption.²³ The MoD rejected the allegations.²⁴ The allegations resurfaced in 2006²⁵ and a number of assertions appeared in the media quoting a former defence minister in the 1970s as saying that the UK had bribed senior Middle East officials to secure arms contracts.²⁶ We put these further allegations to the MoD which replied that the “facts given to the Committee in [the 2003] MOD Memorandum were accurate, both as they related to the practices [...] at that time and, from the records we have identified, in relation to practices at earlier times.”²⁷

10. In 2007-08 the Campaign Against Arms Trade (CAAT) and Nicholas Gilby made further submissions²⁸ to support the allegations concerning bribery in the 1970s. The

19 SI 2008/639, which amended the Export of Goods, Transfer of Technology and Provision of Technical Assistance, (Control) Order 2003 (SI 2003/2764) and the Trade in Goods (Control) Order 2003 (SI 2003/2765)

20 HC (2005-06) 873, para 173

21 Ev 68

22 HC 390 (2003-04) Ev 34-35

23 “Web of state corruption dates back 40 years - Shielded by secrecy law - the system of 'special commissions' still flourishing today”, *The Guardian*, 13 June 2003, p 11

24 HC (2003-04) 390, Ev 34

25 HC (2005-06) 873, Ev 159, para 12 and following

26 For example, “We bribed Saudis, says ex-minister”, *The Daily Telegraph*, 17 June 2006, p 6

27 HC (2005-06) 873, Ev 168

28 Ev 79; Ev 81; Ev 85

examination of events which occurred over 30 years ago is not the usual staple of select committees. Neither ministers nor civil servants currently in post have first-hand knowledge of—or direct responsibility for—events 30 years ago and many of those with such knowledge are no longer alive. There is now, however, some material available in the form of the documents at the National Archives. Both CAAT and Mr Gilby and the MoD offered their views on this material. In view of the passage of time we decided that, rather than embark on a general and lengthy review of contracts for the supply of arms to the Middle East, the best course was to focus on one case and this is done at chapter 6. It was our intention in embarking on the exercise to use our examination of the evidence to inform arrangements for tackling bribery and corruption in the future.

Review of annual and quarterly reports on strategic export controls

11. We have reviewed the quarterly reports on strategic export controls issued since our last Report. We had hoped that for the first time to be able to “catch up” on our review of annual reports on strategic export controls. In the past the Government produced the annual report about seven months after the end of the calendar year around the time (in July) that we are usually finalising our Report. This has meant that we have not been able to carry out any detailed scrutiny of the annual report until the following year. This year the Government indicated that it would produce the 2007 Annual Report on Strategic Export Controls in May 2008.²⁹ In the event it was not able to produce the 2007 report by the time that we concluded our deliberations. The latest indication we have is that the 2007 Annual Report will be produced in July. This is no improvement on previous years. Our Report this year is limited to a review of the 2006 Annual Report on Strategic Export Controls.³⁰

12. As well as the process of taking oral and written evidence on policy and the operation of the legislation, we have continued to explore issues raised by particular licences; we have, for example, assessed whether there has been any inconsistency in the issuing and refusal of licences to a particular country and whether other licence approvals or refusals for which the rationale is not obvious have been determined in accordance with the EU Code of Conduct on Arms Exports and the UK’s National Export Licensing Criteria.³¹ This process is detailed and, necessarily, often confidential, though where the Government has provided a response without a security marking we have published it.³² We have drawn on the information received to make points on policy issues, and we shall keep certain cases under review.

29 Ev 85, para 25

30 Foreign and Commonwealth Office, *United Kingdom Strategic Export Controls: Annual Report 2006*, Cm 7141, July 2007

31 HC Deb, 26 October 2000, cols 199-203W; and see Cm 7141, pp 70-72

32 For example, Ev 71 and Ev 85

2 The work of the Committees

Relations between the Committees and the Government

13. We are pleased to report that the relations between the Committees and the Government have remained constructive and cooperative. Mr Gareth Thomas, Parliamentary Under-Secretary of State for International Development, who responded in the debate on 27 March 2008 on our last Report took the “opportunity to celebrate the work of the Committees on strategic export controls”.³³ We are grateful to the Minister for his comments.

Review of drafts of secondary legislation

14. We recommended in our last Report that any secondary legislation to implement conclusions arising from the Government’s Review of Export Controls be shown in draft to our Committees.³⁴ We received a draft of the Trade in Goods (Categories of Controlled Goods) Order 2008 on 30 May 2008 along with a draft of the Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade (“Trafficking and Brokering”) in Controlled Goods.³⁵ The Government requested comments by 13 June. Although in the time available the Chair of the Committees was able to take informal soundings, and to provide a response, we sought an assurance that more time would be provided to scrutinise the third and final tranche of secondary legislation due to be published in draft later this year. A copy of the Chair’s letter to the Minister is at Annex 1 to this Report. **We conclude that two weeks to comment on the draft Trade in Goods (Categories of Controlled Goods) Order 2008 was wholly inadequate. We recommend that the Government ensure that interested parties have at least two months to comment on the drafts of the third tranche of secondary legislation implementing the Government’s conclusions on the outcome of its Review of Export Controls.**

Evidence and witnesses

Oral evidence

15. In the course of this inquiry, we held four evidence sessions with: (i) the Secretary of State for Defence, Rt Hon Des Browne MP, and officials from the Ministry of Defence (MoD); (ii) the Export Group on Aerospace and Defence (EGAD);³⁶ (iii) the UK Working Group on Arms³⁷ and Transparency International (UK); and (iv) the Minister for Energy,

33 HC Deb, 27 March 2008, col 163WH

34 HC (2006-07) 117, para 35

35 Ev 68; *Draft of Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade (“Trafficking and Brokering”) in Controlled Goods*, Department for Business, Enterprise and Regulatory Reform, May 2008

36 EGAD operates under the joint auspices of the Association of Police & Public Security Suppliers (APPSS), the British Naval Equipment Association (BNEA), the Defence Manufacturers Association (DMA), the Society of British Aerospace Companies (SBAC) and the Society of Maritime Industries (SMI).

37 The Working Group is part of an international coalition of non-governmental organisations which includes Amnesty International UK, Saferworld, Oxfam GB and the Omega Research Foundation. A separate submission was made by Amnesty International UK, the Omega Research Foundation and Saferworld without Oxfam GB—Ev 60—which was not a submission from the Working Group.

Malcolm Wicks MP, who has responsibility for export controls, and officials from the Department for Business, Enterprise and Regulatory Reform (BERR).

16. The evidence session with the Secretary of State for Defence was the first time that either we or our predecessor Committees had taken oral evidence directly from that department. Applications for export licences for military and dual-use goods and technology are referred by the Export Control Organisation (ECO) at BERR to the MoD as well as the Foreign and Commonwealth Office (FCO) and the Department for International Development (DfID) for advice. Within the MoD, specialists, including those in equipment capability and security, and defence intelligence, consider applications against the Consolidated EU and National Arms Export Licensing Criteria, particularly Criterion 4 (preservation of regional peace, security and stability), Criterion 5 (national security of the UK and of Allies, EU Members States and other friendly countries) and Criterion 7 (the existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions).³⁸ The MoD's role in the consideration of applications for export licences, along with the transfer of responsibility for defence trade promotion from MoD to BERR and the allegations of bribery and corruption in defence sales to the Middle East were the areas we examined with MoD.

17. We had planned to take evidence from Dr Kim Howells, Minister of State at the FCO but because of the pressures of the parliamentary programme we were not able to do so. The FCO supplied a written memorandum dealing with many of the questions that we had intended to put to the Minister during an oral evidence session.³⁹ We are grateful to the FCO for supplying the memorandum, which we have drawn upon in formulating our Report.

Written evidence

18. We invited written evidence⁴⁰ and we are grateful to those who made submissions. As in previous years, we sought and received replies from the Government on a wide range of matters. We also received unprompted information from the Government which it considered would inform our deliberations.⁴¹ We are grateful to the Government for its replies and for keeping us informed of developments relevant to our inquiry. We attach to this Report all the written evidence we received—other than material with a security classification or copies of public records open to inspection at the National Archives.⁴² Continuing the practice we adopted last year we have also made available on the Internet the written evidence we had received by May 2008, to assist those with an interest in our inquiry. We are grateful to all those who gave oral and written evidence and to our adviser, Dr Sibylle Bauer, who helped us evaluate the evidence.

38 Ev 42

39 Ev 90

40 "Strategic Export Controls", Quadripartite Committee press notice 2007-08 No. 01, 22 November 2007

41 For example, Ev 69

42 We received copies of several documents which were deposited, and are open for public inspection, at the National Archives, Kew. We have quoted from the documents in chapter 6.

Visits

19. We carried out two visits in 2007-08. In September 2007 we visited DSEi (Defence Systems and Equipment International),⁴³ which is a biennial international defence exhibition held at the ExCeL Exhibition Centre in Docklands, London. There were 1,352 exhibitors present from 37 countries, 27 of which had National Pavilions and 85 Official Defence Delegations from 56 countries attended as guests of the UK Government. The event attracted some 25,000 international visitors.⁴⁴ We were grateful to the organiser, Reed Exhibitions, for arranging the visit and for a briefing at ExCeL. In April 2008 we visited the Port of Southampton and met officials from HM Revenue and Customs (HMRC) and the Revenue and the Customs Prosecution Office. A note of our visit is annexed to this Report.⁴⁵ We found the opportunity to inspect Customs' operations at the Port useful as was the discussion with the officials. We put on record our thanks to those who arranged the visit and answered our questions.

20. We had hoped to visit the Ukrainian Parliament in March but the visit, which would have been sponsored by the Foreign and Commonwealth Office, had to be postponed because of the pressure of parliamentary business at Westminster. We now hope to visit Ukraine to meet parliamentarians, ministers, officials and non-governmental organisations later in the year, to share our experience of scrutinising strategic exports.

43 See below, paras 147 and 148.

44 See also Ev 72.

45 Annex 2

3 Review of export control legislation

Introduction

21. Our Report this year contains a second instalment to the chapters on the 2007 Review of Export Controls in last year's Report.⁴⁶ The background to the legislation and to the Review was set out in Chapter 3 of last year's Report. In summary, the origin of the Export Control Act 2002 was the Report of the Scott Inquiry published in February 1996, which criticised the export control regime at that time for its lack of accountability and transparency. The report recommended that "the present legislative structure, under which Government has unfettered power to impose whatever export controls it wishes and to use those controls for any purposes it thinks fit, should [...] be replaced as soon as practicable".⁴⁷ Following a White Paper on Strategic Export Controls⁴⁸ in 1998 and the draft Export Control and Non-Proliferation Bill in March 2001,⁴⁹ the Export Control Act 2002 (as the draft Bill became) passed all its parliamentary stages and received Royal Assent in 2002. As the 2002 Act was primarily an enabling power the new export control regime was enacted under secondary legislation which came into operation on 1 April 2004.

Research

22. We have in our past two Reports highlighted the need for the Government to commission independent research into the operation of the export control system.⁵⁰ In our view it is essential that the review of the legislation is informed with the best available assessment of the effectiveness of the export control system. In our Report last year we recommended that the Government carry out a government-wide assessment of the effectiveness of the operation of export control legislation since 2004 and that the Government in responding to our Report produce detailed evidence to demonstrate the effectiveness of export controls.⁵¹ To assist the Government, we highlighted a number of areas where we considered further research would be profitable:

- a) what volume and categories of the goods falling within definitions on the Military List and in the dual-use regulations were being exported without licences in breach of export controls;⁵²
- b) the extent to which dual-use goods not subject to control were exported from the UK and were then incorporated into equipment which had it been exported from the UK would have been subject to export control;⁵³

46 HC (2006-07) 117, chapters 4-8

47 Scott Report, HC (1995-96) 115, Vol IV, Chapter 2, para K2.1

48 *Strategic Export Controls White Paper*, Cm 3989, July 1998

49 *Consultation on Draft Legislation: The Export Control and Non-Proliferation Bill*, Cm 5091, March 2001

50 HC (2005-06) 873, paras 76 and 100; HC (2006-07) 117, paras 25-32

51 HC (2006-07) 117, paras 29 and 31

52 HC (2005-06) 873, para 76; HC (2006-07) 117, para 25

53 HC (2005-06) 873, para 100; HC (2006-07) 117, para 25

- c) whether the controls on the transfer of software were adequate, practicable and enforceable;⁵⁴ and
- d) the reasons for the small numbers of applications for trade control licences from British citizens overseas.⁵⁵

23. The Government's response in November 2007 to our recommendations went some way to accepting our concerns. It recognised that the Export Control Organisation's (ECO's) internal assessment of the controls included in the 2007 Consultation Document did not provide "complete assurance that the system is working effectively".⁵⁶ Although it did not rule out commissioning independent research, the Government considered that it would be in a "better position to assess the effectiveness of the controls once it has the responses to the current consultation" and "in the light of the ongoing inter-departmental discussions on the review, as well as the Government's research into comparisons with other EU Member States".⁵⁷ It pointed out that the 2007 Consultation Document specifically asked respondents to provide evidence on the effectiveness of the current export controls.⁵⁸ We accept that answers to such questions in the Consultation Document may be useful but the respondents were self-selecting and the answers to some measure were unstructured. We are therefore not surprised that the Government said that it "did not get quite as much as we had hoped"⁵⁹ in response to the 2007 Consultation Document. From the oral evidence session with the Department for Business, Enterprise and Regulatory Reform (BERR) on 19 May we noted that the Government might carry out some research to establish which ancillary services should be brought within export control.⁶⁰ But for other key aspects of export control the Government is now in the position that it has no independent research to inform the next stage of the review of the legislation. Given the importance that the Government attaches to evidence-based policy and the use of best practice, which must include some research,⁶¹ we find this situation surprising and regrettable. Nor, because of the absence of research, is the Government able to point to sound evidence to refute the allegations—many based on anecdotal evidence⁶²—that the system is ineffective. There is time for the Government to commission research before the final tranche of secondary legislation is formulated, in order to provide

54 HC (2006-07) 117, paras 90-91

55 HC (2006-07) 117, para 59

56 Departments for Business, Enterprise and Regulatory Reform, Defence, Foreign and Commonwealth Affairs and International Development, *Strategic Export Controls: HMG's Annual Report for 2005, Quarterly Reports for 2006, Licensing Policy and Parliamentary Scrutiny Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Business, Enterprise and Regulatory Reform*, Cm 7260, November 2007, p 3

57 Cm 7260, p 3

58 Cm 7260, p 3; we note that the response section (section 3) of the 2007 Consultation Document contained questions inviting respondents' views on the effectiveness of the system—for example, Q27: Do you have any other comments or evidence on the effectiveness of the trade controls on trading in "Controlled Goods" carried out from within the UK? If so, please provide details; Q32 Do you have any other comments or evidence on the effectiveness of the trade controls on the activities of UK persons operating overseas?

59 Q 149; the responses were published at <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/page42883.html>.

60 Q 148; see also below, para 32 and following.

61 Cabinet Office, *Modernising Government*, Cm4310, March 1999, for instance, stated at para 6: "Government expects more of policy makers. More new ideas, more willingness to question inherited ways of doing things, better use of evidence and research in policy making and better focus on policies that will deliver long-term goals".

62 For example, HC (2005-06) 873, Q 198

it with the assurance that the export control system is working effectively. **We recommend that the Government take steps to demonstrate the effectiveness of the export control system.**

Brokering, trafficking and extra-territoriality

24. Where a company or person acting within the UK arranges or negotiates contracts (or agrees to do so) between others for trade in “Controlled Goods”⁶³ between overseas countries this is commonly known as brokering. Where a company or person acting within the UK trades (or agrees to trade) between overseas countries on his or her own behalf principally buying, selling or arranging the transfer across borders of “Controlled Goods” this is commonly known as trafficking.⁶⁴ Under the Export Control Act 2002 and the accompanying secondary legislation that came into operation in April 2004, there are two categories of extra-territorial control. First, actions by UK persons abroad are regulated where they relate to trade in missiles with a range greater than 300 kilometres and torture equipment, or trade to an embargoed destination. This is the “Restricted Goods” category. Second, for other trafficking and brokering to fall under the scope of the Act, part of the transaction has to take place in the United Kingdom. In the 2007 Consultation Document the Government identified possible changes to the extra-territorial controls, including:

- A new “Middle Category”: The “Restricted Goods” controls would be reserved for items for which the Government would never normally grant a licence. A new category, “Partially Restricted Goods” would be created for more sensitive goods but where there was legitimate trade. Under this category, the core activity of trading in these goods would still be controlled if carried out by a UK person anywhere in the world, as would other acts calculated to support that trading, including transportation, financing/financial services, and insurance or re-insurance; but the more peripheral acts, such as the promotion or advertising of these goods at trade fairs or in periodicals would not be controlled.
- Extension of controls on some categories of equipment: The Government said that certain types of military equipment were widely viewed as being of greater concern than others: in particular, small arms, light weapons (SALW) and man-portable air defence systems (MANPADS) and cluster bomb munitions.⁶⁵

25. Last year we took evidence on, and considered, the Government’s proposals. In our Report last year we concluded that the Government should bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List. In our view the experience of the past three years had shown that the existing arrangements had failed and that the extension of the extra-territorial provisions was overdue. We therefore recommended that the Government require all residents in the UK and British citizens overseas to obtain trade control licences,

63 Military, paramilitary or certain explosive-related goods

64 Definitions drawn from “Export Control Act 2002: Trade (Trafficking and Brokering) in Controlled Goods including to Embargoed Destinations: Guidance” issued by the ECO, June 2004.

65 2007 Consultation Document, para 2.1

or be covered by a general licence, before engaging in any trade in the goods on the Military List.⁶⁶

26. In its Initial Response to the 2007 Consultation published in February 2008 the Government concluded that the existing two tier structure for regulating brokering was no “longer the most effective model” and it said that it was going to introduce a three-tiered structure:

- Category 1 would include only goods whose supply is inherently undesirable. For Category 1 goods, the following activities would be controlled:
 - trading activities by any person within the UK;
 - trading activities by UK persons anywhere in the world; and
 - any act calculated to promote the supply or delivery of such goods.

Category 1 would cover torture equipment, plus those cluster munitions “which cause unacceptable harm to civilians” and the supply of any Controlled Goods to an embargoed destination.

- Category 2 would include goods in respect of which there is legitimate trade, but which, on the basis of international consensus, have been identified as being of heightened concern. It was envisaged that the following activities will be controlled:
 - trading activities within the UK;
 - trading activities by UK persons anywhere in the world;
 - other activities directly related to that trading, including direct and targeted acts of promotion;

but not peripheral acts such as general promotion or advertising at trade fairs or in periodicals.

Category 2 would cover small arms and light weapons, long-range missiles (including Unmanned Air Vehicles) and MANPADs.

- Category 3 would include any items on the Military List which did not fall within Categories 1 or 2. For Category 3 goods trading between two countries overseas only if carried out from within the UK would be controlled.

Under Category 3, indirectly associated activities, including the provision of transport, financing/financial services, insurance or re-insurance and general advertising and promotion would not be controlled.⁶⁷

27. When he gave evidence the Minister, Malcolm Wicks MP, indicated that the next tranche of secondary legislation coming into operation on 1 October 2008 would extend

66 HC (2006-07) 117, para 76

67 Government's Initial Response to the 2007 Consultation, paras 1.2-1.3

extra-territorial control on small arms, MANPADS and also cluster munitions.⁶⁸ We and our predecessor Committees have consistently and persistently recommended that the extra-territorial controls be extended to all items on the Military List.⁶⁹ We received a draft of the Trade in Goods (Categories of Controlled Goods) Order 2008 and the Chair's reply to the Minister is at Annex 1. **We conclude that it is necessary to extend extra-territorial controls to cover the export of, and trading in, small arms, MANPADS and cluster bombs and we welcome the Government's decision to do this in the Trade in Goods (Categories of Controlled Goods) Order 2008.**

28. The question now, as the Minister pointed out it in his oral evidence, is “do we now need to move further” than the Trade in Goods (Categories of Controlled Goods) Order 2008.⁷⁰ He said that the “the door is wide open on this for us to take further steps should we deem that necessary”.⁷¹ In calling for the extension of extra-territorial controls our main concern has been to bring within the ambit of the law activities which, if they had been carried out in the UK without a licence, would be criminal activity. We also had a concern that by attempting to define trade in terms of the items that could be reasonably identified in advance as those which would not generally be granted a licence in the UK the Government produced a regime that was too tightly and inconsistently drawn. One obvious example is the inconsistency in the treatment of missiles—those with a range greater than 300 kilometres were included within the 2004 extra-territorial controls but those with a range below 300 kilometres were excluded—which is baffling and confusing.⁷²

29. The starting point has to be Category 2—now category B in the draft Trade in Goods (Categories of Controlled Goods) Order 2008— which is essentially a new category that the Government has brought forward in response to representations about the inadequacy of the controls on extra-territorial transactions. When it gave evidence, the UK Working Group on Arms welcomed the decision to create the new category⁷³ to extend extra-territorial brokering controls to small arms and light weapons and encouraged the Government to extend the controls “to cover at a minimum other equipment generally recognised to be of particular offensive utility”.⁷⁴ The Export Group on Aerospace and Defence (EGAD) did not share the UK Working Group's approach and it considered a widely drawn Category B “unworkable”.⁷⁵ It preferred an international arms trade treaty:

68 Q 134

69 Defence, Foreign Affairs Committee, International Development and Trade and Industry Committees, Third, Second, Third, Fourth Reports of 1999-2000, *Annual Reports for 1997 and 1998 on Strategic Export Controls: Report and Proceedings of the Committee*, Appendices to the Report and Further Appendices to the Minutes of Evidence, HC 225, para 46; Defence, Foreign Affairs Committee, International Development and Trade and Industry Committees, Eleventh, Seventh, Seventh, Eleventh Reports of 1999-2000, *Strategic Export Controls: Further Report and Parliamentary Prior Scrutiny: Report, Proceedings and Minutes of Evidence and Appendices* HC 467, para 64; Defence, Foreign Affairs, International Development and Trade and Industry Committees, Report for Session 2000-01, *Draft Export Control and Non-Proliferation Bill*, HC (2000-01) 445, para 96; HC 390 (2003-04) paras 221 and 224; Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2004-05, *HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny*, HC 145, para 156; HC (2005-06) 873, para 195; HC (2006-07) 117, para 76

70 Q 145

71 Q 145; see also Ev 68.

72 HC (2006-07) 117, para 76

73 Ev 55, para 12

74 Ev 54, para 6

75 Q 66

because by definition it is far easier to effectively enforce a domestic law than it is to enforce a law extra-territorially. If arms were being moved between two countries, those arms would be an export from one of the countries and an import to the other by definition. If we could get to the stage where that transaction was being controlled effectively by the countries directly involved, that would be a far more efficient means of enforcement and far more likely to result in a successful prosecution than would the UK trying to control that transaction from one stage removed.⁷⁶

30. In an ideal world where all states were in a position to apply export controls broadly in line with the UK's controls EGAD's analysis and approach would have much to commend it. But we are not, and, as we note in chapter 8, the prospects for a comprehensive, fully-enforced, universally-applied treaty may be some time off. Moreover, control and policy are different. An overseas government may have a perfect control system, and take a policy decision to license an export to a country which it considers friendly, but the UK would not. In addition, countries outside the EU are not bound by EU sanctions. And even if a treaty came into operation which was based on the EU Code of Conduct on Arms Exports, there would be scope for interpretation and for assessments based on differing foreign policy evaluations by governments. **In the absence of a wide-ranging and enforceable international arms trade treaty we conclude that there is an overwhelming case for the UK to extend its extra-territorial controls further.**

31. The creation of the new intermediate category—Category B—which will cover goods such as small arms⁷⁷ means that the Government now accepts in principle that the reach of the UK's controls on extra-territorial transactions includes trade in goods for which there is a legitimate market. We agree with this principle and welcome the Government's acknowledgement of it. The Working Group pointed out, however, that the Government appeared "reluctant to extend this principle to its logical conclusion, i.e. that the brokering of all Military List goods should be subject to a form of extraterritorial control".⁷⁸ The Government indicated that it wished to include in Category B goods that, "on the basis of international consensus, have been identified as being of heightened concern".⁷⁹ In its oral evidence the UK Working Group pointed out that brokers "are increasingly offering a whole range of military equipment on the list, not necessarily the entire Military List but there are clearly items such as tanks, vehicles, rocket launch systems and helicopters which you may want to control".⁸⁰ We agree with the UK Working Group's analysis. While we welcome the Government's intention to control the extra-territorial transactions of people based in the UK and of British citizens overseas carrying out legitimate brokering in arms, we consider that its proposed restriction of Category B to trading on items causing "heightened concern" is problematic. It is a subjective definition which is likely to throw up as many inconsistencies as the existing regime. For example, missiles might be within Category B but tanks outside. **We reiterate the recommendation we made last year that**

76 Q 62

77 The Government stated that Category B would be extended in April 2009 to include light weapons—Ev 68.

78 Ev 55, para 13

79 *Draft of Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade ("Trafficking and Brokering") in Controlled Goods*, Department for Business, Enterprise and Regulatory Reform, May 2008, para 5

80 Q 100

the Government bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List and that all residents in the UK and British citizens overseas be required to obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List. In order not to undermine the employment prospects of British citizens working for reputable organisations, we further recommend that the Government issue general licences covering British citizens working overseas and engaged in categories of trade between specified countries or in certain activities such as advertising.

Control of transport and ancillary services

32. The Minister recognised “the integral nature of transport” when it came to extra-territorial controls and he promised “that we will look at it again before reaching a definitive conclusion”.⁸¹ He said, as we have noted, that the Government would “carry out some research to establish which supporting activities should be controlled in relation to the new Category B trade controls which [...] include small arms. There may well be a case to include transport services because obviously transport services are vital to this trade, so we are certainly looking at this”.⁸² The Government also indicated that it was working with the industry “to try and get costings that are as accurate as possible”.⁸³ The UK Working Group on Arms regarded as a matter of urgency the extension of the extra-territorial controls to transporters⁸⁴ and it argued that the “roles of broker and transporter can be tightly linked, with the dividing line between them difficult to draw”.⁸⁵ EGAD, however, considered that “control in the peripheral activities such as transportation is fraught with difficulties”.⁸⁶

33. Last year we took the view that bringing ancillary services beyond those that were provided in relation to restricted goods and to the supply of controlled goods to embargoed destinations or for WMD⁸⁷ end-use within export control would improve the regulation of strategic export transfers. But a general extension would add to UK service providers’ costs and, as services were increasingly globalised, could place them at a competitive disadvantage.⁸⁸ We made no recommendation last year and we make none this year on the extension of extra-territorial controls to ancillary services. We do, however, reach a conclusion. **We conclude that the Government should make its decision whether or not to include the control of transport and ancillary services within new Category B provided by the Trade in Goods (Categories of Controlled Goods) Order 2008 on the basis of evidence made available to the Committees, including any practical experience in other countries of implementing such provisions. In addition, the Government**

81 Q 150

82 Q 148

83 Q 149

84 Ev 54, para 6

85 Ev 55, para 15

86 Q 60 [Mr Hayes]

87 Weapons of mass destruction

88 HC (2006-07) 117, para 258

should consider not only the services to include but the nature of the control and the duties and liabilities that can reasonably be placed on those providing ancillary services.

Registration of brokers

34. We concluded in our Report last year that the EU Common Position on the control of arms brokering adopted on 23 June 2003 provided best practice and we recommended that the Government establish a register of arms brokers. We also recommended that any brokering or trafficking in arms by a person in the UK or a British citizen abroad who was not registered be made a criminal offence.⁸⁹

35. When he gave evidence the Minister made it clear that the Government was not opposed to a register in principle and he could see certain advantages in a register.⁹⁰ We pointed out that some EU countries operated registers and he indicated that he was prepared to examine practice across the EU.⁹¹ His reservations concerned “practical difficulties” and he said that “we will have to consider those before reaching a conclusion”.⁹² John Doddrell, Director, Export Control Organisation, set out the advantages of a register. He could envisage advantages:

in terms of increasing compliance, particularly if it is linked to some kind of awareness test in relation to the controls that people would have to satisfy us before they could be registered that they understood what the controls are. There is also a potential advantage in that if somebody commits a particular offence, demonstrates that they are not a suitable candidate to be conducting business in this area, the register would provide a means of preventing them from going about that activity in future, so there are advantages.⁹³

If a register were established, Mr Doddrell explained that the arrangements that would have to be considered:

what the criteria would be to accept somebody on the register; what the mechanism would be for removing them and stopping them from continuing their practice in that area; whether we might charge a fee for people being on the register; whether the register would be a public document freely published and made available or whether it would be something that would be just available for the department itself, and perhaps a final point to make on this is that there is a real balance on this as to whether the benefits [...] outweigh the extra regulatory hoop that we will be imposing on business that they would have to go through in order to go about their business.⁹⁴

89 HC (2006-07) 117, para 82

90 Q 151 [Mr Wicks]

91 Q 153

92 Q 151 [Mr Wicks]

93 Q 151 [Mr Doddrell]

94 *Ibid.*

36. From the oral evidence it is clear to us that the Government is considering whether to introduce a register of brokers. We welcome the detailed consideration that the Government is giving to the question of introducing a register for arms brokers. The arguments, which the Government itself summarised during its oral evidence, amounted, in our view, to a convincing justification for the introduction of a register of arms brokers. **We reiterate our recommendation made previously that the Government establish a register of arms brokers.**

End-use control for torture equipment

37. We recommended last year that the Government bring forward proposals for an end-use control on equipment used for torture or to inflict inhuman or degrading treatment. In its Initial Response to the 2007 Consultation published in February 2008 the Government stated that it had:

decided, in principle, to introduce an end use control on torture equipment, thus enabling the UK to licence—and thus refuse—the export of any goods from the UK which were destined for use in torture or similar inhumane or degrading acts. Since this control is more general in nature, the Government would seek to introduce it at EU level, rather than nationally, in order to ensure that the rest of the EU was operating to UK standards and that UK exporters could not circumvent the control simply by temporarily exporting from other nearby EU countries. It would be introduced on the basis that if the Government had information or intelligence, that the export in question was likely to be used for these purposes, then it would inform the exporter, who would then be required to apply for a licence. Exporters would also need to apply for a licence if they knew that the export was intended for such use. Once a licence application had been received, it would then go through the same rigorous assessment process used for licences under the other end use controls, and any decision to refuse it would be subject to appeal by the exporter.⁹⁵

38. The UK Working Group on Arms understood the “logic behind doing this through the EU” but considered that, if the Government was rebuffed by its EU partners, “such a control should still be introduced unilaterally (thereby setting an example for others to follow)”.⁹⁶ We welcome the Government’s response to the proposal, in principle, to introduce an end-use control on torture equipment. This is an issue that we expect to return to. **We conclude that the Government is right to seek to introduce an end-use control on torture equipment through the EU. If this is not possible, we recommend that such a control should be introduced by the UK.**

⁹⁵ Government’s Initial Response to the 2007 Consultation, para 2.3

⁹⁶ Ev 54, para 7

Re-exports

39. Following press reports,⁹⁷ we asked in 2007 the then Foreign Secretary, Rt Hon Margaret Beckett MP, about reports that maritime patrol aircraft which had been exported from the UK to India were to be sold by the Indian government to Burma and suggested that the export licence should have required a clause in the contract restricting resale. She said that “with the benefit of hindsight I suppose one could say it might have been desirable” but she pointed out that the original contract had “been rather a long time ago, possibly even decades”.⁹⁸ In our subsequent Report, while we accepted that little could be done in respect of the proposed export of British-made maritime-patrol aircraft from India to Burma, we recommended that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, we recommended that the contracts included a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in the British or foreign courts.⁹⁹ In its response to our Report the Government indicated that it would consider these recommendations in the post-consultation analysis of the Review of Export Controls.¹⁰⁰ The issue was not addressed in the Government’s Initial Response to the 2007 Consultation and so we raised it in writing¹⁰¹ and with the Minister when he gave oral evidence in May 2008. The Minister said that “where we understand that goods will be re-exported by the recipient country we assess the risks associated with that”.¹⁰² Mr Doddrell explained:

it is the practical difficulties. Once the goods have left the UK it is very difficult to stop them going anywhere else. Our preferred approach for some time has been to factor all these considerations into the initial licensing decision, and if we judge that there is a risk that helicopters going to a recipient in India would then be re-exported on to Burma then our preferred approach is to stop them going to India in the first place.¹⁰³

40. From our work scrutinising export controls since 1999 we are aware of the key role that pre-licensing checks play in export controls. Our concern highlighted by this Indian case was where defence goods are exported to a “friendly country”, used by the authorities in that country and after many years then sold on. We cannot see that the system of pre-licensing checks could anticipate, or should prevent, an unobjectionable export on the grounds that it might be re-exported to another country which might in the future be subject to an embargo. When this point was put to the Minister he said that it came down to practicalities¹⁰⁴ and that he would look at the matter again.¹⁰⁵ Amnesty International UK,

97 HC (2006-07) 117, para 215; the press report was “Curbs apply only to aircraft spares: UK”, *The Hindu*, 4 February 2006, <http://www.hindu.com/2006/02/04/stories/2006020403311300.htm>; see also Ev 66, para 37.

98 HC (2006-07) 117, Q 232

99 HC (2006-07) 117, para 217

100 Cm 7260, p 21

101 Ev 87, para 15

102 Q 185

103 Q 186; see also Q 188 and Ev 69.

104 Q 190

the Omega Research Foundation and Saferworld pointed out that Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Poland, Romania, Spain and Sweden used “re-export controls to differing degrees”.¹⁰⁶ In our view, a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo would provide increased protection against undesirable re-exports. Such a clause would underscore any diplomatic efforts the UK made to prevent objectionable re-exports and, as the non-governmental organisations pointed out, provide grounds for “refusing transfers to the same end-user [...] and revocation of existing licences”.¹⁰⁷ It could also act as a deterrent if export licences were to be refused where a UK company had in breach of the requirement previously exported items under a contract not containing a re-export clause. **We reiterate our recommendation that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, we recommend that the contracts include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts.**

Licensed production overseas

41. In our review of export control legislation last year we concluded that the existing controls over licensed production overseas were inadequate and needed to be extended. We were attracted to the option set out by the Government in the 2007 Consultation Document to make export licences for supplies to licensed production facilities or subsidiaries subject to conditions relating to the relevant commercial contracts.¹⁰⁸ In its Initial Response to the 2007 Consultation the Government concluded that the option’s

flaw was that ultimately, a contract is only as good as the will of the two parties to abide by it. If the parties have no real collective interest in preventing onward supplies of concern, the overseas entity is unlikely to advise its UK link of breaches and the UK exporter will be less inclined to pursue such matters through the courts, particularly in an overseas jurisdiction. And even if legal action was pursued on the basis of the contract, it is far from certain that the remedy would do anything to prevent the export of concern; damages or other financial remedies might be granted, but that would not solve the problem of goods or technology ending up in a destination we were unhappy about. So, from an export licensing perspective, any follow up action by the UK exporter serves little purpose other than as a warning to the overseas entity not to export to undesirable destinations in future. But the UK Government already has the ability to revoke licences or refuse future applications—which is a very powerful sanction—and in addition, any control specifically linked to licensed production could give rise to arguments over the status of the facility in question and thus whether the control applied. So the Government therefore

105 Q 191

106 Ev 65, para 33

107 Ev 66, para 40

108 HC (2006-07) 117, para 238

considers that in practice, [the option] imposes extra burdens and complications without giving the licensing authorities any significant additional leverage.¹⁰⁹

42. We raised the issue during the oral evidence session with the Minister, who told us that the “door is open”.¹¹⁰ We invite the Government to reconsider. As we noted above in respect of re-exports, the system of pre-licensing checks may not pick-up or prevent an unobjectionable export on the grounds of circumstances that might change in the future—for example, if a producer overseas in receipt of British goods or technology who faced with severe financial pressures decides to sell to an objectionable buyer, in order to avert insolvency. In our view, a safeguard against this occurrence would be a standard requirement of licensing that export contracts covering the supply of goods and technology to overseas production facilities contain a clause preventing re-export to a destination subject to UN or EU embargo. **We recommend that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo.**

“Single action” clause

43. In their evidence this year Amnesty International UK, the Omega Research Foundation and Saferworld drew attention to the “Einzeleingriff” or “single action” (or individual intervention) clause used in Germany, whereby the transfer of an unlisted item can in principle be refused.¹¹¹ They pointed out that the Einzeleingriff had been applied to non-listed communication equipment to a country under UN arms embargo, where it was believed the equipment would be used for internal repression. As the equipment had no military end-use (i.e. no use in the development of or incorporation into weapons), the catch-all clause under the Dual-Use Regulation did not apply. In the non-governmental organisations’ view, this approach had considerable advantage as it did not establish an

109 Government’s Initial Response to the 2007 Consultation, para 7.6

110 Q 195

111 Foreign Trade and Payments Act of 28 April 1961 (Federal Law Gazette I p. 481, as amended by Article 1 of the Law of 28 March 2006 [FLG I p. 574]):

Part 1, Chapter 1, Section 2, para. 2 of the Foreign Trade and Payments Act:

- (2) The Federal Ministry of Economics and Technology, in agreement with the Federal Foreign Office and the Federal Ministry of Finance, may decree the necessary restrictions on legal transactions or acts, in order to avert a possible danger, which may arise in certain cases, for the legally protected rights referred to in Section 7 para. 1 of this Act. In case of measures related to the trade in capital assets, payment transactions or the trade in foreign valuables and gold, agreement with the German Federal Bank shall be made. The decree shall expire six months after its enactment, unless the restriction is laid down through statutory order.
- (3) Restrictions shall be limited in nature and scope to the extent necessary to achieve the objective stated in the licence. They shall be framed in a way hampering the freedom of economic activity as little as possible. Restrictions may affect existing agreements only if the desired objective is in substantial jeopardy.
- (4) Restrictions shall be revoked as soon as, and insofar as the reasons warranting their imposition do no longer apply.
- (5) Where independent obligations to act may be substantiated under this Act, paragraphs 2 and 3 above shall apply mutatis mutandis.

Section 7, para 1 which is referred to above:

Legal transactions and acts in foreign trade and payments may be restricted in order to 1. guarantee the vital security interests of the Federal Republic of Germany, 2. prevent a disturbance of the peaceful coexistence between nations, or 3. prevent a major disruption of the foreign relations of the Federal Republic of Germany.

obligatory licensing requirement for industry, while at the same time it allowed the authorities to prevent suspicious transfers in specific cases.¹¹²

44. EGAD said it had carried out research into the “single action” clause used in Germany and had reservations about it. Industry was looking for an export system that was “clear and predictable”, not “a situation where there was *carte blanche* to stop any shipment of anything at any time on the surmise that it might be used for a purpose that was claimed to be adverse to the policy of the day”.¹¹³ The Minister had also examined the “single action” clause. He said that the advantage of the German approach was that it gave the German authorities “significant flexibility” but, on the other hand, it gave “virtually no certainty to exporters about what is and what is not controlled”.¹¹⁴ He explained that:

What we would like to do is to negotiate an approach through the European Union and that is what we are seeking to do. It is difficult to assess timescales on this for the usual reasons. It includes a level of support within the Commission and the role of Presidency and other Member States, but that would be our preferred approach.¹¹⁵

We conclude that we should return to the issue of the “single action” clause—empowering the Government to refuse the transfer of an unlisted item—once the Government has pursued the matter through the EU and we recommend that in its response to this Report the Government state its current position in negotiations with the EU.

Military end-use control

45. As an alternative to the “single action” clause or to an increase of the controls on licensed production overseas and of the overseas subsidiaries of UK companies, the Government explained that it was examining whether it “can enhance controls on non-controlled goods under the military end-use control”¹¹⁶ and it aimed to clarify its position in a “further response later this year”.¹¹⁷ EGAD told us that there was “misconception that most military equipment is manufactured using specially designed or modified military components” and while that “may have been the case 20 years ago [...] the case today is, particularly in the electronics industry, so many components which are manufactured for industrial use are finding their way into military equipment”.¹¹⁸ In its evidence the UK Working Group on Arms pointed out that the Government was “already running an informal military end-use control system”.¹¹⁹ The UK Working Group said that the system went beyond the case of Turkey, which we raised in previous Reports,¹²⁰ where Land Rover

112 Ev 61, para 7

113 Q 76 [Mr Hayes]

114 Q 204

115 *Ibid.*

116 Q 198; and see also Qq 197, 204.

117 Q 204

118 Q 64 [Mr Fletcher]

119 Q 101

120 HC (2005-06) 873, paras 96-99; HC (2006-07) 117, para 235

as a company were informing the “ECO of all exports of non-licensed vehicle kits going to Otokar in Turkey for turning into military vehicles and then passing information about onward export from Otokar to other destinations” and “that is working across all of Land Rover’s arrangements”.¹²¹ The UK Working Group told us that there were “similar arrangements in place for Pakistan and Malaysia” and it argued that if the system “is working then there is already recognition within government that military end use controls of this nature need to be applied”.¹²²

46. The UK Working Group makes a telling point: it appears that a military end-use control applying to non-controlled goods is developing. We raise no objection to this development and we applaud the cooperation of UK industry. The operation of the control should, however, be transparent and, where cooperation is refused, the Government needs to be able to prevent non-controlled goods exported from the UK being put to military use for purposes at variance with the EU Code of Conduct on Arms Exports and the National Export Licensing Criteria. **We conclude that a military end-use control applying to non-controlled goods is evolving. We welcome this development. We recommend that the Government bring forward proposals for a systematic military end-use control regime.**

47. Amnesty International UK, the Omega Research Foundation and Saferworld raised a concern about military utility and transport vehicles. They told us that there had been frequent reports of these vehicles which were not in themselves of a specification that required an export licence being adapted for military use with armouring, gun mounts and other military fittings and then being used to play a central support and logistics role for forces involved in serious and persistent human rights violations. The non-governmental organisations proposed that the ML6 category of the Military List should be amended “to cover ‘utility and transport vehicles supplied for military, security or police use’, including those supplied as complete items or in kit form; and the ML10 category to cover ‘utility and transport aircraft supplied for military, security or police use’”.¹²³ **We recommend that the Government consider as part of a package of proposals for a military end-use control regime whether (i) the ML6 category of the Military List should be amended to cover utility and transport vehicles supplied for military, security or police use, including those supplied as complete items or in kit form, and (ii) the ML10 category should be amended to cover utility and transport aircraft supplied for military, security or police use.**

121 Q 101

122 *Ibid.*

123 Ev 62, para 12

4 Enforcement

Introduction

48. Since the start of this Parliament we have scrutinised the enforcement of export controls closely. Ahead of our last two Reports we took oral evidence from HM Revenue and Customs (HMRC) and the Revenue and Customs Prosecution Office. This year we took written evidence and visited the Customs facilities at the Port of Southampton, where we had an informal meeting with both HMRC and the Revenue and Customs Prosecution Office. A note of the visit is annexed to this Report.¹²⁴

Seizures by HM Revenue and Customs

49. The table below sets out the number of seizures in each of the past seven financial years. Seizure occurs when HMRC detain goods subject to export control which appear to be intended for export without a valid export licence.¹²⁵

Financial year	HMRC seizures
2000-01	120
2001-02	80
2002-03	67
2003-04	63
2004-05	37
2005-06	34
2006-07	44

50. We have previously expressed concern about the downward trend in the number of seizures by HMRC.¹²⁶ The Minister, Malcolm Wicks MP, in his oral evidence as well as pointing out that in 2006/7 there had been 44 seizures by HMRC said that “in 2007/8 the figure is likely to be significantly higher and we will be reporting on those figures in our next annual report”.¹²⁷ **We conclude that we should continue to monitor the number of seizures made annually by HM Revenue and Customs and we recommend that the Government continue to supply this information in annual reports on strategic export controls along with an explanation for the trend in seizures.**

124 Annex 2

125 Foreign and Commonwealth Office, *United Kingdom Strategic Export Controls Annual Report 2005*, Cm 6882, July 2006, p 9; and for 2006–07 Q 178 [Mr Wicks]

126 HC (2006-07) 117, para 157

127 Q 178 [Mr Wicks]

Level of penalties

51. The Export Group on Aerospace and Defence (EGAD) in its evidence last year pointed out that the dearth of any headline prosecutions underscored with heavy penalties on transgressors had allowed the threat of potential prosecution to reduce as an “effective awareness raising tool”.¹²⁸ In its evidence this year EGAD returned to this issue. David Hayes from EGAD pointed out that:

If I was to contrast the situation in the United States with the situation in the United Kingdom, working as I do with both systems frequently, the main difference, from a company’s perspective, is that non-compliance with the UK system can make economic sense but non-compliance with the US system never makes economic sense.¹²⁹

In its evidence the UK Working Group on Arms made a similar point when it compared the penalty imposed on the ITT Corporation in the USA which had been criminally convicted and fined US\$100 million for illegally sending classified night-vision technology used in military operations to China and Singapore with the penalties imposed by the British courts.¹³⁰

52. If EGAD’s assessment is correct, it casts serious doubt on the effectiveness of the export control system. In our past two Reports we have recommended that the Sentencing Guidelines Council as a matter of urgency conduct a review of the guidelines on sentences for breaches of export control.¹³¹ On each occasion the Council has decided not to include a review of the penalties for breach of export control in its annual programme. We are extremely disappointed and concerned that the Council has on two occasions declined to review the penalties. That said, the Revenue and Customs Prosecution Office and courts have made progress without the Council. In November 2007 a British arms dealer, John Knight, was jailed for four years after pleading guilty to illegally moving weapons contrary to Article 9(2) of the Trade in Goods (Control) Order 2003. Mr Knight was also made subject to a confiscation order of £53,389.51 to be paid within six months or face an 18 month prison sentence in default. This prosecution was brought by the Revenue and Customs Prosecutions Office and was the first use of this legislation by any prosecuting authority in the UK.¹³² The sentence was appealed. The Court of Appeal upheld the sentence and, as the Government pointed out, “set out some quite useful guidance on how sentences should be applied in cases of conviction under the arms control legislation”.¹³³ Following the Knight case we consider that the time has come for the Council to take its lead from the Court of Appeal and to review the penalties for breaches of export control. **We reiterate our recommendation made previously on two occasions that the**

128 HC (2006-07) 117, Ev 57

129 Q 86 [Mr Hayes]

130 Ev63, para 19

131 HC (2005-06) 873, para 126; HC (2006-07) 117, para 165

132 “Arms dealer jailed in first use of export control legislation”, Revenue and Customs Prosecution Office press notice 23, November 2007, http://www.rcpo.gov.uk/rcpo/pressoffice/news/200711023_2.shtml; see also Annex 2 to this Report, section 3

133 Q 177

Sentencing Guidelines Council conduct a review of the guidelines on sentences for breaches of export control and we press the Council as a matter of urgency to include the review in its programme for 2008-09. We are deeply dismayed to have to make this recommendation again.

Open licences

53. The Knight case also gave rise to representations on the use of open licences. Oliver Sprague from Amnesty International said :

from the court transcripts [John Knight's] lawyer says that he is registered to use various open general licences for his brokering and trafficking activities and he wants to continue to use them after he has finished his sentence. I would go one step further: under the current system there is nothing to stop him using it now. As long as he has access to a phone, he could be using that licence. It seems crazy that somebody convicted of such a serious export control violation is eligible to use an Open General Export Licence for the movement of small arms and light weapons or of a wide range of goods on the Military List.¹³⁴

54. We put Amnesty International's concerns to the Minister, Malcolm Wicks MP. He pointed out that HM Prison Services rules did not permit convicted prisoners to run a business when in prison. But he accepted that an anomaly had been pointed up and he said that:

We had our lawyers look at what could be done and I am now pleased to be able to tell the Committee that a notice to exporters has been issued setting out the circumstances where the Secretary of State may consider suspension or revocation of open general licences for individual exporters. The notice sets out the circumstances where the Secretary of State may consider it appropriate to take speedy action to suspend or revoke such licences. John Knight has now been advised that his company, Endeavour Resources, is suspended forthwith from the use of the Open General Trade Control Licence for a period of four years from the date of his conviction. We have learned lessons.¹³⁵

55. We applaud the Government for suspending the rights of Endeavour Resources Limited from the use of the Open General Trade Control Licence. We consider that the lesson learned from the Knight case is of general application. **We recommend that the Government suspend as a matter of course any person or company convicted of breach of export controls from the use of the Open General Trade Control Licence for a period no less than the length of their sentence and, if the Government establishes a register of brokers, he or she be struck off the register. We also recommend that those who have committed minor breaches have this recorded against their names in the register.**

134 Q 122

135 Q 156

Compliance visits

56. When an exporter registers to use an Open General Export Licence (OGEL), he or she is subject to compliance visits by the Export Control Organisation (ECO).¹³⁶ The UK Working Group on Arms pointed out that the figures showed a “growing trend of examples of misuse of open licences when the compliance officers come to visit. In 2004, 5% of OGELs were seen to be misused; in 2005, 8% were seen to be misused; and in 2006, 11%. That is just over one in 10, from compliance visits, are shown to have problems with their use.”¹³⁷ The trend should be seen against an increase in the number of open licence-holders from 779 in January 2003 to 3,114 in December 2007.¹³⁸ The Government told us that it was “concerned about levels of non-compliance in relation to use of open general licences” and it explained that “partly this has come about because more people are using the open general licences”.¹³⁹ It pointed out that it now had “the mechanism in place to remove entitlement to use open general licences if there are persistent breaches, so there would be a real incentive on exporters to get it right, make sure that they are following the rules”.¹⁴⁰ The Minister also made the point that the majority of non-compliance cases were “usually minor record-keeping errors” or “incorrect references on documentation” and that these breaches were “reported to HMRC”.¹⁴¹ But he explained that he was not “complacent” and he considered that “we need to improve”.¹⁴² He had been able to reallocate resources to compliance with the result that the compliance team at the ECO had “increased by over 30% so that more companies can be visited each year”.¹⁴³

57. We note the Government’s explanation for the trend showing increases in the number of misuses of open general licences and on the nature of the breaches and we welcome the reallocation of resources to increase the number of compliance visits. **We conclude that we should monitor the trend and type (in particular, intent, lack of awareness or neglect of duty of care) in the number of misuses of open general licences next year. We recommend that this information should be included in the Government’s annual reports on strategic export controls.**

58. We consider that it is neither good for the integrity of the export control system nor defence exporters for the authorities to adopt heavy-handed enforcement tactics in the face on isolated, technical breaches of the system of open licences. The same considerations do not apply to persistent breaches. **Where breaches of the requirements to use open general licences are persistent and an exporter shows no inclination to bring his or her administrative arrangements up to the required level, we recommend that the Export Control Organisation automatically remove the exporter’s entitlement to use open general licences.**

136 Cm 7141, para 3.7

137 Q 122

138 Ev57, para 29

139 Q 168

140 *Ibid.*

141 Q 161 [Mr Wicks]

142 Q 164 [Mr Wicks]

143 *Ibid.*

59. The UK Working Group on Arms had concerns also about the scope of Open General Export Licences. It claimed, for example, that Open General Export Licences could be used to export military small arms and their components to Guinea, a state adhering to the ECOWAS¹⁴⁴ convention on small arms, if imported from the Guinean government to be repaired or replaced. The Open General Export Licences could also be used to export instruction manuals and blueprints for military equipment to, *inter alia*, Burkina Faso, Congo (Brazzaville) and Guinea (Conakry).¹⁴⁵ **In responding to this Report we recommend that the Government set out the arrangements and programme for reviewing and updating open general licences.**

Civil penalties

60. Amnesty International UK, the Omega Research Foundation and Saferworld suggested that, rather than relying exclusively on the criminal law to prosecute breaches of export control, the Government should amend the primary legislation to be able to proceed through the civil courts as well as the criminal courts.¹⁴⁶ The non-governmental organisations said that:

civil penalties would create a lesser test for prosecutors and therefore enable a greater number of breaches to be successfully prosecuted, creating stronger deterrent against transgressing the export control regime. [Civil penalties] would create an incentive for compliance from those who would stand to lose financially and would generate a more cooperative stance from companies under investigation.¹⁴⁷

61. We asked whether other countries applied civil penalties to breaches of export controls. The UK Working Group replied that Germany used them and that Israel had recently introduced a new law that contained civil penalties. The UK Working Group also cited its experience of the USA where officials had pointed out that the lower burden of proof was “very helpful and that companies actually tend to dismiss the likelihood of criminal prosecution and are much more wary of civil procedures” and the US officials took the view this was a “critical component in ensuring compliance from industry”.¹⁴⁸ Picking up EGAD’s point about compliance in the USA, the Working Group understood that UK industry was “far more concerned about complying with civil law in the US than it is about

144 The convention is the Economic Community of West African States (ECOWAS)—Convention on Small Arms and Light Weapons, their Ammunition and other related materials / Moratorium on Import, Export and Manufacture of Light Weapons. ECOWAS Member States are Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Cote D’Ivoire, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The ECOWAS Convention on was adopted on 14 June 2006. UK exporting policy is that, as well as meeting the EU Code of Conduct on Arms Exports and the National Export Licensing Criteria, an export licence for small arms and light weapons, components or ammunition will not be issued unless the ECOWAS Commission has issued an exception to the Moratorium. See guidance on the ECO’s website at <http://www.berr.gov.uk/europeandtrade/strategic-export-control/sanctions-embargoes/by-country/westafricanstates/index.html>.

145 Ev 57, para 30

146 Ev 65, para 31; see also HC (2006-07) 117, Ev 139.

147 Ev 65, para 31

148 Q 98

the law as it stands in the UK".¹⁴⁹ EGAD in its evidence showed sympathy towards further consideration of civil penalties.¹⁵⁰

62. We also asked the Government about civil penalties and it replied:

We have been looking at this very carefully with Customs and will be planning to make an announcement if ministers agree in the coming months. Part of this is suspending people's right to use OGELs—that is part of it—but also whether financial penalties can be imposed perhaps with a slightly less onerous burden of proof than if one had to go through a formal process in the courts. There may well be a place for that in the regime and we have done a lot of work on it and an announcement will be coming forward in the not too distant future.¹⁵¹

63. We are pleased to note that the Government is considering the possible application of civil penalties to breaches of export control. **We conclude that the use of civil penalties for the breach of export controls appears to offer a method of strengthening the UK's export controls. We conclude that we should consider this matter further when the Government has completed its consideration of the use of civil penalties for the breach of export controls. We recommend that the Government inform the Committees and the House of the outcome of its deliberations at an early date.**

Bribery overseas

64. We deal with enforcement against bribery overseas in chapter 7.

149 Q 98

150 Q 84

151 Q 178 [Mr Doddrell]

5 Organisational and operational issues

Export Control Organisation

65. Exporters are the main users of licensing services provided by the Export Control Organisation (ECO). In line with the practice we adopted in previous years, we asked the Export Group on Aerospace and Defence (EGAD) for its opinion of ECO's performance over the past year. EGAD was "very happy in most regards"¹⁵² with the ECO's performance. EGAD singled out the outreach that ECO was conducting which it described as "very good and very productive".¹⁵³ EGAD's main concerns focussed on ECO's new IT system, SPIRE.¹⁵⁴ While EGAD noted that SPIRE had been "introduced on time and to budget [...] remarkably for a government IT system", it considered that there had been a loss "of the personal touch".¹⁵⁵ Contrary to earlier indications those using SPIRE had not been given a named licensing officer as a contact.¹⁵⁶ In addition, EGAD had concerns about the interface between SPIRE and CHIEF,¹⁵⁷ HM Revenue and Customs' (HMRC's) electronic system. Ms Peers from EGAD explained:

if I have applied for an electronic licence through SPIRE and the SPIRE licence is issued I cannot interface with CHIEF so I have to print-off the licence. I have to send it to the Hub [at HMRC's offices in Salford]. I have to get the Hub to decrement it [i.e. reduce the total on the electronic licence] and then the goods are allowed to leave. My concern is if I then print off another licence and send that up to the Hub and that is then decremented, what is to say I cannot send 40 when I actually have permission for 10. There do not seem to be any checks that I can find to prevent people just downloading another licence, sending it to Hub and then allowing the goods to go.¹⁵⁸

66. We raised these concerns with HMRC when we visited Southampton in April 2008. HMRC did not recognise the problems raised.¹⁵⁹ Subsequently, HMRC told us that "customs export declaration information submitted electronically to the customs processing system [CHIEF] is captured and can be interrogated through a management reporting system" and that "HMRC and ECO can legally exchange information where necessary through the appropriate gateway".¹⁶⁰ The ECO confirmed that the interface

152 Q 53 [Mr Salzmann]

153 Q 53 [Ms Peers]

154 Shared Primary Information Resource Environment, SPIRE, is the ECO's fully electronic system for processing licence applications.

155 Q 53 [Mr Salzmann]; see also Ev 47.

156 Q 53 [Ms Peers]

157 Customs Handling of Import Export Freight, CHIEF, is HMRC's declaration processing system, recording the UK's international trade movements by land, sea, or air and links with several thousand businesses; see also Annex 2, section 4.

158 Q 54

159 Annex 2, section 4

160 Ev 96-97

between SPIRE and CHIEF was “now operating fully”.¹⁶¹ We note that EGAD said that the Hub appeared “to be working quite well in general” and that EGAD has regular meetings with HMRC.¹⁶²

67. The UK Working Group on Arms said that in July 2007 the ECO had stated on its website that goods could be shipped “before an exporter’s OGEL [Open General Export Licence] registration had been checked and acknowledged by ECO, effectively removing any prior scrutiny over users”.¹⁶³ The change had arisen because of the illness of a member of staff.¹⁶⁴ We have concerns about ECO’s action: either the process provides a safeguard against the evasion of export control in which case the waiving of the requirement may have allowed exports in breach of export control; or the registration process and the requirement to wait until the ECO has carried out checks serves no purpose and is an otiose burden on business. **In responding to this Report we recommend that the Government provide an assessment of the effects on the integrity of the UK’s export control system of waiving the requirement on exporters applying for OGELs to wait for an acknowledgment of their applications from the Export Control Organisation before exporting goods under the licence. We further recommend that the Government take steps to ensure that the integrity of no part of the UK’s export control system is jeopardised by the illness or unavailability of staff.**

Export enforcement agency

68. Last year David Hayes, Chairman of EGAD, submitted evidence (on his own behalf, not from EGAD) proposing that there should be a single export compliance agency which would focus exclusively on implementing export controls.¹⁶⁵ This year the UK Working Group took up the idea to suggest that the Government:

initiate a viability study into the creation of a single regulatory agency, drawing together the personnel, experience and authority of the ECO and the controlled-goods section of HMRC to create a unified organisation for the compliance and enforcement of export controls. This would assist in the implementation, detection, investigation and prosecution of offences under the [Export Control Act 2002].¹⁶⁶

EGAD endorsed the UK Working Group’s call for a viability study.¹⁶⁷

69. The Minister, Malcolm Wicks MP, did not see a case for a study. He considered that there could be “considerable extra overheads associated with [an agency]”.¹⁶⁸ He explained:

161 Q 168

162 Q 55

163 Ev 58, para 32

164 Ev 58, para 32, footnote 23; according to the UK Working Group, the message posted on the ECO’s website stated: “Due to absence through illness of a key member of staff, confirmation letters for OGEL registrations have fallen behind expected timescales. If you have sent a letter or fax to us to register for an OGEL, you do not have to wait for the acknowledgement letter to start using the licence.”

165 HC (2006-07) 117, Ev 153

166 Ev 65, para 28

167 Q 88

168 Q 210

My own experience is that it is often tempting in any area which cuts across departmental or agency boundaries to say why not bring it all together, would it not be more sensible? I am not sure that it would. I think there are issues to be explored as to whether, for example, licensing and enforcement should be in the same agency. I can see arguments why that probably would not be a sensible thing. We do not see this as a priority or even as a desirable move.¹⁶⁹

70. We share the Minister's misgivings and identify no pressing reason to depart from the conclusions we reached last year on this matter.¹⁷⁰ We could not see that the creation of a single enforcement agency was going to overcome the operational difficulties that were currently faced such as the difficulty in obtaining evidence from overseas to put before a UK court. Having reviewed the evidence on enforcement in the previous chapter which shows an increase in the number of seizures by HMRC, more resources being devoted to compliance and that Government is examining the possible use of civil penalties, we consider the case for a single enforcement agency is weakened. Any reorganisation is likely to lead to considerable uncertainty and a diversion of resources to carrying out the changes required to set up the agency rather than building on the progress which appears to be underway. **We conclude that there is no overwhelming case in favour of creating an export enforcement agency in the short term.**

Defence Export Sales Organisation (DESO)

71. On 25 July 2007 the Prime Minister announced a machinery of government change moving responsibility for defence trade promotion from the Defence Export Services Organisation (DESO) at the Ministry of Defence (MoD) to UK Trade and Investment (UKTI) to "provide much greater institutional alignment across Government and build on the success of UK Trade and Investment".¹⁷¹ The Prime Minister explained that:

within this new framework, account will need to be taken of the specific features of defence exports, including the continuing role of the Ministry of Defence. No change is envisaged to existing and planned agreements between the Ministry of Defence and other Governments which will continue to be administered by the Ministry of Defence. Also, those functions of the Defence Export Services Organisation which support UK defence policy and the Armed Forces will be allocated elsewhere within the Ministry of Defence.¹⁷²

72. On 11 December 2007 the Secretary of State for Business, Enterprise and Regulatory Reform announced the arrangements under which the transfer on 1 April 2008 would take place. The Secretary of State noted that "Defence equipment manufacture is highly important to the United Kingdom" and he stated that the "combination of expertise within both and UKTI offers a major opportunity to enhance the way HM Government offer

169 Q 210

170 HC (2006-07) 117, para 304

171 HC Deb, 25 July 2007, col 83WS; see also Ev 42 and Ev 45-47, Q 41.

172 HC Deb, 25 July 2007, col 83WS

support to this successful industry”.¹⁷³ The Government told us that the transfer “was to enable the defence industry to take more advantage of the very wide network that UKTI has available right across the world, including the expert staff in overseas posts who have a good knowledge of the local market conditions which make this whole infrastructure available to the defence sector as well”.¹⁷⁴ Following discussion with industry, the Government published in December 2007 an implementation plan, “Creating UK Trade & Investment Defence & Security Group—Implementation Plan”.¹⁷⁵ The Government said that further dialogue with the defence industry would take place up until the UKTI Defence and Security Group was launched in April 2008 to “help scope out how best to build on existing work to further promote strong standards of business conduct and governance of the sector”.¹⁷⁶

73. The Minister, Malcolm Wicks MP, considered that the transfer of DESO from MoD to the Department for Business, Enterprise and Regulatory Reform (BERR) would “bed down very well”.¹⁷⁷ We received several submissions¹⁷⁸ on the transfer but, given that the transfer only took place on 1 April 2008, we consider that it is premature to reach any conclusions or to make recommendations until the new arrangements have bedded in.

74. On licensing, the Secretary of State said that current export licensing function within the DESO would be retained within the MoD and “so be separate from export support activities. And within BERR the separation between BERR export licence functions and trade promotion in UKTI will continue”.¹⁷⁹ Tony Pawson, Head of Defence Export Services, MoD, explained that “the government-to-government arrangements, including between Saudi Arabia and the British Government [would] remain with the Ministry of Defence, which in turn have detailed back-to-back contracts from the Ministry of Defence to defence suppliers and only the Ministry of Defence can operate those contracts” and that “future ones are going to be considered on a case-by-case basis but there are not any anticipated in the near future”.¹⁸⁰ **We conclude that the transfer of some functions of the Defence Export Sales Organisation (DESO) from the Ministry of Defence to the Department for Business, Enterprise and Regulatory Reform provides an opportunity to separate the functions of promoting defence sales from that of licensing exports in both departments.**

F680 process

75. Where an exporter plans to sell, demonstrate, promote or export certain equipment, goods or information which is classified, he or she needs MoD clearance to do so. To get this clearance the exporter has to complete a form known as the F680, “the main purpose

173 HC Deb, 11 December 2007, cols 16-17WS

174 Q 211

175 Ev 46, Q 41

176 Ev 47, Q 41

177 Q 217

178 Ev 49, para 5; Ev 74–76 paras 1-8; Ev 79 paras 3-9

179 HC Deb cols 16-17WS

180 Q 45

of which is to help prevent unauthorised disclosure of classified goods or equipment”.¹⁸¹ We asked why the F680 process was remaining with the MoD and not transferring with DESO to BERR, which has responsibility for export licences. The Secretary of State for Defence explained that the F680 process derived from the Official Secrets Act and not from the export control legislation and he considered it entirely appropriate that “we are the people who can ensure that we do not lead to the UK revealing more than we would wish to about our defence capabilities in the early stages of the negotiations of potential contracts”.¹⁸² He added that the F680 process also had the “advantage [...] that people get a degree of comfort [...] being able to get through that process successfully, about the later stages of export licensing [...] that is encouraging and it is a kind of tester”.¹⁸³

Defence attachés

76. In our Report last year, we recommended that the Government did not cut defence attaché posts in countries where the export of goods and technology from the UK required careful consideration to ensure that they met the EU Code of Conduct on Arms Exports and the National Export Licensing Criteria.¹⁸⁴ The Secretary of State for Defence reassured us that “there will be no reduction in the level of scrutiny that is necessary from posts abroad in relation to the licensing process by the process that we have gone through with defence attachés”.¹⁸⁵ **We conclude that all of the departments concerned with the scrutiny of export licences need to keep under review whether the cutbacks in defence attaché posts is having a detrimental effect on the UK’s export controls.**

Monitoring of imports

77. In our Report last year we also recommended that the Government improve the arrangements for monitoring and controlling large volumes of weapons that enter the UK for destruction or re-export. In addition, we recommended that the Government provide a full account of the 200,000 assault rifles that were imported into the UK from the former Yugoslavia between 2003 and 2005, explaining how many were made unusable and how many were re-exported.¹⁸⁶ In its response to the Report the Government said that the first part of the recommendation:

is connected not with arms export controls but with domestic controls on firearms, for which the Home Office is responsible. The Government considers that it would therefore not be appropriate to address these issues as part of this response, which focuses on arms export controls. But the Government acknowledges that the Committee has a legitimate reason to request this information. Therefore, a separate response on these issues will be provided by the Home Office [...] In respect of the second part of the Committee’s recommendation, there is no consolidated list

181 “Export Licences, Ministry of Defence F680 Form: Why an Exporter Might Need to Complete One”, ECO website, <http://www.berr.gov.uk/europeandtrade/strategic-export-control/licensing-rating/guidance/page8721.html>

182 Q 6

183 *Ibid.*

184 HC (2006-07) 117, para 312

185 Q 30

186 HC (2006-07) 117, para 310

recording the subsequent storage, movement, deactivation (where relevant) and subsequent disposal of weapons imported into the UK. It is therefore not possible to provide an answer to this part of the Committee's recommendation. The Home Office would be able to provide further information relating to monitoring of weapons within the UK, or deactivation procedures.¹⁸⁷

78. We regret to record that, despite reminders,¹⁸⁸ we have not had any additional information from the Home Office. **We recommend that within six weeks of the publication of this Report the Home Office supply a memorandum responding to the matters we raised on the import of arms in our Report last year.**

The UK Annual Report on strategic export controls

79. We consider that the publication of current, precise, and comprehensive information is essential for the effective operation and scrutiny of the system of strategic export controls.

The date of publication of the annual report on strategic export controls

80. Since we, and our predecessor Committees, started scrutinising the Government's annual reports on strategic export controls nearly a decade ago we have been in the position of appearing to be one year behind in our scrutiny. Typically, as was the case for 2006, the UK Strategic Export Controls Annual Report 2006¹⁸⁹ was published on 24 July 2007, just before the House adjourned for the summer and after we had completed work on our last Report. We began scrutiny of the 2006 Annual Report in the autumn of 2007, taking written and oral evidence through to spring 2008, and we shall complete the process of scrutiny with the publication of this report in July 2008, that is 19 months after the end of the period we are scrutinising. This is unsatisfactory as we are reporting on strategic export controls reports which appear out-of-date and to have been superseded with the publication of the following year's annual report. In our last Report we therefore recommended that the Government publish future annual reports on strategic export controls by the end of April each year.¹⁹⁰ We are pleased that the Government agreed to "look very carefully at whether the publication date can be brought forward".¹⁹¹ The Government told us that it hoped to publish the UK Strategic Export Controls Annual Report 2007 in May 2008.¹⁹² In the event it was not published when we completed our deliberations on this Report. It would be of considerable assistance if publication of the 2008 Annual Report could be brought forward to March 2009. **We recommend that the Government publish future annual reports on strategic export controls by the end of March of the following calendar each year.**

187 Cm 7260, p 29

188 See Ev 82 and Ev 87, para 8.

189 Cm 7141

190 HC (2006-07) 117, para 370

191 Cm 7260, p 35

192 Ev 90, para 25

Form and content of annual reports on strategic export controls

81. The Ministers in their foreword to Strategic Export Controls Annual Report 2006 state that the format has changed considerably since the first annual report and that “the way in which the information is presented is reviewed every year, and where possible, further information is included, or the data is presented more clearly”.¹⁹³ We concur with the ministers’ assessment that there has been a progressive improvement since the first annual report.¹⁹⁴ We are pleased to report that further improvements have been made but this is a dynamic process and we expect improvements to continue to be made over the years. We should put on record that we found the compact disc produced, and enclosed, with the 2006 Report to be useful, particularly the consolidation of the information in the four quarterly reports.

82. In our Report last year we made a number of recommendations about the form and content of future annual reports. As explained above, these were published after the 2006 annual report was published, although some of the changes made in the 2006 report went with the grain of our recommendations—for example, the section on policy analysis of exports to embargoed destinations and case studies.¹⁹⁵

83. There is one area where we continue to have concerns. We recommended that future annual reports on strategic export controls set out in a consistent and systematic manner the resources made available by the Government to implement and enforce strategic export controls with details of enforcement actions.¹⁹⁶ In response, the Government indicated that it would “endeavour to provide new material that will add value to interested parties”.¹⁹⁷ Subsequently, the Government explained that “information on resourcing [...] will be in terms of overall resourcing and not monetary value”.¹⁹⁸ We are grateful for any extra information but we cannot scrutinise the management and enforcement of export controls without monetary information. We need to know what resources are going into export control and whether resources are increasing or decreasing year on year. **We recommend that that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls.**

Quarterly reports

84. Last year we made a number of recommendations about the form and contents of quarterly reports.¹⁹⁹ We are pleased that the Government was able to adopt some of our recommendations, in particular (i) the division of information on financial values and descriptions between Military List items and “Other”; (ii) to combine the information on financial values, number of licences issued and descriptions to give a better indication of the volume of each type of goods licensed for export; and (iii) to provide information in

193 Cm 7141, p 3

194 For example, HC (2006-07) 117, para 369

195 Cm 7141, para 21

196 HC (2006-07) 117, para 372

197 Cm 7260, p 35

198 Ev 87, para 10

199 HC (2006-07) 117, para 382

aggregate form on the final destination of goods covered by “incorporation licences”.²⁰⁰ In its response the Government placed two items in the pending tray:

The Government will consider further the practices followed in annual reports issued by other EU Member States and elsewhere, and consider whether it will be able to provide the same, or similar, level of information in future reports. It will report back to the Committee once it has completed its review.²⁰¹

We recommend that the Government in responding to this Report set out any conclusions it has reached arising from its examination of the practices followed in annual reports issued by other EU Member States and provide an indication of the timetable for the completion of the work.

85. We noted last year that the Government was evaluating the production and maintenance of a fully searchable and regularly updated database of all licensable decisions with a search facility that would allow the user to sort licences by country and by goods.²⁰² The Government told us that it would consider the value and practicality of continuing the quarterly reports on strategic export controls in their current format. We took the Government’s point that a database might supersede and replace the quarterly reports and we recommended that the Government bring forward a proposal for a fully searchable and regularly updated database of all licensing decisions and that, if the Government propose that the database replace quarterly reports, it must demonstrate that there would be no loss of functionality or data.²⁰³ The Government accepted our recommendation²⁰⁴ that it bring forward a fully searchable and regularly updated database of all licensing decisions.²⁰⁵ **We recommend that the Government in responding to this Report set out the timetable for bringing a fully searchable and regularly updated database of all licensing decisions into operation and publish details of its functionality and operating arrangements.**

Specific cases raised with Government

86. As we have done previously, we have explored issues raised by particular licences set out in the quarterly reports—both refusals and cases where licences have been granted²⁰⁶—and we have also followed up concerns brought to our attention by interested parties or in the media.²⁰⁷ This process is detailed and, necessarily in many cases, confidential, though we encourage the Government to classify responses only where strictly necessary and we have challenged decisions where we consider the restriction is unjustified. That said, we wish to put on record that this year the Government has supplied a significant number of responses without any restriction, which we have published. We also want to record the Government’s readiness to explain the rationale for its decisions.

200 Cm 7260, pp 36-37

201 Cm 7260, p 37

202 HC (2006-07) 117, para 386

203 *Ibid.*

204 Cm 7260, p 38; see also Ev 82.

205 HC (2006-07) 117, para 386

206 See Ev 71 and Ev 85.

207 See Ev 69 and Ev 70.

Libya

87. One decision on which we sought more information was the Government's issue of Standard Individual Export Licences (SIELs) for armoured personnel carriers and water cannons to Libya.²⁰⁸ While the Government was concerned with many aspects of Libya's human rights record,²⁰⁹ it explained that it had:

placed a proviso on the licence that the goods were to remain in the control of the exporter until the end-user, the Libyan Police, had successfully completed, and been assessed against, appropriate training on the use of this equipment and best practice in public order situations. One aspect of the training was the "underpinning theories and models related to Human Rights and the proportionality of response". Independent assessors from the UK MoD Police and the Humberside Police evaluated this training. HMG considered the level of risk that the goods would have been used contrary to Criterion 2 to have been mitigated to an acceptable level by the training and evaluation.²¹⁰

88. We note that the Government was aware of the risk that the exports could be used for repression and took steps through a proviso to prevent any abuse. We continued to have concerns about Libya's human rights record. Human Rights Watch reported on Libya in January 2008:

Despite some improvements in recent years, in Libya serious rights abuses persist. The absence of a free press, the ban on independent organizations, the torture of detainees, and the continued incarceration of political prisoners, some of them "disappeared," remain matters of deep concern. To date, international engagement with the oil-rich country has focused on counter-terrorism and business ties. Human Rights Watch welcomes improved relations between Libya and other governments, but not at the expense of human rights and the rule of law.²¹¹

We therefore took the matter up again with the Government in May 2008 and the Government provided us with further information in June 2008.²¹² It said that the "package surrounding these exports trained the Libyan police in appropriate, human rights compliant, behaviour and gave them the equipment to respond to threats in an appropriate, non-lethal manner".²¹³

89. While we welcome any improvement in human rights in Libya and measures to curb the excesses of the Libyan authorities, we have misgivings about these exports to Libya. In this case with Libya's poor record on human rights there is a risk that the exports could be misused. Previously when we raised the question of risk that exports would be used in a

208 Ev 71, para 1; Ev 94, para Q 12

209 Ev 94, Q 12

210 Ev 71, para 1

211 <http://hrw.org/english/docs/2008/01/03/libya17674.htm>

212 Ev 94, Q 12

213 *Ibid.*

manner that was inconsistent with the EU Code of Conduct on Arms Exports and raised end-use monitoring, the Government told us that it believed:

strongly that there is no substitute for a rigorous assessment of any proposed export at the time of application. It is not the case that the Government issues licences where it has identified some degree of risk: if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria then it will not be granted. The end user's record in the use of equipment, whether from the UK or other supplier, in a manner inconsistent with our criteria, is taken fully into account when assessing export licence applications. In this context, detailed end use monitoring of specific UK exports would add little to future assessment of export licence applications.²¹⁴

90. This appears to be a case for which at the least the considerations were finely balanced and where in deciding to issue export licences to Libya the Government has attached weight to the steps which the Libyan authorities have taken to mitigate the risk that the exports could be used for the abuse human rights. **In responding to this Report we recommend that the Government explain whether in issuing export licences for armoured personnel carriers and water cannons to Libya it made an exception to its policy to refuse an export licence if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria and whether it will carry out end-use monitoring in the case of these exports to Libya.**

Criterion 8: sustainable development

91. Last year we took detailed evidence on the application of Criterion 8 of the EU Code of Conduct on Arms Exports, which requires exports to be compatible with the technical and economic capacity of the recipient country. Where it appears from the quarterly reports that an application for an export licence may—or should—have been subject to an assessment by the Department for International Development (DfID) for the purposes of Criterion 8 we have sought additional information from the Government.²¹⁵ The Government explained that where “the end user was a private company DFID did not carry out a Criterion 8 evaluation”.²¹⁶ We are concerned that, where an application for an export licence to a country on DfID's list of countries where sustainable development is most likely to be an important factor,²¹⁷ scrutiny may be side-stepped by an application from a private company that is supported, or controlled, by the recipient country's government. We are concerned that applications for licences by private companies on DfID's list are not subject to consideration against Criterion 8. **In responding to this Report we recommend that the Government explain whether it carries out any Criterion 8 assessment of the impact of exports to private companies in countries on the Department for International Development's list of countries where sustainable development is most likely to be an important factor and whether it checks that an**

214 Cm 6954, p 15

215 Ev 71, paras 3-4; Ev 86, para 3

216 Ev 71, para 4

217 See HC (2006-07) 117, para 108.

application made by a private company from a country on the list is unconnected with the government of the country.

Open Individual Trade Control Licence: Ivory Coast

92. We also asked about an Open Individual Trade Control Licence (OITCL) issued in 2006 for trade between a large number of destinations in components for equipment ranging from submarines to heavy machine guns.²¹⁸ One of the countries included as a destination was Ivory Coast, which has been under UN and EU embargo since 2004.²¹⁹ In its response the Government said:

The licence was granted to the UK office of an overseas government, and the end-user is the navy of that government.

We are unable to provide further details of this case, as the information is commercially confidential.²²⁰

93. We found the Government's reply unsatisfactory as we have received as a matter of course information that is commercially restricted and we have always taken care to respect the classification of the information. We took the matter up with the Government which replied that:

The Government makes every effort to ensure that classification of material provided to the committee is consistent and appropriate. The data that is provided [...] is classified as "Restricted-Commercial" and is shared with the committee in confidence. The committee's respect for this is noted. Correspondence between officials and Ministers is often classified as "Confidential" or higher for valid security reasons, and we are not able to share this information with the committee. The Government's offer to brief the [Committees] regarding confidential material remains in place.²²¹

218 The matter was raised by the UK Working Group on Arms—see Ev 56, para 18, and according to Cm 7141, compact disc, the destinations covered were Angola, Belgium, Brazil, Cameroon, Canada, Cape Verde, Chile, Colombia, Denmark, Ecuador, Egypt, Finland, France, French Guyana, Germany, Greece, Guinea-Bissau, Guyana, Haiti, India, Italy, Ivory Coast, South Korea, Malaysia, Martinique, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Russia, Senegal, South Africa, Spain, Surinam, Sweden, Trinidad and Tobago, Turkey, United States of America, Uruguay, Venezuela. Subsequently, the Government advised that the information had been inadvertently included in the Annual Report for 2006 and that the application was received in late 2006 and completed in February 2007 (Ev 72, para 7).

219 On the 13 December 2004, the Council of the European Union decided by Common Position 2004/852/CFSP to implement the UNSCR 1572(2004) imposing an arms embargo and the provision of any assistance, advice or training related to military activities, and on equipment which might be used for internal repression in Ivory Coast. Council Regulation (EC) No 174/2004, which came into force on 2 February 2005 and is directly applicable in all EU Member States, imposes restrictions on the supply of assistance related to military activities and on equipment which might be used for internal repression in Ivory Coast. As is standard with such embargoes, exceptions are made in respect of provisions related to the export of non-lethal military equipment for humanitarian or protective use.

220 Ev 72, para 9

221 Ev 89, para 24

We have concluded that in the case we raised about the Open Individual Trade Control Licence which appeared to cover exports to Ivory Coast we should accept the Government's offer of a confidential briefing.

Outreach report

94. Finally, there are two items of unfinished business from 2007. First, we welcomed the Government's offer of a "Restricted" report on outreach and recommended that the Government provide such a report at the same time that it published its annual reports on strategic export controls.²²² We asked about the report and the FCO said in January 2008 that it would "provide a 'restricted' summary of HMG outreach activities in 2007 once the details have been finalised".²²³ **We recommend that the Government send us a "Restricted" report on outreach no later than its response to this Report and clarify the timetable for the production of future reports.**

222 HC (2006-07) 117, para 376

223 Ev 84

6 Allegations of corruption in defence contracts in the 1970s

Introduction

95. It is unusual for select committees to examine in detail events which occurred over 30 years ago, that is usually the territory of the historian. There are obvious problems. As the Secretary of State for Defence, Des Browne MP, pointed out when he gave oral evidence on 17 January 2008 he was “impeded by the limited degree of knowledge that I can have of things that happened 30 years ago”²²⁴ and many of those involved in the matters at issue were no longer alive.²²⁵ But we decided, exceptionally, that as what the Government described as “very grave allegations”²²⁶ have been made persistently since 2003, to scrutinise the accusations in more detail.

96. The broad charge is that since the 1970s the Ministry of Defence’s (MoD’s) defence exports services organisation has been aware of, colluded with and have facilitated defence exports to the Middle East which have been tainted with bribery and corruption. We and our predecessor Committees have received a number of allegations in support of the charge from the general—that bribery was widespread in the Middle East in the 1970s²²⁷—to detailed allegations surrounding specific contracts.²²⁸ In view of the passage of time we decided that, rather than embark on a general and lengthy review of contracts with the Middle East, the best course was to focus on one case. The obvious candidate was the MoD’s acceptance in June 1976 of the fees charged on two contracts to Saudi Arabia. There is material available for examination—papers now available in the National Archives²²⁹—and the case is, we consider, representative of the issues that arise for those attempting to examine allegations that bribery took place in the 1970s.

Allegations made in June 2003

97. The allegations concerning the June 1976 case arose following accusations made in *The Guardian* in June 2003. The newspaper contended that the British Government’s own arms sales department—the Defence Sales Organisation (DSO, the predecessor of Defence Export Services Organisation, DESO)—was directly implicated in bribery abroad in the 1970s.²³⁰ More specifically that:

224 Q 17; see also HC (2006-07) 117, Ev 114.

225 Q 21

226 HC (2003-04) 390, Ev 34

227 “We bribed Saudis, says ex-minister”, *The Daily Telegraph*, 17 June 2006, p 6; Ev 80, para 17; Ev 81; HC (2004-05) 145, Ev 57; we put some of these allegation to the MoD, which responded in November 2006—see HC (2006-07) 117, Ev 114.

228 See Ev 85.

229 File DEFE 68/319, National Archives, Kew; see Ev 81.

230 “Web of state corruption dates back 40 years - Shielded by secrecy law - the system of ‘special commissions’ still flourishing today”, *The Guardian*, 13 June 2003, p 11

- MoD files showed that DSO officially authorised "special commissions" paid by arms firms;
- payment arrangements were even written by civil servants into the secret contracts on government-to-government arms deals; and
- firms which paid the bribes, described as "commonplace in certain parts of the world", were exempt from normal MoD rules banning corruption.

98. Our predecessor Committees put these allegations to MoD, which in July 2003 supplied a memorandum rejecting the claims that bribes had been paid by DSO.²³¹ Subsequently, we received further evidence and commented on the allegations in our recent reports.²³² This year we put the allegations directly to the Secretary of State for Defence when he gave oral evidence on 17 January 2008. He told us that he had "done a fair amount of enquiry"²³³ on the issues and that "the position regarding allegations of bribery remain[s] the same as was set out in 2003 and that is that they are totally unfounded".²³⁴

The 1976 Guidelines

99. In the 2003 memorandum the MoD explained that DSO staff dealing with defence exports were instructed to observe the following "explicit and careful" principles:

- a) public money should not be used for illegal or improper purposes;
- b) officials should not engage in, or encourage, illegal or improper actions whether in their relations with UK or overseas firms; and
- c) direct employment of agents should be avoided so far as possible. If agents had to be employed then they should be reputable and the fee should not be excessive in relation to the lawful and proper work involved.²³⁵

100. In a memorandum to our current inquiry the Campaign Against Arms Trade (CAAT) pointed out that the principles to which the MoD referred had been set out in guidelines issued on 9 June 1976 by the then Permanent Secretary at the MoD, Sir Frank Cooper, to Sir Lester Suffield, then Head of Defence Sales.²³⁶ The MoD supplied us with a copy of the 1976 Guidelines.²³⁷ The Guidelines themselves make it clear that the stimulus for their issue was "the current interest in the general subject of special commissions and similar arrangements in relation to commercial and business deals" and "the importance of maintaining strict standards in the Defence Sales field".²³⁸ The Secretary of State made the point to us that the 1976 Guidelines were "to ensure that [officials] stayed within the law

231 HC 390 (2003-04) Ev 34-35

232 HC 873 (2006-07) paras 22-24; HC 117 (2006-07) paras 341-43

233 Q 16

234 Q 15

235 HC (2003-04) 390, Ev 34, para 4

236 Ev 79-80, paras 12-13; see also Ev 81; the Government supplied us with a copy of the 1976 Guidelines—Ev 45, Q 23.

237 Ev 45

238 1976 Guidelines, para 2

and did not act corruptly”.²³⁹ In contrast, CAAT took the view that the June 1976 case which we discuss below showed that the Guidelines, contrary to what the MoD had been telling the Committees, were not “to ensure legality and propriety in the handling of Government-to-Government contracts”.²⁴⁰ We are unclear what exactly CAAT is alleging on the purpose of the 1976 Guidelines. If it is that the 1976 Guidelines were window dressing, we consider that assessment too severe for two reasons. First, the 1976 Guidelines were classified “confidential” and were not published at the time. Second, the Guidelines contain clear guidance to officials to report cases where fees or commissions “appear excessive in relation to the level and propose work which the agents undertakes[,...] the agent should not be engaged without reference to [the Permanent Secretary]”.²⁴¹ This procedure was followed by Sir Lester within the following two weeks.

The June 1976 case

101. In the “context”²⁴² of the 1976 Guidelines on agency fees Sir Lester prepared a minute to be sent to Sir Frank; a copy of the draft minute was placed in the National Archives in 2007.²⁴³ In the draft minute Sir Lester set out his concerns about the fees to be paid in respect of two contracts to supply arms to Saudi Arabia. On the first contract, the Saudi Arabian Air Defence Assistance Programme, Sir Lester recorded in the draft that the UK contractor expected to pay fees which appeared “to represent a significant increase” over the fees paid on an earlier phase of the contract. He believed that these fees had been “augmented by payments made to agents by [the UK contractor’s] sub-contractors (eg building and catering sub-contractors)”. Sir Lester then added: “There will be considerably less work for these sub-contractors in the new programme and therefore less opportunity to conceal agency fees in their prices”.²⁴⁴ This final sentence was removed from the finalised minute put to Sir Frank on 23 June. (The agency fees on the first and the second contract, Sangcom Project, were of a similar magnitude, 15%.)²⁴⁵ Similarly, other sections of the draft were removed from the finalised version sent from Sir Lester to Sir Frank. They were as follows:

- In paragraph 8 the draft minute stated that the agency fees, “although described as ‘technical consultancy’, amounts in practice to the exertion of influence to sway decisions in favour of the client”.²⁴⁶
- In paragraph 10 the draft explained that the Saudi Government “would certainly not officially approve the payment of fees, although they undoubtedly expect appropriately discreet arrangements to be made. Statements to this effect are made by senior Saudis to visiting senior businessmen in somewhat elliptical language whenever a suitable

239 Q 21

240 Ev 80, para 14

241 1976 Guidelines, para 3(c)(2)

242 Draft minute, para 1—National Archives, file DEFE 68/319; see also Q 21.

243 National Archives, file DEFE 68/319; see also Ev 79, para 11, and Ev 81.

244 Finalised minute, paras 4 and 7, though para 11 suggests the fees were lower as it recommends the acceptance of fees of 10%.

245 Draft minute, para 7

246 Draft minute, para 8; see also Ev 80, para 14.

opportunity occurs, for example by HRH Crown Prince Fahd ibn Abdul Aziz during a recent audience granted to Mr. Greenwood, Chairman of BAC, in the [p]resence of D.Sales 1 [a DESO official] and our Defence Attaché”.²⁴⁷

102. CAAT argued that, “at the very least, these payments, made via the MoD accounts under a Government-to-Government deal, were improper” and that they “were in direct breach of the [June 1976] guidelines, which the MoD relied on to defend itself to your Committee against the allegations made by *The Guardian*”.²⁴⁸

103. We asked the Secretary of State about the draft minute. He pointed out it was not possible to determine who the author of the draft minute was or what his status or authority was and it was not possible for him to construct a reliable picture of the situation 30 years ago.²⁴⁹ We asked the National Archives about the status of the document. National Archives stated:

There is no written guidance specifically for draft minutes. However, when a paper file is selected for permanent preservation, the whole file is selected. The National Archives doesn't recommend that departments weed files and it is quite normal for such files to contain document drafts. Drafts can be historically significant in themselves. Section 7.1 (c) of [the National Archives'] Guidelines for the Selection of Records (available on our website) states that: “principal policy papers, for example those leading to primary or subordinate legislation in which the department took the lead, submissions to Ministers, and papers created in the course of preparing material for the Cabinet or a Cabinet Committee, including all drafts”.²⁵⁰

104. The Secretary of State made the point that the “whole document” should be read.²⁵¹ We agree. In the Secretary of State's view the author of the document was alerting Sir Frank Cooper to “the risk of allowing agency fees to rise above a particular percentage level” and making the inference that above a certain ceiling there was a risk of corruption occurring.²⁵² In his view there were parts of the draft in which the drafter set out certain types of behaviour apparently corrupt behaviour but that was “not the tenor of the document” and that the document said to the Permanent Secretary in the context of his June 1976 Guidelines “this is what we need to be alert to and this is what we need to do to make sure that we do not trigger that risk”.²⁵³ Second, the Secretary of State suggested that it was “possible to take about a dozen words out of it”²⁵⁴ and on the basis of these words put a particular construction on the minute.

247 Draft minute, para 10, see also Ev 80, para 15.

248 Ev 80, para 16

249 Q 21

250 Ev 96

251 Q 21

252 *Ibid.*

253 *Ibid.*

254 *Ibid.*

105. The sections we cite above and which were subsequently excised before the minute was finalised amounted to over 120 words, about a tenth of the text. These sections were therefore substantial and their removal alters the tenor of the submission to Sir Frank. With these sections removed the minute sent by Sir Lester to Sir Frank focused on the question of the level of fees, rather than the function for which the fees might be disbursed.

106. Although they have no direct knowledge of the 1976 case we asked two witnesses, who have experience and knowledge of exports, about the prevalence of corruption in the Middle East in the 1970s. First, we asked Transparency International (UK) whether it had been surprised when the former Secretary of State for Defence, the late Lord Gilmour, was reported to have said that “you either bribed and got the deal or you did not bribe and you did not get the deal in relation to UK arms exports to Saudi Arabia in the past”.²⁵⁵ Transparency International (UK) replied:

When we hear reports like that, or when we speak to companies, we get a very common answer, which is that 10 years ago, 20 years ago, yes, that was common. It was common not just in relation to the UK but in relation to defence companies selling and governments receiving. Is it becoming less common today? Yes, we believe so, and there are many reasons we could go into as to why that should be the case.²⁵⁶

Second, we asked the Export Group for Aerospace and Defence (EGAD) a similar question and we set out in full its reply and the subsequent exchange:

Chairman: Lord Gilmour, former Secretary of State, said it would be fair to say that the only way to do business with the Saudis was with bribery and corruption. Did this come as a complete bolt out of the blue when you heard that?

Mr Hayes: We have to say he is entitled to his view.²⁵⁷

Chairman: Your answer was not “No, we were shocked, we were astonished” but “He is entitled to his opinion.”

Mr Hayes: Absolutely.

Chairman: I think I understand what you are saying.²⁵⁸

255 “We bribed Saudis, says ex-minister”, *The Daily Telegraph*, 17 June 2006, p 6

256 Q 110

257 Q 72

258 Q 73

Extra territorial jurisdiction for criminal offences

107. We considered one other matter arising from *The Guardian's* allegations²⁵⁹ made in June 2003 concerning bribery in the DSO. In responding to the allegations the MoD pointed out that since 1948 by virtue of section 31(1) of the Criminal Justice Act of 1948 UK civil servants had been subject to extra territorial jurisdiction for criminal offences if all the elements of the offence were committed overseas.²⁶⁰ But as the Government itself pointed out that “for a prosecution there needs to be a complaint, evidence and an investigation” and, when he gave evidence, the Secretary of State was “not aware of any complaint and investigation that took place in relation to the 1948 Act”.²⁶¹ He made it clear that he was not suggesting the inference should be drawn that the absence of a prosecution meant that there was no breach of the 1948 Act.²⁶² He did not know if, at any time since the 1970s, a complaint had been made.²⁶³ The Secretary of State added for completeness’ sake that the extra-territoriality jurisdiction went beyond that imposed by the 1948 Act on public servants as “there was in the common law such a jurisdiction relating to people who were not public servants”.²⁶⁴

108. We were grateful to the Government for explaining the legal position and we take the Secretary of State’s point about drawing conclusions from the absence of evidence of complaints or prosecutions under the 1948 statute or the common law. We accept that without an exhaustive study of the files from the 1960s it would be unjustifiable to conclude that section 31 of the 1948 Act and the common law jurisdiction were dead letters. We can, however, venture an observation. Neither the 1976 Guidelines nor the draft or finalised minute from Sir Lester Suffield to Sir Frank Cooper referred to the 1948 Act or the risk of criminal prosecution. The Secretary of State for Defence said, senior civil servants in the 1970s “knew very well that to act corruptly as a public official was a criminal offence then they probably did not need to be told”.²⁶⁵ He added that they also had the advantage of the Guidelines and that the Guidelines had obviously been “written to ensure that the MoD staff acted lawfully and properly”.²⁶⁶ The 1976 Guidelines state, however, that what is illegal “will depend in the last resort on the law and practice of the country [...] concerned, and it is for the foreign government to determine what are acceptable standards within its jurisdiction”.²⁶⁷

259 “Web of state corruption dates back 40 years - Shielded by secrecy law - the system of ‘special commissions’ still flourishing today”, *The Guardian*, 13 June 2003, p 11

260 HC (2003-04) 390, Ev 34; confirmed by Mr Browne at Q 16

261 Q 16

262 *Ibid.*

263 *Ibid.*

264 *Ibid.*

265 Q 23

266 *Ibid.*

267 1976 Guidelines, para 5

7 Challenging bribery and corruption

Introduction

109. One of the reasons for our examination in the last chapter is that a clear understanding of the past is helpful in establishing better future practice. In this chapter we turn from the 1970s to the current and future risk of bribery and corruption in arms export contracts.

Guidance to those dealing with exports

110. As we noted in the previous chapter, the 1976 Guidelines made no reference to the extra-territorial provisions in either the Criminal Justice Act of 1948 UK or the common law prohibiting bribery and corruption. If they had, we consider the Guidelines would have had greater force. **We recommend that when it produces guidance for those handling or dealing with exports—both for civil servants and British citizens or companies—the Government set out concisely and clearly the extra-territorial provisions in statute and common law on bribery and corruption as well as the penalties for breaching the law.**

Risk of bribery and corruption

111. In our Report last year we recommended that the Department for International Development (DfID) consider including an assessment in the Criterion 8 (sustainable development) methodology applied by the Government to test whether the contract behind an application for an export licence was free from bribery and corruption.²⁶⁸ As the UK Working Group on Arms pointed out:

corruption diverts public resources away from social sectors and the poor, increasing the cost and lowering the quality of public services, and often restricting access to such essential services as water, health and education. Corruption acts as a drag on the development and economic growth of a country, and perpetuates unequal distribution of power, wealth and resources. Corruption in one sector of the economy can also lead to an increase in corrupt practices across the board in the form of extortion, bribery and intimidation, many of which disproportionately affect poor people.²⁶⁹

In its oral evidence to our current inquiry Transparency International (UK) added to the list, pointing out that corruption compromised “the national security aspects of the country [...] if the Defence Ministry is seen to be corrupt”.²⁷⁰

112. We see no reason to change our minds about the need for the Criterion 8 assessment to test whether the contract behind an application for an export licence is free from bribery

268 HC (2006-07) 117, para 122

269 Ev 57, para 27

270 Q 107

and corruption. The Government has completed its review of the methodology²⁷¹ but it has not published it, as we recommended last year.²⁷² We therefore do not know if it includes any assessment of the likelihood that a proposed export is tainted with bribery or corruption. **We reiterate our recommendations that an assessment in the Criterion 8 methodology be applied by the Government to test whether the contract behind an application for an export licence is free from bribery and corruption, to maximise the integrity and accountability of the procurement process, and that the Government publish the methodology in the annual report on strategic export controls.**

113. Corruption is not confined to those countries which qualify for consideration against Criterion 8. CAAT cited the Serious Fraud Office's current investigations into allegations of corruption in respect of BAE's deals with Chile, the Czech Republic, Qatar, Romania, South Africa and Tanzania—"countries with widely differing economic circumstances and political backgrounds"²⁷³ and suggested that all export licence applications should "be subject to an anti-corruption assessment".²⁷⁴ Transparency International (UK) also gave us evidence on the prevalence of bribery and corruption in arms exports. It stated:

if you look at the Transparency International Bribe Payers index in 2002, it is the one that asks many thousands of businessmen "In which sectors do you find the most bribes to be paid?" and the top three sectors are public construction, then arms, then oil. That would be a fairly wide evidence base. If you look at similar surveys—the Americans have done something similar—that come up with the top three or four industries at risk, of which arms is one. One of their mechanisms is that their Commerce Department has a mechanism by which companies can register complaints about bribery. In the second half of the 1990s 50% of the complaints were about defence bribery, even though that is only about 1% of world trade. You hear the same thing borne out when you speak to either government officials or defence officials, who say that in the past, bribery has been extremely common practice. That is changing, but to us, that is enough evidence that says yes, defence is more at risk.²⁷⁵

114. We asked why these three areas were more susceptible to corruption. Transparency International (UK) considered that it was "partly the nature of the contracts" and explained that "all three of those are large, irregular contracts and that always offers more opportunity" and that in the case of arms exports, "the historical issue has been much more around secrecy, that if they are not openly competed and there is not open pressure on the contracts, it is that much easier to pay bribes or influence the outcome".²⁷⁶ When we put these concerns to the Minister, Malcolm Wicks MP, he assured us that the Government was "fully signed up to fighting corruption"²⁷⁷ and "where there is public knowledge, or

271 Ev 86, para 5

272 HC (2006-07) 117, para 119; the Government indicated in Ev 97, at para 7, that it would publish the methodology in the 2007 Annual Report on Strategic Export Controls.

273 Ev 80, para 20

274 Ev 80, para 21

275 Q 104

276 Q 105

277 Q 136

indeed private knowledge, which suggests that there could have been bribery or corruption, we would act on that”.²⁷⁸

115. Transparency International (UK) proposed that as a requirement for the granting of an export licence companies should be required to adhere to strict anti-corruption measures which included:

- publication of the names of intermediaries and advisers utilised by UK defence companies, and publication of all fees paid to them and the services they provide;
- a commitment to undertake face-to-face due diligence before appointing an agent, adviser or other intermediary, and on a regular basis thereafter, e.g. annually or biannually;
- a requirement that subsidiaries and joint ventures observe the same high standards of due diligence required in the UK; and
- formal monitoring of any “offset” arrangements in connection with defence deals.²⁷⁹

116. The Minister said that the main focus of the process of licensing exports “has to be on the potential risk presented by the export, not on the general process by which the contract was won”²⁸⁰ and he pointed out that the Export Control Organisation (ECO) “would not have the expertise at the moment to investigate bribery and corruption”.²⁸¹ He considered that there could be “a danger of diffusing that focus” and he pointed out that companies were “subject to the law of the land and the law is clear about bribery and corruption”.²⁸² He added that the Government did not enquire into a whole range of potential criminal activities on the part of the exporter. He was, however, willing to take the advice of the Committees on this issue.²⁸³

117. In our view the statistics which Transparency International (UK) produced give cause for concern and are a powerful argument for export control authorities taking steps to prevent bribery and corruption. Although we accept the Minister’s point that the adoption of the package of measures proposed by Transparency International (UK) would require policing and monitoring by the ECO and therefore change the focus of its operations, we consider that, to enhance the credibility of its policy of combating bribery and corruption, the Government could use the export licensing process to combat bribery and corruption without distorting its focus. **We recommend that as a first step the Export Control Organisation require those applying for export licences to provide a declaration that to the best of their knowledge the export contract has not been obtained through bribery or corruption and that where an agent has been used due diligence checks have been carried out. We recommend that those who knowingly make a false declaration be liable to prosecution and revocation of all export licences. In addition, we recommend**

278 Q 137

279 Ev 53, para 8

280 Q 139

281 Q 140

282 Q 139

283 *Ibid.*

that in a case where subsequently an exporter is convicted of corruption the Government revoke all his or her export licences. We also recommend that the Government amend the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence.

The Salam project

118. Transparency International (UK) also raised the al-Salam arms contract between the UK and Saudi Arabia. The Ministry of Defence (MoD) explained that in December 2005 the Government had signed an “Understanding Document” which established a partnership to modernise the Saudi Arabian Armed Forces and to develop closer service-to-service contacts. Under the terms it was also agreed that Typhoon aircraft would replace Tornado ADV aircraft and others currently in service with the Royal Saudi Air Force. Following detailed discussions between the governments on the commercial arrangements, the Saudi Arabian Government had announced on 17 September 2007 that agreement had been reached to purchase 72 Typhoon aircraft for the Saudi Armed Forces at a cost of £4.4 billion. The Government hoped that this new defence programme, known as “the Salam Project” and separate from the former Al Yamamah deal, would eventually include weapons, logistical and training packages, and provide an opportunity for RAF and Royal Saudi Air Force aircrews and ground technicians to train alongside each other in the UK. The MoD also explained that the Project included a commitment to a substantial programme of inward investment in the Saudi aerospace industry, including technology transfer and training for Saudi nationals that would provide thousands of skilled jobs in Saudi Arabia.²⁸⁴

119. Transparency International (UK) said that the conditions surrounding the Salam contract would be a “litmus test of the Government’s commitment to fighting bribery”²⁸⁵ and that it was greatly in the interests of both governments to show beyond doubt that the new contract was consistent with current recognised standards of corporate and public integrity.²⁸⁶ Transparency International (UK) believed that a “powerful, visible way to do this would be to set up a body comprised of respected institutions from both countries that would monitor the financial, equipment and associated support areas during the whole life of the contract”.²⁸⁷ It argued that such an arrangement would “demonstrate their commitment to showing that the contract was consistent with recognised standards of corporate integrity” and it believed that “such a positive initiative will improve the image of the UK and Saudi Arabia after the Al Yamamah saga and go a long way towards restoring faith in the UK’s anti-corruption efforts”.²⁸⁸

120. The Secretary of State for Defence told us that the Salam Project was “a perfectly proper contract in which there is no impropriety associated with this negotiation at all”.²⁸⁹ The Foreign and Commonwealth Office (FCO) told us that the “Saudi Government would

284 Ev 42

285 Ev 49, para 8

286 Ev 49, para 9

287 Ev 49, para 10

288 Ev 49, para 11

289 Q 27

not agree to any arrangement that would result in the release of sensitive information relating to their defence capability, which they would consider to be against their national interest”.²⁹⁰ The Secretary of State also said that, if the Government were to accede to Transparency International (UK)’s request to set up joint monitoring, “the next claim would be that it is not independent because the governments set it up even if it was in response to a suggestion from Transparency International. There is a perfectly good, independent body in the [National Audit office] that reports to Parliament that does this job.”²⁹¹ In a rejoinder, Transparency International (UK) said that the Secretary of State was “underestimating the damage that has been done to the UK’s previously good reputation in anti-corruption by the fall-out from Al Yamamah”.²⁹² It said that large UK companies, many of whom had worked hard at putting in place an anti-bribery practice, had been dismayed by the negative perception of UK companies overseas. In Transparency International (UK)’s view there was now “an opportunity to restore the UK’s reputation by making the new Al Salam contract fully transparent and an exemplar of good practice”.²⁹³

121. We consider that the Salam Project provides the opportunity to begin a new chapter in relations between the UK and Saudi Arabia and for a fresh start for both governments to demonstrate that they are prepared to put in place greater transparency to tackle bribery and corruption. **We recommend that the UK Government consider how to improve the transparency of the Salam Project. We also recommend that the Public Accounts Committee gives consideration to publishing all reports to it from the National Audit Office in respect of the Salam Project.**

Enforcement

122. On enforcement, the Government pointed out that the UK had:

strengthened its systems to combat foreign bribery by establishing the Overseas Anti-Corruption Unit in the City of London Police in November 2006. Working closely with the Serious Fraud Office, they have successfully increased the number of enquiries and investigations. There are now 20 foreign bribery enquiries ongoing, and 46 allegations under preliminary investigation. BERR has recently provided further resources to increase the number of officers in the unit to 12.²⁹⁴

123. We accept the Government’s assurance that it has strengthened its systems to combat bribery and we note that a number of investigations are underway. We accept that such investigations may require assistance from authorities overseas and thus may take some time. **We recommend that the Government provide in its response to this Report a statement setting out the progress made by government departments and agencies investigating current allegations of bribery in relation to arms exports.**

290 Ev 93, Q 11

291 Q 27; see also Q 26.

292 Ev 52, para 6

293 *Ibid.*

294 Ev 93, Q 9

8 The EU and the international perspective

Introduction

124. The pattern of our Report of following-up issues we raised last year, or earlier, emerges in this chapter too. On the European level we report on reviews underway, or in one case stalled, as well as emerging proposals which potentially could affect the UK's export controls. Beyond Europe, the arms trade treaty, which the UN started work on in 2006, has now reached a critical phase.

Review of the EU Code of Conduct on Arms Exports

125. The EU Code of Conduct on Arms Exports adopted on 8 June 1998 forms the basis of the UK's decision-making process for licence applications. The Code contains political commitments, but is not legally binding. It represents minimum standards which all Member States have agreed to apply to exports of controlled goods. These standards are defined through a common set of criteria to be used in deciding whether proposed exports should be allowed. The Government has published consolidated EU and National Criteria which explain how it interprets the terms of the Code.²⁹⁵

126. As we, and our predecessor Committees, have noted the EU Code was subject to a fundamental review which was drawing to a close over three years ago.²⁹⁶ A revised code was agreed at a technical level and it has also been agreed in principle that the revised text should be adopted as a Common Position under Article 18 of the Treaty of European Union. But there was no consensus as to when this should be. This Common Position would be legally binding on Member States, who would be obliged to ensure that their domestic legislation conformed with the Common Position.²⁹⁷ We have welcomed the revisions to the EU Code.²⁹⁸ This year we asked the Foreign and Commonwealth Office (FCO) if there had been any progress on the adoption of the revised EU Code. The FCO said:

We are in discussions at official level with all EU member states to see how to overcome the reservations some had previously expressed about the Common Position. These discussions are moving forward and we hope they will lead to consensus being reached in the course of the next six months. [...] Once consensus is reached, the Government will move quickly to implement, having already subjected the Common Position to parliamentary scrutiny.²⁹⁹

295 European Union Code of Conduct on Arms Exports, Council Document 8675/2/98; see also HC Deb, 26 October 2000, col 203W.

296 HC 390 (2003-04) paras 108-14; HC 145 (2004-05) paras 83-86; HC (2005-06) 873, para 139

297 HC (2005-06) 873, Ev 126; see also HC (2005-06) 873 Q 303.

298 HC (2005-06) 873, para 141

299 Ev 96, Q 19

We recommend that the Government continue to press determinedly for the revised EU Code of Conduct on Arms Exports to be adopted as a legally binding Common Position under Article 18 of the Treaty of European Union.

Peer review of implementation of EU Council Regulation 1334/2000

127. Last year we recommended that the Government set out the progress that had been made in carrying out the recommendations arising from the 2004 peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items in an enlarged EU. We also recommended that the Government considered whether the EU review's conclusions had implications for its own 2007 Review of Export Control Legislation.³⁰⁰ In a memorandum this year the Government said it had concluded that:

there are no implications for domestic legislation arising from the review of the implementation of the EU Regulation. Examination of the Commission's proposals for amending Council Regulation 1334/2000 is on-going in Council Working Groups. It is hoped that this process will be complete by the end of 2008.³⁰¹

We are grateful for the Government's memorandum commenting on the effect of the review on legislation. The review also had implications for the operation of the export control. **We recommend that in responding to this Report the Government explain whether the conclusions and recommendations from the peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items have led to changes in the operation of the export control system to improve its effectiveness.**

Changes to dual-use regulations

128. Last year we expressed concerns about the European Commission's proposals for changes to the dual-use regulations and recommended that the Government in its response to our Report explain its policy to the changes emerging from the Commission.³⁰² In reply, the Government said that Member States had yet to agree formally on any of the proposals, and "discussions are likely to continue until at least the end of 2007" and that "the UK will develop any new policy that is required once the Presidency has drawn up draft conclusions".³⁰³ We asked the Government for updates on progress and when the Presidency's proposals would emerge. The Government said that in February 2008 discussion on the Commission's proposals for a "revision of the Council Regulation on the control of exports of dual-use items [took] place at official level in the Presidency-chaired Dual-Use Working Party. The UK has contributed positively to these discussions and seeks to disseminate UK best practice and experience where this is appropriate. Member states

300 HC (2006-07) 117, para 314

301 Ev 87, para 16; see also Cm 7260, p 30.

302 HC (2006-07) 117, para 323

303 Cm 7260, p 30

have yet to agree formally on any of the proposals, and discussions continue.”³⁰⁴ This is an issue that we shall keep under review.

Intra- EU transfers

129. We recommended last year that the Government needed to formulate a policy to respond to any proposals emerging from the European Commission to remove the barriers to the free movement of military goods and technology that currently exist within the EU. Our concern was that the policy needed to address the effect that any changes would have on export controls and to ensure that UK and EU export controls were not weakened.³⁰⁵

130. In its memorandum the Ministry of Defence (MoD) addressed EU defence industry restructuring. It explained that with pressure on defence budgets throughout Europe, it was “essential that work be undertaken to develop a rationalised, integrated and efficient European industrial base that can responsively and cost-effectively meet capability requirements”.³⁰⁶ To achieve this goal the MoD pointed to a number of steps taken by EU Member States collectively:

- EU Member States that participate in the European Defence Agency (EDA) have agreed that work must be undertaken to develop an effective European defence industrial base through aligning and combining States’ needs in shared equipment requirements and meeting these through an integrated, interdependent but less duplicative European Defence Technological and Industrial Base (EDTIB). In September 2007, National Armaments Directors approved a series of roadmaps that would take forward the initiative in the areas of:
 - clarifying the key defence-related industrial capabilities for the preservation or development in Europe;
 - achievement of mutual confidence on security of supply between EDA Member States;
 - increasing competition in the European Defence Equipment Market;
 - developing diversity and depth of the European defence related supplier base; and
 - increasing Armaments Co-operation amongst participating Member States.³⁰⁷

131. On the face of it greater intra-EU transfer could impact on the UK’s export controls. We therefore asked the Secretary of State for Defence about the proposals. He said that:

we did not agree with the early proposals. We argued for a set of proposals which were much more akin to the scheme that we have in this country. Those proposals have broadly been accepted, which we are pleased about. They are reflected in the current document which is out for consideration by other countries, including some

304 Ev 87, para 9

305 HC (2006-07) 117, para 320

306 Ev 43

307 *Ibid.*

who supported the earlier proposals. So this is a dynamic process. Insofar as the actual documentation, it shows that we have been persuasive in our arguments; we have won a lot of the arguments and we are pleased about that. Broadly we welcome the direction of this but we are alert to the possibility that it could slip back at any time and we will make sure that we try to prevent that from happening.³⁰⁸

132. When he gave evidence in January 2008 the Secretary of State said that he did not have all the details, which were supplied subsequently in a memorandum from the FCO:

On 5 December 2007 the Commission published a Defence package which included 2 draft legislative measures [...] The package is intended to improve the efficiency and competitiveness of the European defence industry by addressing the conduct of business and the effectiveness of the market.

The objective for the Defence and Security Procurement Directive, where MoD lead, is to establish new, more flexible public procurement rules specifically adapted to the defence sector. This will not only ease the conduct of business in this area but, it is hoped, will encourage some Member States away from invoking Article 296 of the Treaty to exempt their procurements from the public procurement rules due to the inadequacies of the current rules. The Government supports the Commission's aims of improving competitiveness, transparency and efficiency in the European defence equipment market although the proposed measure clearly needs to be carefully balanced with the need to ensure adequate protection of legitimate national security concerns.

Separately, The Intra-Community Transfers Directive aims to simplify national export licensing procedures, so as to facilitate cross-border trade within the EU and thereby improve competitiveness and security of supply. The Directive generally proposes to use as its basis the simplified licensing arrangements that are in operation within the UK.³⁰⁹

133. On the basis of the evidence given by the Secretary of State for Defence and by the Foreign and Commonwealth Office we conclude that the Government has reached the view that neither the Defence and Security Procurement Directive nor the Intra-Community Transfers Directive as published on 5 December 2007 will lead to a weakening of the UK's export control system. This is an issue that we shall keep under review.

Slovak arms to Sri Lanka

134. Criterion 3 of the EU Code of Conduct on Arms Exports states that EU states should not grant export licences where "the arms could provoke or prolong armed conflict in the country of final destination".³¹⁰ It was reported in April 2008 that the Slovak Economy

308 Q 50

309 Ev 89, para 22

310 Cm 7141, p 73

Ministry had approved a shipment of 10,000 military missiles to the Sri Lankan Government.³¹¹ We asked the FCO whether the export violated the EU Code. It explained:

When these reports came to light, the FCO immediately sought to establish the facts. Staff at our Embassy in Bratislava discussed the reports with officials from the Slovakian Ministry of Foreign Affairs. They confirmed that the export of 10,000 rockets had taken place, but a licence to ship a further 30,000 rockets had been revoked.

The original Slovakian export is not in itself technically a breach of the Code of Conduct, but clearly would be considered undesirable when considered against Criterion 3. And under similar circumstances the UK would have refused the export of this type of military equipment to Sri Lanka at this sensitive time. We are now liaising with the Slovenian Presidency and other EU partners within COARM³¹² to consider how best to ensure that the Code of Conduct is applied in a uniform manner across the all Member States, thereby avoiding this type of anomaly in future.³¹³

135. We do not understand how an export which would be considered undesirable in the light of Criterion 3 is not a breach of the EU Code of Conduct on Arms Exports. The case raises concerns that the EU Code may be applied inconsistently by EU States. **We recommend that the Government provide us with a report on the outcome of its contacts with the Slovenian Presidency and EU States within the Working Party on Conventional Arms Exports (COARM) to consider how best to ensure that the EU Code of Conduct is applied in a uniform manner across the all Member States.**

International arms trade treaty

136. On 6 December 2006 the UN General Assembly resolved to establish a Group of Governmental Experts (GGE) in 2008 to assist the Secretary General produce a draft international arms trade treaty. The resolution was approved by 153 members in favour, 24 abstentions and 1 vote against (the USA). Following this decision the Secretary General requested States to submit their views on the form and content of a treaty. In 2007 102 responses had been received. The FCO told us that the UK had worked hard to encourage countries to respond. A report is expected after the third meeting of the GGE to the Secretary General for the consideration by the First Committee of the UN.³¹⁴

311 Sme, Bratislava, reported on 7 April 2008 by *BBC Monitoring*

312 EU Working Party on Conventional Arms Exports

313 Ev 96, Q 20

314 "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms", UN resolution 61/89, 6 December 2006; "Arms trade treaty, 'nuclear-weapon-free world', outer space arms race among issues, as general assembly adopts 54 first committee texts", GA/10547, 6 December 2006; "Government Experts hold their second meeting in New York to discuss a possible Arms Trade Treaty" Office for Disarmament Affairs (UNODA) Update, May 2008; Foreign & Commonwealth Office, *Departmental Report 1 April 2007 – 31 March 2008: Better World, Better Britain*, Cm 7398, May 2008, p 59; see also <http://disarmament.un.org/update/index.html>.

137. The Government provided us with an informal briefing on the arms trade treaty in May 2008, which we found informative and useful. As we have stated previously,³¹⁵ we commend the Government for its energy and skills in encouraging other countries to support the treaty. The next stage in the process will be the report from the GGE later this year. We hope that a comprehensive and effective treaty emerges, though we recognise that this may take some time to achieve. **We conclude that the Government is to be commended and supported in its efforts to achieve a comprehensive and effective international arms trade treaty.**

Proliferation Security Initiative

138. The Proliferation Security Initiative (PSI) aims to stop illegitimate trade in weapons of mass destruction and WMD³¹⁶ technology. The Government told us that the UK continued to participate actively in PSI and it had recently hosted a meeting of the PSI Operational Experts Group in London in February 2008 and had sent a cross-departmental team to the PSI 5th Anniversary events in Washington in May 2008.³¹⁷

139. At present the UK has no powers to seize goods subject to export controls on the high seas, or to interdict ships on the grounds that they are carrying such goods. The 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol) will strengthen the international legal basis to impede and prosecute the trafficking of WMD, their delivery systems and related materials on the high seas in commercial ships by requiring state parties to criminalise such transport. The Protocol also establishes a mechanism to facilitate the boarding in international waters of vessels suspected of engaging in these activities. The SUA Protocol will only come into force after ratification by 12 countries. The Government said that currently only three countries—Spain, Cook Islands and St Kitts and Nevis—had ratified it. The UK had signed the Protocol but has not yet ratified. Legislation will be required to enable the UK to ratify the SUA Protocol. The Government said that the necessary legislation was contained in the Transport Security Bill, which had a place in the Draft Legislative Programme for the next session of this parliament.³¹⁸

140. We are concerned that the Government has yet to ratify the SUA Protocol and that the legislation to effect ratification is only at a draft stage. **We recommend that the Government bring forward legislation in the next session to ratify the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol).**

Arms embargo on China

141. China has been subject to an arms embargo since 1989. We noticed from examination of quarterly reports that the value of standard individual exports licences (SIELs) issued for exports to China increased from £85 million in 2006 to £227 million in 2007 and we asked

315 HC (2006-07) 117, para 354

316 Weapons of mass destruction

317 Ev 94, Q13

318 Ev 94–95, Qq 13–14

the FCO whether the embargo had any economic or commercial effect. The FCO replied that:

The EU embargo on China was imposed after the Chinese suppression of the Tiananmen square pro-democracy demonstrations in 1989 and its scope covers lethal weapons that could be used for internal repression. It is important to note that it is not a “full scope” embargo. The export of some controlled goods to China was always envisaged and thus, increases in the volume of exports for controlled goods that are not covered by the terms of the embargo should not be seen as a barometer of the effectiveness of the embargo. It is also difficult to assess the economic and commercial impact of the embargo based on one year’s figures, and this needs to be assessed against a longer period.³¹⁹

142. The FCO supplied the table below showing the value and number of standard individual export licences from 2004 to 2007.³²⁰

SIELs to China		
Year	Number of SIELs	Value of SIELs
2004	180	£100 million
2005	238	£61 million
2006	284	£85 million
2007	310	£227 million

143. The FCO explained:

The table shows that since 2004 there has been a steady rise in the number of SIELs approved, although the value has fluctuated.

In 2007 three unusually high value UK exports to China took place. One was for enriched uranium (£124 million) to be used by the Yibin Nuclear Element Plant for the fabrication of commercial nuclear fuel in support of the Chinese civil nuclear power programme. Another was for cryptography software (£23.8 million) that would enable the provision of Voice Over Internet Protocol Services to be used by UT Starcom Telecom Ltd in China. The final high value export was for nickel powder (£10 million) to be used by Jinco Nonferrous Metals Co Ltd. for use in the process of making nickel sulphate and chloride. These three high value exports have distorted the overall figures for 2007 compared to previous years. All three export licence applications were assessed against the Consolidated EU and National Arms Export Licensing Criteria and were approved following consultations with the

319 Ev 90–91, Q 2

320 *Ibid.*

appropriate government departments and agencies. None were submitted to FCO Ministers.³²¹

144. We note the Government's explanation for the increase in the value of SIELs in 2007. If the three "unusually high value" value items are removed the value for SIELs in 2007 would have been about £80 million, which would have been slightly down on 2006. But as the Government acknowledges the number of SIELs continues to grow.

145. In the political field the most recent development has been unrest in Tibet. The FCO told us that it continued to "have serious concerns about human rights in China" and that it covers "human rights issues in depth with the Chinese during our regular biannual UK-China Human Rights Dialogue, (the last round of which took place in Beijing in January 2008)".³²² But the Government judged that overall that "the human rights situation has improved significantly in China since 1989".³²³ It pointed out that the US had dropped China from its list of "countries of concern" in its annual human rights report.³²⁴ The Government made it clear, however, that its "willingness to enter into dialogue does not influence our policy on arms exports to China".³²⁵ On Tibet, the Government urged:

substantive dialogue between the Chinese authorities and the Dalai Lama to resolve the underlying human rights issues there. We believe that engagement with China, not isolation, is the best way to encourage this. Strengthening the arms embargo would do nothing to encourage dialogue, and would risk isolating the Chinese Government in a way which would make it significantly more difficult for us to raise human rights concerns.³²⁶

146. We conclude that the British Government and the EU should maintain their arms embargo on China.

Criteria for sponsorship of visits to arms fairs

147. In our Report in 2006 we expressed dismay that a Chinese military delegation visited the DSEi³²⁷ arms fair in London in 2005 with the support of the UK Government.³²⁸ We asked about the criteria for sponsorship of visits to arms fairs. In a memorandum to the inquiry the Government explained the criteria:

The starting point is potential export market opportunities, based on each country's known requirements and the UK's ability to meet them. The latter is a function of what our industry can offer and the Government's likely stance on licensing of such

321 Ev 90–91, Q 2

322 Ev 91, Q 3

323 Ev 91, Q 4

324 *Ibid.*

325 *Ibid.*

326 Ev 91, Q 3

327 Defence Systems and Equipment International

328 HC (2005-06) 873, para 166

equipment to that country. The licensing criteria thus inform our deliberations, but we do not rule out inviting representatives from a country to an exhibition purely because only a limited range of items are likely to be licensable for export to it. Wider factors may also be taken into account and may cover [...] aspects of bilateral military dialogue, including involvement of the country in peacekeeping operations or our wish to encourage a contribution to international efforts to enhance global security. However, a country would not be considered where that would be contrary to the UK's international obligations and our wider defence and security interests.

The [FCO] conducts its own assessment of the value or risk of inviting countries on the list. This will involve considering the approach and behaviour of a country on human rights and whether a company might reasonably expect to obtain a licence to export defence goods to the country, even if for a limited range of goods, in accordance with any current measure. Our Embassy staff in the country will be contacted if that is thought to be necessary. FCO agreement to invite certain countries on the list, such as China, is given at Ministerial level.³²⁹

148. We are grateful to the Government for its explanation of the criteria it applies in deciding whether or not to sponsor the visit of a delegation to an arms fair in the UK. In his oral evidence the Secretary of State for Defence made the points that the Chinese knew that any goods they ordered would be subject to the “export licensing process” and that the EU embargo on China was “partial in scope” and so equipment on display which did not come within the scope of the arms embargo could easily have been “sold appropriately to the Chinese”.³³⁰ He also made the point that the Government had “been encouraging the Chinese to play a part in peacekeeping operations and they are now playing a part in peacekeeping operations across the world”.³³¹ In our view the matter is straightforward: if a country is subject to an international arms embargo, the representatives of its government should not be entitled to official sponsorship to attend an arms fair in the UK. China has been subject to an arms embargo since 1989 and it should receive no official sponsorship to attend arms fairs in the UK. **We recommend that the Government adopt a policy that, where a country is subject to an international arms embargo, the UK Government does not provide official sponsorship for the representatives of the State under embargo to attend arms fairs in the UK.**

Cluster munitions

149. In our last Report we congratulated the Government on its support for a ban on “dumb” cluster munitions and on its commitment to withdraw the UK's stocks of “dumb” cluster munitions with immediate effect.³³² As part of the process which began in Oslo in February 2007 a Diplomatic Conference on Cluster Munitions was held in Dublin in May 2008. The purpose of the conference was to negotiate a new instrument of international

329 Ev 45, Q 14

330 Q 12

331 Q 12; and see also Q 13.

332 HC (2006-07) 117, para 368

humanitarian law banning cluster munitions that cause unacceptable harm to civilians. On 28 May the Prime Minister issued a statement:

In order to secure as strong a Convention as possible in the last hours of negotiation we have issued instructions that we should support a ban on all cluster bombs, including those currently in service by the UK.

This Convention will be a major breakthrough, and builds on the UK's leadership on landmines and the Arms Trade Treaty. We will now work to encourage the widest possible international support for the new Convention.³³³

150. On 30 May more than 100 countries, including the UK, agreed to the text of the Convention on Cluster Munitions.³³⁴ The parties to the Convention undertook never under any circumstances to:

- a) use cluster munitions;
- b) develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; and
- c) assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.³³⁵

151. There have been reports that the draft treaty agreed in Dublin “incorporated a number of important, last-minute amendments that diminish the effectiveness of the protocol—and these changes were at the behest of the UK” and that:

Britain has negotiated a loophole that will allow the MoD to deploy a new generation of cluster bombs [...] the draft has subtly redefined what counts as a cluster weapon. For the purposes of the treaty, a cluster bomb is no longer a cluster bomb provided it contains fewer than ten bomblets; is designed to hit a single, identifiable target, and is fitted with a fail-safe device to self-destruct the bomblets so as not to maim children [...] This means that while the MoD will scrap its existing M73 and M85 weapons—which it does not use anyway—it is free to develop a new generation of these munitions provided they fall within the strict terms of the treaty. Surprise, surprise: the MoD's next generation anti-tank cluster shell does precisely that.³³⁶

152. In the time available we were not able to put these points to the Government but it pointed out that “Article 2 of the Convention makes clear that other munitions which have sub-munitions, but which meet a set of cumulative criteria designed to avoid indiscriminate area effects and the risks posed by unexploded sub-munitions, are not

333 The Prime Minister's comments on the Dublin Diplomatic Conference on Cluster Munitions, 28 May 2008, <http://www.number-10.gov.uk/output/Page15608.asp>

334 Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, CCM/77, 30 May 2008, <http://www.clustermunitionsdublin.ie/pdf/ENGLISHfinaltext.pdf>

335 Convention on Cluster Munitions, CCM/77, 30 May 2008, Article 1(1)

336 “How cluster bomb ban was robbed of its impact”, *The Scotsman*, 5 June 2008, p 24

cluster munitions”.³³⁷ **We recommend that in responding to this Report the Government explain whether it pressed for a restriction in the Convention on Cluster Munitions agreed in Dublin in 2008 that would allow it to develop a new generation of anti-tank cluster shell.**

153. The use of cluster munitions has terrible humanitarian consequences. **We conclude that the Government is to be commended for its support for, and agreement to enter into, the Convention on Cluster Munitions agreed in Dublin in 2008, which bans all types of cluster munitions, including so-called “smart” cluster munitions.**

337 Ev 92, Q 6; see also Q 8.

Annex 1: Letter from the Chair of the Committees to the Department for Business, Enterprise and Regulatory Reform

The Trade in Goods (Categories of Controlled Goods) Order 2008

BERR wrote to the Committees on Arms Export Controls on 30 May inviting comments on the draft Trade in Goods (Categories of Controlled Goods) Order 2008 by 13 June.

In the time available the Committees have not been able to meet but I have taken informal soundings on the draft Order. On the basis that the Order goes some way to meet the Committees' recommendations made in previous reports that the extra-territorial reach of the legislation should be extended and that there is scope to make further changes in the third tranche of secondary legislation the Committees raise no objection to the proposed Order.

The Committees would be grateful for an assurance that BERR will provide at least two months for the Committees to consider the third tranche of changes, which I understand may emerge in the autumn.

June 2008

Annex 2: Note on the visit to the Port of Southampton

Members participating:	Roger Berry (Chair), Mr David S. Borrow, Linda Gilroy and Sir John Stanley
HM Revenue and Customs	Mark Fuchter (Head of Prohibitions and Restrictions Policy Team), Aaron Dunne (Head of Counter Proliferation and Crime Team), Vivian O'horo (Senior Policy Advisor for Strategic Exports and Non Proliferation of Goods), Lee Barham (Policy Advisor – Strategic Export Control and Sanctions Enforcement), Sue Lancioni (Policy advisor on enforcement of strategic export controls), Kevin Davis (Assistant Director Criminal Investigation) and Chris Berry
UK Border Agency	Helen Scott (Senior Officer - Container Operations Southampton)
Revenue and Customs Prosecution Office	David Green QC (Director), Bill Wheeldon (Head of Division C, Strategic Goods and Border Detections), Helen Wolkind (Head of the Director's Private Office), Malcolm McHaffie (Senior Lawyer) and Elspeth Pringle (Lawyer)

1. Port visit — Detection operations

The delegation was shown around the Southampton Container Terminal (SCT) by Mark Fuchter, Kevin Davis, Lee Barham (HMRC) and Helen Scott (UKBA). Members were told that, while the current facilities were of a modest scale in relation to the size of the port, negotiations with the port authorities for larger facilities were in progress.

Discussions at the port focused on the search and detection techniques used by HMRC staff, how often those techniques were used and under what circumstances. The officers emphasised that, due to the high volume of cargo handled by the port, the use of risk analysis in selecting the shipments to be scanned or searched was of central importance. Risk analysis or 'profiling' was done using the CHIEF (Customs Handling of Import and Export Freight) system, with processing and verification completed by staff at the National Clearance Hub (NCH) based in Salford, which utilized information such as the declared destination, origin and shipping company. While the risk analyses for imports and exports differed in the weighting assigned to the various factors, the fundamental principles behind the analyses were the same as were the methods for searching and scanning cargoes. However, with certain types of cargo, particularly suspected dual-use items, it was often more difficult to establish whether the transfer of the cargo was within export control and cooperation with, and advice from, the Department for Business, Enterprise and Regulatory Reform (BERR), such as sending metal samples for material analysis, was essential.

Members were shown an X-ray scan of a cargo container which had been selected using CHIEF as a higher risk cargo requiring further investigation. It was explained that with the appropriate training a person would be able to gain a large amount of information from such a scan but that due to the nature of certain cargoes (for example, very dense metals) physical searches might also be necessary. Members then saw the container opened and searched. The goods were not found to be in breach of export control.

2. Proliferation Security Initiative (PSI)

After returning from the port Aaron Dunne (HMRC) gave a presentation to Members, and answered questions, on the PSI. He explained that the PSI had been launched by President Bush in May 2003 and that the Statement of Interdiction Principles that underpinning the PSI had been endorsed by the Prime Minister. The PSI was a response to the growing challenge posed by the proliferation of WMD and it advanced international cooperation to stop shipments of WMD. On the practical side, Mr Dunne explained that there was a programme of exercises testing counter proliferation capability and building expertise and cooperation among the participating countries, as well as a programme of outreach and a forum for sharing information and good practice. The purpose of the exercises was to test, develop and enhance capabilities and to deter proliferators. There are approximately four major international live exercises each year in addition to regular paper-based, tabletop exercises.

Mr Dunne explained that the PSI consisted of 20 core countries (members of the Operational Experts Group or OEG), which alongside the US and the UK included Russia, Japan, France and Germany. The OEG acted as a steering group. The So San incident – the interdiction of a North Korean ship carrying missile parts to Yemen in 2002 - was among the factors that prompted the launch the PSI. While the interdiction on the high seas was legal there were no legal grounds for seizing the missiles, warheads, and missile fuel on board.

In the UK the Foreign and Commonwealth Office led on policy and HMRC was the centre of legal and operational expertise on the enforcement of export controls. The MoD had the operational lead. On outreach, the FCO led on countries new to PSI and HMRC on enhancing the capability of existing member states. Mr Dunne commented that the PSI had led to enhanced inter-departmental cooperation, coordination and communication within the UK and ensured swifter decision making. PSI was a spur to using resources more effectively.

Mr Dunne explained the Government's powers to interdict ships on the high seas which were governed by international law. He said that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention) had been amended by the 2005 Protocol which broadened the scope of the Convention to include offences relating to the illegal transport of WMD and related materials. It also provided a comprehensive framework for the boarding of ships suspected of committing an offence under the Convention. The UK had not yet adopted the Convention as primary legislation was required in order to implement its provisions in domestic law.

In conclusion, Mr Dunne said that the PSI had been the catalyst for enhanced inter-departmental communication and cooperation, improved bilateral relations and contacts with overseas partners and bilateral relations and contacts with industry. It had enhanced end-to-end counter proliferation capabilities.

3. The Knight Case

Kevin Davis (HMRC) gave a presentation to Members and answered questions, on the first successful prosecution in respect of trafficking under the Trade in Goods (Control) Order 2003. The outcome of the case was that John Knight (JK) received a four year prison sentence together with a confiscation order for £53,389. JK was a UK national resident in the UK and a well known supplier of small arms and light weapons, for which he had sought and obtained export licences in the past.

Timetable of the case:

- 10 July 2006:** JK agreed a formal contract to supply machine guns to Kuwait on payment of US\$130,000.
- 31 July 2006:** JK made an application to BERR for a trade control licence for the shipment. The goods fell within **ML1a in Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003**.
- 6 November 2006:** BERR contacted JK as further information was required in support of the licence application. JK was advised not to progress the deal without a valid licence.
- 16 November 2006:** JK provided the Kuwaiti company with a false certificate of origin showing the country of manufacture of the sub machine guns as Cyprus. The actual country of origin was Iran.
- 20 November 2006:** JK received a letter from BERR denying the licence due to concerns that the weapons might be diverted to another end-user.
- 21 November 2006:** JK provided a packing list and told the customer that the shipment of the machine guns was progressing and that he would provide flight details shortly.
- 28 November 2006:** JK appealed against the licence refusal providing further details of the order.
- 4 December 2006:** BERR formally advised JK that his appeal had been refused.
- 6 December 2006:** UK HMRC met Kuwaiti authorities to provide information and request assistance.
- 4 January 2007:** JK arranged final shipment and provided flight information to Kuwaiti company.
- 5 January 2007:** Machine Guns intercepted at Kuwait City airport by Kuwaiti authorities and seized.
- 5 January 2007:** JK arrested by HMRC and premises searched; JK subsequently formally charged with the deliberate evasion of UK trade controls and found guilty and convicted.

23 November 2007: JK sentenced to 4 years imprisonment following his guilty plea and a confiscation order made in the sum of £53,389 with 6 months to pay and default sentence of 18 months imprisonment.

7 February 2008: JK's appeal rejected and sentencing guidelines articulated for serious cases of this type.

JK's application for a license demonstrated his knowledge of relevant legislation and export control regulations in relation to the weapons concerned. Furthermore, HMRC officials had visited JK previously and in doing so made sure he was fully aware of the legal requirements for arms exports. HMRC officials had explained that, while prosecutions were not always possible, compliance/educational visits and searches often proved useful deterrents and helped prevent and disrupt the supply of goods of concern.

Malcolm McHaffie (RCPO) emphasised that in cases where a UK resident was arranging an arms deal between two overseas countries, the cooperation of those countries was of vital importance in ensuring a conviction. While the Kuwaiti authorities were to have been the buyer of the arms, they had also provided excellent assistance to the UK authorities; and this assistance had been provided in the absence of formal procedures to provide mutual support.

On the level of sentence, Mr McHaffie commented that ensuring that a convicted arms trafficker received a maximum or near maximum sentence would require evidence of delivery. In the JK case, files recovered from his home computer proved delivery. Notwithstanding a plea for compassion based on JK's personal circumstances, the court had handed down a custodial sentence of four years, which had been upheld on appeal. In Mr McHaffie's view the sentence was a strong deterrent to those contemplating breaking the UK's export controls.

HMRC believed the number of UK residents carrying out activities similar to JK's was small; there were currently on-going investigations into suspect arms traffickers. One of the difficulties in prosecuting arms traffickers such as JK was that they were well aware of the large amounts of information government departments were likely to hold on them. Revelation of such information under the Criminal Procedure and Investigation Act 1996 disclosure process could in certain circumstances undermine criminal prosecutions and impossible in some circumstances. Also, very often, evidence sought to prepare a *prima facie* case was held in countries of concern or where no formal MLA³³⁸ Treaty was in place, again creating difficulties for a successful prosecution.

The Chairman congratulated HMRC and RCPO on the successful prosecution of the first trafficking case under the Trade in Goods (Control) Order. HMRC and RCPO said that they had been greatly satisfied by the result and felt that had the case been lost it would have sent out a very bad signal.

3. The Gyrocompass Case

Kevin Davis (HMRC) gave a second presentation, and answered questions, on the recent gyrocompasses case in which a UK businessman of Iranian descent, Mehrdad Salashoor, (MS) received 18 months imprisonment and a £432,970 confiscation order in relation to the commission of four export control offences and perverting the course of justice.

He explained that the gyrocompasses were dual use goods in that they could be used in maritime navigation and as internal components of ballistic missiles. MS was a UK resident and a regular exporter of marine equipment to Iran.

Timetable of the case:

- 3 May 2006:** MS sought advice from BERR on the proposed export of gyrocompasses “to Azerbaijan”. BERR advised that an export licence was required.
- 26 May 2006:** 11 gyrocompasses were exported to Malta. Because Malta was an EU destination (for the purpose of dual use goods) no export licence was required. The Maltese intermediary submitted Customs documents to tranship 11 gyrocompasses to Iran. On the basis of local risk assessment the Maltese Customs selected the goods for examination and sought assistance from UK on license ratings. BERR advised Malta that the items were controlled and the Maltese company applied for an export licence to ship gyrocompasses to Joalee Marine, Iran. The application was refused. The Maltese company requested to send gyrocompasses back to MS in the UK and the Maltese authorities granted an export licence to UK.
- 5 July 2006:** 11 gyrocompasses were sent back to UK.
- 20 July 2006:** 6 were sold by MS back to the manufacturer.
- 23 July 2006:** 2 were exported to Norway without an export licence.
- 24 July 2006:** the 2 gyrocompasses were diverted to Joalee Marine, Iran. (The remaining three gyrocompasses were under HMRC control in the UK.)

Mr Davis continued that on 28 July 2006 MS was interviewed by HMRC. He had produced e-mails and correspondence to demonstrate how he had been deceived by shady middlemen and how he had attempted to stop the goods leaving Malta when he heard about the Iranian deal. These were later forensically proved to have been concocted in a deliberate attempt to mislead the authorities. The investigation also established that there had been six previous exports to Iran via Malta which included three gyrocompasses and pumps, the later being licensable under WMD end-use control. Additionally, the French manufacturer of the gyrocompasses had been given a false end user certificate from “Azerbaijan”. The investigation also revealed a dichotomy in the interpretation of dual use regulations at the time; the British Government considered the gyroscopes to be controlled under Dual Use Regulations whereas the French did not.

As a result of a joint operation in UK and Norway evidence of shipment to Iran had been obtained for the UK prosecution. Investigators also established that MS’s claim that the gyroscopes were to be fitted to vessels berthed in Oslo was false – the ships did not exist.

The Norwegian shipping agent was under local investigation for a false transit declaration. The agent had declared the goods in transit whereas they had actually been sent to the agent’s shed for repackaging and relabelling.

MS was arrested and charged and on 11 December 2007 and had pleaded guilty to the aforementioned offences.

HMRC cited that this was an excellent example of international cooperation and considered that it would be a deterrent to proliferation networks.

4. The National Clearance Hub at Salford (NCH)

Lee Barham (HMRC) gave a presentation, and answered questions, on the National Clearance Hub (NCH) at Salford which was the single centralised site replacing Entry Processing Units (EPU) previously located at all major air/sea ports. The hub was designed to provide a consistent, seamless clearance system for imports and exports within defined timeframes with minimal manual intervention.

Mr Barham explained that the NCH had primary customs responsibility for:

- the inputting of manual import and export entries to the Customs Handling of Import and Export Freight (CHIEF) declaration processing system;
- the inputting of manual requests for export arrival and departure loading information;
- all import and export entries selected for further checks;
- issuing import and export examinations to Detection Officers at the Frontier;
- controlling un-entered goods for inventory linked ports and airports;
- authorising and amending inventory records and removals; and
- issuing Customs Civil Penalties and Warning Letters.

He explained that CHIEF functioned as a system for license declaration and verification, and allowed legal goods to be imported or exported with minimal delay. If an importer or exporter was unaware of the need to apply for an export license this would be detected by CHIEF. CHIEF allowed the use of both risk analysis and specific intelligence to be targeted on imports and exports.

Members pointed out that when the Export Group for Aerospace and Defence (EGAD) had given oral evidence to the Committees on 20 March 2008 it said that the interface between CHIEF and SHIRE—the Export Control Organisation’s system—was not working correctly (Qq 54-55, HC (2007-08) 254). HMRC did not recognise the problems raised but undertook to seek further information from EGAD.³³⁹

Members also raised the concerns of the UK Working Groups on Arms which in its oral evidence on 20 March 2008 had said that it was almost impossible to monitor open general licences because of the incompatibility between the way the HMRC database and the Customs CHIEF system reported information and the way the Export Control Organisation registered use of the licence. The Working Group had asked HMRC whether

³³⁹ Subsequently supplied, see Ev 97, para 8.

cross-referencing was possible and the answer that had come back was: “in the six months alone to December 2007 that would involve the manual cross-checking of some 8,000 individual references” and that “we have no way on our system of extracting information about what has been exported under these licences” (Q123, HC (2007-08) 254). HMRC said that the system produced sufficient information for their purpose but it would provide the Committees with a note.³⁴⁰

HMRC also undertook to provide the Committees with a note on monitoring the Internet.³⁴¹

May 2008

340 Supplied subsequently, Ev 96

341 Supplied subsequently, Ev 96

Annex 3: Glossary of acronyms and initials

BERR	Department for Business, Enterprise and Regulatory Reform
CAAT	Campaign Against Arms Trade
CHIEF	Customs Handling of Import and Export Freight (an IT system)
COARM	EU Working Party on Conventional Arms Exports
DESO	Defence Export Sales Organisation
DfID	Department for International Development
DSEi	Defence Systems and Equipment International
DSO	Defence Sales Organisation
DTI	Department of Trade and Industry, now BERR
ECA	Export Control Act 2002
ECO	Export Control Organisation
ECOWAS	Economic Community of West African States
EDA	European Defence Agency
EDTIB	European Defence Technological and Industrial Base
EGAD	Export Group on Aerospace and Defence
EPU	Entry Processing Unit
EU	European Union
FCO	Foreign and Commonwealth Office
GGE	Group of Governmental Experts
HMRC	Her Majesty's Revenue and Customs
MANPADS	Man-Portable Air Defence Systems
MoD	Ministry of Defence
NAO	National Audit Office
NCH	National Clearance Hub
OGEL	Open General Export Licence
OITCL	Open Individual Trade Control Licence
PSI	Proliferation Security Initiative
SALW	small arms and light weapons
SCT	Southampton Container Terminal
SIEL	Standard Individual Export Licence
SPIRE	Shared Primary Information Resource Environment (an IT system)
SUA	1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol)
UKBA	UK Border Agency
UKTI	UK Trade and Investment
UN	United Nations
WMD	Weapons of Mass Destruction

Formal Minutes

Thursday 3 July 2008

Members present:

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

Members present:

<i>Business and Enterprise Committee</i>	<i>Defence Committee</i>	<i>Foreign Affairs Committee</i>	<i>International Development Committee</i>
Mr Adrian Bailey	Mr James Arbuthnot	Mike Gapes	John Battle
Roger Berry	Mr David S Borrow	Mr Paul Keetch	Malcolm Bruce
Peter Luff	Linda Gilroy	Mr Ken Purchase	Richard Burden
	Mr Bernard Jenkin	Sir John Stanley	
	Robert Key		

Roger Berry was called to the Chair, in accordance with Standing Order No. 137A(1)(d).

The Committees deliberated, in accordance with Standing Order No. 137A(1)(b).

Draft Report: Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation

Draft Report (Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation), proposed by the Chairman, brought up and read.

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

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

Paragraphs 1 to 153 read and agreed to.

The following Annexes to the Report read and agreed:

- (1) Letter from the Chair of the Committees to the Department for Business, Enterprise and Regulatory Reform
- (2) Note on the visit to the Port of Southampton
- (3) Glossary of acronyms and initials.

BUSINESS AND ENTERPRISE COMMITTEE

The Defence, Foreign Affairs and International Development Committees withdrew.

Peter Luff, in the Chair

Mr Adrian Bailey

Roger Berry

Resolved, That the draft Report (Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation), prepared by the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, be the Eighth Report of the Committee to the House.

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 17 January, 20 March and 19 May: Department for Business, Enterprise and Regulatory Reform (May 2008), Department for Business, Enterprise and Regulatory Reform (May 2008), Foreign and Commonwealth Office (June 2008), National Archives (June 2008), HM Revenue and Customs (June 2008) and Foreign and Commonwealth Office (July 2008).

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

[Adjourned till Tuesday 8 July at 10.15 am

DEFENCE COMMITTEE

The Business and Enterprise, Foreign Affairs and International Development Committees withdrew.

In the absence of the Chairman, Robert Key was called to the Chair

Mr David S Borrow
Linda Gilroy

Mr Bernard Jenkin

Resolved, That the draft Report (Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation), prepared by the Business and Enterprise, Defence,

Foreign Affairs and International Development Committees, be the Twelfth Report of the Committee to the House.

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 17 January, 20 March and 19 May: Department for Business, Enterprise and Regulatory Reform (May 2008), Department for Business, Enterprise and Regulatory Reform (May 2008), Foreign and Commonwealth Office (June 2008), National Archives (June 2008), HM Revenue and Customs (June 2008) and Foreign and Commonwealth Office (July 2008).

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

[Adjourned till Tuesday 15 July at 10.00am

FOREIGN AFFAIRS COMMITTEE

The Defence, International Development and Business and Enterprise Committees withdrew.

Mike Gapes, in the Chair

Mr Paul Keetch
Mr Ken Purchase

Sir John Stanley

Resolved, That the draft Report (Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation), prepared by the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, be the Eighth Report of the Committee to the House.

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 17 January, 20 March and 19 May: Department for Business, Enterprise and Regulatory Reform (May 2008), Department for Business, Enterprise and Regulatory Reform (May 2008), Foreign and Commonwealth Office (June 2008), National Archives (June 2008), HM Revenue and Customs (June 2008) and Foreign and Commonwealth Office (July 2008).

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

[Adjourned till Wednesday 9 July at 2.00 pm

INTERNATIONAL DEVELOPMENT COMMITTEE

The Defence, Foreign Affairs and Business and Enterprise Committees withdrew.

Malcolm Bruce, in the Chair

John Battle

Richard Burden

Resolved, That the draft Report (Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation), prepared by the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, be the Eighth Report of the Committee to the House.

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 17 January, 20 March and 19 May: Department for Business, Enterprise and Regulatory Reform (May 2008), Department for Business, Enterprise and Regulatory Reform (May 2008), Foreign and Commonwealth Office (June 2008), National Archives (June 2008), HM Revenue and Customs (June 2008) and Foreign and Commonwealth Office (July 2008).

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

[Adjourned till Tuesday 8 July at 10.15 am

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First Joint Report	Strategic Export Controls: 2007 Review	HC 117 (<i>Cm 7260</i>)
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Session 2005-06

First Joint Report	Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny	HC 873 (<i>Cm 6954</i>)
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Oral evidence

Taken before the Business Enterprise and Regulatory Reform, Defence, Foreign Affairs and International Development Committees

on Thursday 17 January 2008

Members present

Roger Berry, in the Chair

Mr Adrian Bailey
John Battle
Mr David S Borrow
Malcolm Bruce
Mr David Crausby

Linda Gilroy
Mr Fabian Hamilton
Robert Key
Peter Luff
Sir John Stanley

Witnesses: **Rt Hon Des Browne MP**, Secretary of State for Defence, **Mr Desmond Bowen**, Policy Director, and **Mr Tony Pawson**, Head of Defence Export Services, Ministry of Defence (MoD), gave evidence.

Q1 Chairman: Good afternoon. Secretary of State, welcome. It is the first time we have invited the MoD to give evidence to this Committee. In the past we have had evidence from the Foreign and Commonwealth Office, from DfID¹ and the Department for Business, Enterprise and Regulatory Reform (formerly DTI)² clearly because of their major roles in this field in terms of policy and export control matters. Obviously the MoD is also deeply involved in export control policy and therefore we are very grateful to have the opportunity to have yourself and your officials here with us this afternoon. Perhaps first of all, Secretary of State, may I invite you to introduce your officials for the record?

Des Browne: Thank you very much; we are pleased to be here. The MoD does quite an important advisory role in relation to the export licensing process. On my left I have Desmond Bowen who is Policy Director from the MoD and on my right I have Tony Pawson who is the Head of Defence Export Services.

Q2 Chairman: Secretary of State, the MoD seems to have two roles in the arms export control field. On the one hand the MoD has a promotional role in promoting UK defence exports, but at the same time it has a regulatory function in ensuring that licences are only granted for arms exports if they meet the criteria. How do you separate that promotional role from the regulatory function at the MoD?

Des Browne: I do not want to start off with a semantic point but I carefully used the word “advisory” in the introduction. We do have an advisory role as part of the overall regulatory function but we do not hold the regulatory function in this process; we advise in relation to it. However, we do recognise that potential conflict and we take great care to ensure that the part that we play in the process of export licensing is separated from export promotion. Apart from anything else, in the

Department the Minister for Defence Equipment and Support is responsible for export promotion issues and the Minister for the Armed Forces is responsible for the export control issues. The promotion staff are not in any way involved at all in the licensing process. The head of the service may wish to go into the detail of that for you but we take great care to ensure that the unit that gives input to DBERR³ in relation to its decision making does not comprise anybody—there is no commonality at all—involved in supporting export internationally.

Q3 Chairman: So the individuals concerned with the two functions are quite separate.

Des Browne: They are. Perhaps Tony can explain in more detail so you know exactly how this works in practice.

Mr Pawson: As well as the export promotion staff not being involved in the licensing process, those involved in the export licence process are not involved in the promotion. Secondly, it is a secretariat function which means involving all the relevant parts of the Ministry of Defence who do not report up the same chain of command. For example, from the equipment capability point of view, we need to protect our own UK capability when we are exporting something so there is a branch that looks at that. What about our technology issues? There is a branch that looks at that. What about protection of classified information? There is a branch that looks at that. What about security of our equipment if it is exported overseas? What sort of security arrangements have we got with the foreign governments of countries concerned so we have some reassurance on that? What about potential diversion? In terms of staff we have the DIS⁴ which looks at these matters. What is the end use? What is the technical assessment of what this capability we are proposing to export will do for the operations of the armed forces of the country concerned? Will that

¹ The Department for International Development

² The Department of Trade and Industry

³ The Department for Business, Enterprise and Regulatory Reform

⁴ Defence Intelligence Staff

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change the regional balance? What about defence bilateral relations? That is another branch of the Ministry of Defence. The specialists: there is WMD,⁵ there is Aldermaston, there is DSTL⁶ in Porton Down for chemicals, there is the CESG⁷ on cryptographic equipment. All these various branches are brought together and advice provided to ministers.

Q4 Chairman: As I understand it there are particular criteria that you focus upon, obviously criterion 5 (national security), criterion 7 (consequence of diversion), there are particular criteria in the code. Does that mean that the MoD leaves other criteria to other departments? For example, criterion 2 (risk of use of arms for internal repression), do you leave that to the Foreign Office? Does the Foreign Office do internal repression or does the MoD do internal repression?

Des Browne: I would not like to speak for the Foreign Office, but we certainly do not do it! It was helpful that Tony was as comprehensive as he was and he was probably more comprehensive than you might have wanted immediately, but I think he listed the range of particular skills and the knowledge base that we have in the MoD that informs one or other of these eight criteria. Clearly we have particular knowledge in relation to 4, 5 and 7 and people look to us because we have that knowledge base, particularly informed comment in relation to 4, 5 and 7 but also, given the substantial experience that our armed forces have across the world—particularly in the second part of the 20th century and the 21st century but even earlier than that—we have a knowledge base that gives us information about how particular pieces of equipment can be used, particularly about the usage and whether or not that usage would generate a contravention of any of the other criteria or enact and bring into play any of the other five criteria. Of course if we had a view we would make that known. On occasions I am sure—although I cannot think of a specific example because I do not do this at that level—that people may come and ask us if we have a suspicion or a concern that this piece of equipment is being used in a certain way and they want advice.

Q5 Mr Borrow: Moving onto the Form 680 process obviously there is classified equipment which exporters wish to demonstrate or sell overseas. The process is that they will need clearance from the MoD; the Form 680 is filled in from the MoD and they deal with it before it goes to DBERR where the Export Control Organisation then deals with it. Is there a technical reason why the whole of that process could not be led by the Export Control Organisation in DBERR, why it needs to go through your Department because the existence of a Form 680 from your Department does not necessarily mean it then gets a licence to be exported?

Des Browne: I think that is right, although in shorthand terms my understanding of the inference of the successful application of a Form 680 is that it has more relevance to the process going forward. If you are refused a Form 680 then you have a fairly clear idea that you are pretty unlikely to get an export licence so it forms a process in that way. It does of course have the advantage that at a very early stage in the process quite a lot of the considerations that apply to export licensing are applied and people, having gone over that course and distance, are in a much better position to apply for an export licence if the negotiations get there. The nub of your question really is whether this is a function of licensing which we have the regulatory role but where properly the regulatory role lies with DBERR. I think the answer to that lies in the historical basis of these two different processes. One is about licensing, permitting the actual export of equipment or controlled goods. The other is about allowing people to use what would be classified—not only classified, it extends beyond information which is classified—essentially getting permission to use what would be classified information, and subject to the Official Secrets Act, to get an assessment of the defence implications of doing that at an early stage in the negotiations. This is a defence related assessment of classified information which is subject to the Official Secrets Act. It becomes later a part of the process of export licensing but that is why we do it, because we have the knowledge base and we know the consequences of the sharing of this information, about the control of access by customer governments to information and equipment which is subject to security classification. It is just a common sense process I think which has grown up which allows people to share a level of knowledge that allows negotiations and discussions to take place about potential sales.

Q6 Mr Borrow: Your view would be that we need to keep the process of deciding whether it is in the UK's interest for this bit of kit to be exported, in the sense that it is classified information in the hands of foreigners, separate from the consideration as to whether or not this bit of kit should be with country A who could use it in a bad way, which is essentially what the export control regime is all about.

Des Browne: I think I am just explaining why I think this has grown up and I think the reason why it has grown up is that the Form 680 derives from the Official Secrets Act and not from the export control legislation. The reason we do it is because it is considered entirely appropriate and I agree with them, that we are the people who can ensure that we do not lead to the UK revealing more than we would wish to about our defence capabilities in the early stages of the negotiations of potential contracts. It does have the advantage, as I say, that people get a degree of comfort about that, being able to get through that process successfully, about the later stages of export licensing. Again that is encouraging and it is a kind of tester I think. Of course we do not

⁵ Weapons of Mass Destruction

⁶ The Defence Science and Technology Laboratory

⁷ Communications Electronics Security Group

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apply all of the criteria to a Form 680; we have a particular consideration and that is about defence secrets.⁸

Q7 Chairman: You say the situation has grown up historically, but would you have any objection to DBERR running the F680 process?

Des Browne: We will continue—for example, when UKTI⁹ take over the functions of DESO¹⁰ with the new group that they have created—to inform the process of export licensing in the way in which we currently do. We will keep those people in the MoD; we will keep them separate from the people who transfer. We will keep that expertise so as far as criteria 4, 5 and 7 are concerned we are the repository of most of that and we will continue to do that. I will have to keep things under review, but I do not see us changing this process to such an extent that anybody would take the view that another department that did not have the support that we can give in the Ministry of Defence to the people who make this decision, the knowledge base—it is about the protection of classified information in relation to defence capability and its effect on our defence capability. With all due respect to DBERR I do not think they have the expertise to be able to make that decision.

Mr Pawson: I would like to add the point that although, as the Secretary of State has said, there are negotiations that take place in the early stage of the promotion process in relation to the Form 680, it does not constitute a commitment to actually issuing a licence. The fact that this process is independent of the DBERR licensing process actually reinforces the independence and integrity of that decision and that process.

Q8 Sir John Stanley: Secretary of State, as you are aware at the end of the war in the Lebanon in 2006 there was a 72-hour window between the passing of the United Nations Security Council resolution for a ceasefire and that ceasefire coming into effect. In that period the Israelis dropped a larger number of cluster munitions in that 72-hour period than has ever been recorded. You will also be well aware that that has resulted in a significant number of subsequent civilian deaths and maimings. The Committee, as you know, in its previous report very much welcomed the Government's decision to phase out dumb cluster munitions, but those of us who have been—I went with a group in the Foreign Affairs Committee to the Southern Lebanon—and have talked to the UN mine clearance personnel trying to remove these cluster munitions, have been very struck by the fact that not only do dumb cluster munitions have a significant failure rate (in other words do not detonate on impact) but we were surprised to discover that so-called smart cluster munitions also have a significant failure rate of up to

approximately 10%. Given the fact that it is the Government's stated policy to stop the use of cluster munitions which in the Government's words "cause unacceptable harm to civilians", do you not agree that the Government should be seeking to phase out as soon as possible the use of smart cluster munitions as well?

Des Browne: I made the decision in March of last year to phase out two of the four cluster munitions that we had, to discontinue their use and to destroy them; they are now destroyed.¹¹ We have taken the lead internationally in the context both of the CCW¹² and the Oslo negotiations. In the process of delivering that commitment we have destroyed those two munitions.¹³ We still have two other munitions that are a cause of discussion. This whole process is bedevilled of course by a lack of clarity as to what is a cluster munition. There is no agreement internationally as to the definition of a cluster munition, never mind one that does unacceptable harm and parties are left to make their own view about that. In the absence of an international agreement on this which we strive for because we would like to see all cluster munitions phased out across the world, but I have responsibilities to balance military effectiveness and capability—including the very important imperative that I have to protect those forces whom I deploy into very difficult environments—with the humanitarian issues and concerns and I think it is important that people understand that I was able to make the decision that I made because the military advice, which I accepted, was that the purpose for which we had those munitions was able to be met in terms of military effectiveness and military protection—including force protection—by developments in other munitions. We strive to develop munitions which can replace those munitions that we have that some others define as dumb or smart cluster munitions; we make that differential ourselves because that has become a term of discussion. I think what I am saying is that I agree with you that we should have that ambition and I do have that ambition and our government does have that ambition, but subject to that very difficult balance between the military capability which we need for effectiveness, particularly for the protection of our forces, and these very obvious humanitarian considerations, some of which manifested themselves in Southern Lebanon in that 72-hour period. Can I also say that I am well aware of the work that the Norwegians did in that area and the conclusions they came to about the remnants of those weapons being used. We have ourselves, as I am sure you know because you have a great interest in this area, done some other work and the advice that I received from that work is that the weapon that we hold has a failure rate of 1%¹⁴. I know there

⁸ *Note by witness:* All criteria are applied during the F680 process, although the principle MOD concern at this early stage is the release of classified information to potential customers.

⁹ UK Trade and Investment

¹⁰ The Defence Export Services Organisation

¹¹ *Note by witness:* Those cluster munitions that the Government withdrew from service last year are in the process of being destroyed. This will take several years to accomplish.

¹² UN Convention on Conventional Weapons

¹³ *Note by witness:* See footnote 11.

¹⁴ *Note by witness:* The failure rate of the weapon is 2%—this is on public record.

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is some dispute but that is part of the problem and that is part of why these processes—the CCW process and the Oslo process—are so important because I think we have to deal with these issues about definitions, about the evidential phase, about decisions that need to be made. The short answer to your question is yes because I think you asked me if I share that ambition and I do share that ambition.

Q9 Sir John Stanley: I am very glad that you have highlighted what I personally believe is the key issue here which is the failure rate. Do you agree that the use of cluster bombs which have a significant failure rate is the equivalent of sowing anti-personnel landmines which the Government has, by treaty, now said that it would not use? The equivalent way of doing it is by sowing cluster bombs that do not detonate on impact. Could I ask you, Secretary of State, if it is the case that in the UK we have the failure rate of smart cluster munitions down to 1%—if that is the case—do you see any technological, near-term prospects of achieving what I am sure you want to see and others would wish to see as well, cluster munitions which actually do achieve the desired objective which is a 100% success rate in terms of detonation on impact and not be left lying around in the bushes, the fields and the hedges, around people's houses and gardens where they are a permanent risk to civilians?

Des Browne: I share that ambition. Personally—although I believe I speak for the Government on this—I share the broader ambition of being able to do with anything that could be classed as a cluster munition what we were able to do with the two munitions that we have removed from our armoury and destroyed,¹⁵ and that is replace them with weaponry which provides the capability that cluster munitions presently do but without them being of that design.

Q10 Linda Gilroy: I think most people would find it difficult to understand what you mean when you say that they are needed for force protection. Can you say something to the Committee about that? Also, can you give some sort of idea of what the position is as regards other countries using such munitions, dumb and otherwise?

Des Browne: Can I just say first of all that we do not deploy these munitions into any theatre of operations that we are presently engaged in. We neither deploy them in Iraq nor Afghanistan. They are not, in our view, appropriate or necessary for either of those two operational environments.¹⁶ However, they are appropriate in certain circumstances when you seek to take out either a number of armoured vehicles or alternatively a dispersed force in a particular area. So they are an area weapon and presently they are part of our capability should we be faced with that sort of challenge either to win the battle—which is what we

would seek to do in war—or alternatively to protect our forces from that threat. The alternative, if we took them out, would be that we would have to bomb quite extensively the area and that risks a significant degree of collateral or civilian damage if we were to deploy a large amount of force over a large area in order to achieve the same objective. The bottom line is that I take very seriously—as do the military in the United Kingdom—and all previous governments have our obligation only to have and use weapons that conform with international humanitarian law. Weapons require not to be indiscriminate, careless or negligent; to the extent that they are then we have to be able to make the balance and all of this is a balance. I have tried to articulate that balance and by our actions and decisions shown how we can affect it.

Q11 Robert Key: I believe I know where the Secretary of State's heart lies and I wish to encourage him. I think he would agree that no manufacturer of any arms can guarantee that it will be 100% accurate or successful at any one time. I think he would agree that even within the military there is controversy about the effectiveness and the appropriateness of using these weapons. However, I would say that in our democracy where politicians tell the military what to do, the time has come to tell the military to find an alternative to these weapons. Would you agree, Secretary of State, by saying what the Ministry of Defence says in your response to our report that cluster munitions include those that cause unacceptable harm to civilians, implies that you are prepared to accept acceptable harm to civilians? What is "acceptable harm"? How many children out of every 10 is it acceptable to kill? Forgive me, Chairman, getting emotional; I should declare my interest here. On 13 May 1955 I was on Swanage Beach playing with my friends and a British World War II anti-personnel mine exploded; five out of the seven of us were killed, two of us survived. Was that acceptable? If six out of seven had been killed and I had a 50% chance of survival, would that have been acceptable? It would not have been to me, and that is one reason why I am on this Committee incidentally. I really do think that the time has come to realise that people in this country will accept our military and support our military but there does come a point when they say—and they have the right to say—"We do not think that form of munition is acceptable".

Des Browne: I fully respect and have engaged with those who very strongly hold that view and I enormously—having now heard this part of your life which I was not aware of, Mr Key—respect your views in this regard; you are informed by an experience that none of the rest of us have had. This Committee's evidence should not be left with the impression that the military are not seeking alternatives to these weapons. That is the state of mind of our military and that is the state of mind of our ministers. We are seeking alternatives to those weapons. There is an unhelpful vocabulary in relation to these weapons in terms of definition, in terms of phraseology, which is difficult to define

¹⁵ *Note by witness:* See footnote 14.

¹⁶ *Note by witness:* The deployment of specific weapons depends on the nature of the military mission and the operational environment. Currently, cluster munitions are not deployed by UK forces in Iraq or Afghanistan.

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unless you define it by reference—as I do—to international humanitarian law. I am very conscious of my responsibility in this regard. I can only reiterate that I have in government taken certain steps; I have an ambition to be able to take other steps. There will of course continue to be a debate in the military and this is a very healthy position; the use of vehicles, the use of all sorts of weaponry, about tactics, about concepts. The debate goes on. There is a settled view in the military in relation to the need for this capability presently. My view is that I need to keep it in our armoury presently for the eventuality that I may have to deploy forces into certain circumstances; presently we are not doing that.

Q12 John Battle: If I could switch the focus to the arms fairs and in particular the presence of China at arms fairs because since Tiananmen Square back in 1989 there has been an EU embargo that we are signed up to yet there have been reports—I think in 2005 and 2007—that China was actually present at arms fairs, at the DSEi¹⁷ arms fair in London. This Committee published a report in 2006 expressing its dismay to learn about the Chinese military delegation visiting the arms fair; there has been another visit since. The response of the Government to that report was to reaffirm that the embargo should stay in place. Does the Chinese presence at an arms fair undermine the embargo and our commitment to the current embargo?

Des Browne: I do not think it does. I was very aware in my preparation for this hearing and I know this is an issue that was raised with my predecessor not in an evidence session but in correspondence. He gave, I thought, a clear explanation as to why it was appropriate in the circumstances to invite China. All invitations, of course, to these exhibitions are made in the context that people know that it does not mean that the goods on display are being promoted with a licence for export to them. There is still the export licensing process; if they are controlled goods they will need to go through the export licensing process. The Chinese knew, when they were coming, that that was the case. The second point I make is that the EU embargo is not a complete embargo; it is partial in scope. There was equipment on display which British companies could easily have sold appropriately to the Chinese which did not come within the scope of the arms embargo. The final point I want to make to you is that we took the view and still take the view that engagement with the Chinese in this regard is important despite the fact that there is an arms embargo and if we can sustain the embargo and have engagement with them then that is appropriate. At the time and since then we have been encouraging the Chinese to play a part in peacekeeping operations and they are now playing a part in peacekeeping operations across the world. I believe they have troops in the Lebanon making a very important contribution. I return in a sense to

the question: is the suggestion that these troops should not be armed because of the embargo? I do not think anybody believes it is.

Q13 John Battle: I would broaden out the question and say, could you then tell me what factors in a broader sense—China or other countries—determine whether the MoD sponsors a delegation, not just that they are allowed to come but we sponsor the delegation? Is it the size of their market? Are the abuses of human rights taken into account in determining whether the Government should sponsor their presence at an arms fair? That is the question I would really like answering.

Des Browne: Of course they are. Like all of our relationships with China (indeed, as I speak, I think the Prime Minister may well still be sitting on the tarmac at Heathrow Airport trying to take off to fly to Beijing) I do not think anybody seriously believes that we should not have relationships. If we can have a relationship in this area—bilateral defence discussions, discussions in relation to human rights issues among others, encouragement for the Chinese Government to play a part for example in peace keeping operations—and offer the opportunity in the context of what we believe is a perfectly appropriate environment to buy the sort of support equipment they might need to do that, as long as it is not in contravention of the arms embargo, then that is an entirely appropriate thing to do.

Q14 John Battle: That is the question. I was the Foreign Minister in 2001 when the Chinese Premier came to Britain; we stopped them participating in the arms fair in 2000 and 2001 on human rights grounds and we still kept a conversation open with them. I visited China myself as a minister and so did the Foreign Secretary at the time and I think I am just pressing to find out about the criteria. At what stages do you rule that progress on human rights has not been sufficient to sponsor any country—not just China—to be present at the arms fair? Do you think sufficient progress has been made?

Des Browne: Since I did not come armed with criteria and I do not want to answer this off the top of my head. I will give this some reflection and write to the Committee in more detail in response to this because it is a legitimate question.¹⁸ To answer generally, we have a significant interest to ensure that the Beijing Olympics, for example, are safe because we will have a lot of our citizens not just competing but also being present at Beijing when those Olympics are taking place. It would not be in our national interests in my view and in the interests of our citizens to deny the security forces of China the wherewithal to ensure that that was the case. It would be against our national interests. Circumstances change and I think that is indicative of the sort of factor that might apply in the balance and you just have to look at them on a case-by-case basis. Without wishing to reduce this to simplicity—in fact complicating it—I would say that you also have to look at it year on year. Circumstances

¹⁷ Defence Systems and Equipment International

¹⁸ Ev 45

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change and progress in terms of human rights will be a factor but it will not be the decisive factor if there are other considerations such as, for example, the likelihood that we would need to make a contribution to helping the Beijing Olympics and making them successful.

Q15 Mr Hamilton: Secretary of State, can I move us to another part of the world, to Saudi Arabia. Since 2003 this Committee has received quite a number of allegations concerning corruption in arms sales to that country. Some of those allegations go back to the 1970s, as I am sure you will be aware. Every time we put those allegations to the Ministry of Defence they have been refuted, but for the record, as this is the first time you have given evidence to the Quadripartite Committee, can I ask what your response is to the allegations that since the 1970s British civil servants have been aware of, connived at and have facilitated defence exports tainted with corruption to Saudi Arabia.

Des Browne: If I may be very precise, given that you are giving me the opportunity to do this orally for the first time, as our memoranda of 2006 and 2007 said, the position regarding allegations of bribery remain the same as was set out in 2003 and that is that they are totally unfounded.

Q16 Mr Hamilton: Thank you for that very clear statement. As you know legislation has been introduced over the years which has made it completely illegal for any corrupt practices to take place and for some sort of extraterritoriality. The allegations that have been made to this Committee took place over 30 years and the Government has actually defended all those allegations going way back to the 1960s. The responses have not relied upon Part 12 of the Anti-Terrorism, Crime and Security Act 2001. That statute provided extraterritorial reach, as I have said, in respect of acts of bribery by UK citizens overseas but the MoD said that for many years prior to the introduction of the 2001 Act UK civil servants were already subject to extraterritorial jurisdiction for criminal offences if all the elements of the offence were committed overseas by virtue of the Criminal Justice Act of 1948. The implications that we drew were that if a civil servant was engaged in corruption overseas he or she would have been prosecuted under the 1948 Act. Is that a correct construction to put on the MoD's position?

Des Browne: I am grateful to the Chair in particular and *The Daily Telegraph* for giving me notice of these questions since about October of last year and, given that I have had some notice of this line of questioning which has been promised to me for some six months now or thereabouts, I have done a fair amount of enquiry into this. I will endeavour to help the Committee as much as I can within certain constraints. My understanding, from the enquiries that I have made and the advice I have received, is that Section 31 of the Criminal Justice Act 1948 creates just that jurisdiction. So far as public officials were concerned in terms of activity abroad we did not need to wait until 2001 until there was a

jurisdiction including activities beyond the shores of the United Kingdom. The answer to your question is that for a prosecution there needs to be a complaint, evidence and an investigation. I am not aware of any complaint and investigation that took place in relation to the 1948 Act so if you draw the inference that the absence of a prosecution meant that there was no breach of it, then you are entitled to do that. I am not suggesting that to you. I do not know if, at any time between the 1970s and now, somebody made a complaint. I don't know. Can I also say to you, just for completeness' sake, that my understanding—and I accept this advice—is in law that this extraterritoriality, this jurisdiction went beyond the public servants and in fact there was in the common law such a jurisdiction relating to people who were not public servants. If that is any help, that is what I understand the position to be.

Q17 Mr Hamilton: That is very helpful. From what you said earlier one might assume that if no-one has been prosecuted then there has been no evidence of corruption, or none that you knew of, no accusations that you knew of.

Des Browne: That is what I took from the nature of your question. That may well be an entirely appropriate inference to draw but I am not asking you to draw it. If the Committee chooses to draw it then that is a matter for them. Part of the problem in this area of questioning is of course that my state of knowledge is going to be impeded by the limited degree of knowledge that I can have of things that happened 30 years ago.

Q18 Mr Hamilton: I quite understand that. However, can I just put to you that an alternative explanation to the fact that there has been no prosecution because there has been no evidence is that no-one has actually been looking for that evidence of corruption or indeed that no-one within the MoD was interested in mounting a prosecution under the 1948 Act. What would you have to say to that?

Des Browne: My answer to that would be, given the documentation which I think we are about to come and look at that and the fact that my attention has been drawn to it, is that that documentation supports an interpretation that in fact the officials who are being sometimes maligned I think inappropriately were in fact making sure that there was not a breach of the 1948 Act or indeed a contravention of the 1976 Directive. They were actually acting overtly in a very honest, straightforward and non-corrupt way.

Q19 Chairman: Secretary of State, I would like to come onto 1976, but before I do that, as you will know on 16 June 2006 the former Defence Secretary, Lord Gilmour, in a previous administration on *Newsnight* specifically stated that Britain bribed senior Saudi officials to secure arms contracts. He said, "You either got the business and bribed or you did not bribe and did not get the business". Does this

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mean, therefore, that the former Secretary of State for Defence clearly had misunderstood how his department was operating?

Des Browne: I do not think I am in a position to comment on the comments of other people since I have no knowledge of the factual basis that underpinned that. I can only answer questions from where I am, as the Secretary of State with responsibility for this area of policy now and some responsibilities in relation to contracts with Saudi Arabia and the state of my knowledge. I do not seek to draw any of these conclusions in relation to what former ministers may say. Indeed, people are open to have the views that they have quite clearly in this society and assume they are informed by their knowledge base. I am much more interested in the facts than I am the conclusions.

Q20 Chairman: We appreciate exactly what you are saying but I am sure you will appreciate that we have some difficulty in the sense that the Ministry of Defence does speak of a period long before you became Secretary of State for Defence. In their memorandum to this Committee they are asserting that allegations of this kind are completely unfounded on the basis of the evidence they have and I simply make the observation that the public will find this difficult to comprehend given the statement of a previous Secretary of State for Defence and of others.

Des Browne: I have many examples in my head of people who apparently had one view when they were in office and another view when they were out. I do not make any comment on that. What I say to you is that if you want my view then I am prepared to look at the evidence and the facts that are there and draw that view from that, not draw it from somebody else's conclusions based on their own experience of whatever it was because I cannot evaluate that unless I have their experience or they share the underlying facts with me and neither of them have.

Q21 Chairman: I think that is entirely reasonable; I accept that. You invited me to ask you about 1976 so can we do so? You will be aware that papers that were in the National Archives in relation to certain events in 1976 have now come into the public domain, including a document that is before the Committee, the draft minute from Lester Suffield who was Head of Defence Sales at the time to Sir Frank Cooper, the then Permanent Secretary of the MoD. This draft says, for example, that agency fees, "although described as 'technical consultancy', amount in practice to the exertion of influence to sway decisions in favour of the client".¹⁹ Then, in a further paragraph, he goes on to explain that senior Saudis "would certainly not officially approve the payment of fees, although they undoubtedly expect appropriately discreet arrangements to be made. Statements to this effect are made by senior Saudis to visiting major businessmen in somewhat elliptical language whenever a suitable opportunity occurs"

and then there is an example which I will not quote.²⁰ There were two contracts under discussion in 1976 essentially and the papers deposited in the National Archives have now been published. Do you think this provides any prima facie evidence that possibly the rules were being breached?

Des Browne: I said at the outset that I have given this some consideration and I have. Clearly I am limited by the fact that this document that had been deposited in the Archives and the Public Record Office and has come to light is 30 or more years old. There is no way in which I can determine the circumstances of this draft document. It is not clear from it—I have examined it—who the author of it is but it has a set of letters at the top which suggests who the final document was supposed to come from. I do not know what his status is or his authority; it is addressed to the then permanent under-secretary who is unfortunately now no longer with us and it is just not possible for me to construct a reliable picture of the situation 30 years ago. However, it is possible to take about a dozen words out of it, but it is also possible to read the whole document. The advantage I have had is the ability to be able to read the whole document. What does the document tell me? The actual document tells me that somebody was conscious of the principles of the use of public funds because it starts off with the sentence which says, "In the context of your" (meaning the permanent under secretary) "recent directive on the subject of agency fees", so it is written in the context of the 1976 Directive I assume which was in turn a set of guidelines for officials to ensure that they stayed within the law and did not act corruptly.²¹ The author of this document is consciously writing to the permanent under secretary to say, "Within the context of those guidelines and that objective" and then goes on, in my view, to set out an intention to alert the risk of allowing agency fees to rise above a particular percentage level, the inference that can be drawn if that happens or the danger that it will in fact be a corrupt thing to allow to happen. Then it goes on, "and advises the Government that the Government should seek to restrain payment so that that is not triggered". So the author says that there is a risk and that we should not trigger that risk. The way in which we should not trigger that risk is in the context of your analysis in the 1976 Directive and we should restrain these agency fees to a ceiling, which is broadly in the 1976 Directive considered to be a ceiling that is indicative of where the risk will not kick in, although the 1976 Directive also says you have to look at the individual circumstances of each one. Contrary to the conclusion that officials were in a recipe for corruption, they were actually conscious that they had to create a set of circumstances. The whole document does not seem to me to hold any other construction. It may well be that there are parts of it in which the drafter sets out certain types of behaviour—I have no idea on what basis that was being set out—but that is not the tenor of the document. The document says that in the context of your directive, permanent under secretary, of 1976

¹⁹ National Archives, file DEFE 68/319

²⁰ National Archives, file DEFE 68/319

²¹ 1976 Guidelines

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this is what we need to be alert to and this is what we need to do to make sure that we do not trigger that risk. It is capable of supporting, very easily, the entire contrary construction to that which people have put from 12 or 15 words out of it.

Q22 Chairman: Except that it is confirmation that the Saudis undoubtedly expect appropriate discreet payment.

Des Browne: What it does not do—and this is what the nub of the issue is—is that it does not say that we are going to countenance that or allow it; it says in fact that we need to behave in such a way that not only are we not going to do that but that it cannot be inferred that we are.

Q23 Chairman: It is interesting that the 1976 Directive—the so-called Cooper Guidelines—does not actually make any reference whatever to the 1948 Act which has been used in aid of the MoD's position at the time, nor does it refer to any risk of criminal prosecution. Is that not a little strange?

Des Browne: It may well be but I have no way of knowing whether it is or not. Does it not largely depend on the trained state of knowledge of those whom this directive was written for? If everybody in the 1970s who was operating at that level in the Civil Service knew very well that to act corruptly as a public official was a criminal offence then they probably did not need to be told. I actually suspect that most people who rise to that level in the Civil Service probably have an inkling that behaving corruptly as a public official in those days was a criminal offence whether they know the particular provision of the act or not. In any event, they have the advantage of the directive and the directive was obviously written to ensure that the MoD staff acted lawfully and properly. I have taken the trouble of drawing out of the directive the bits that I think support that. Rather than read the whole directive I can send it to you, but it says, “there is a need for some special guidance” because of the “importance of maintaining strict standards in the defence sales field . . . Public money is not to be used illegally or for improper purposes. Officials must not engage in, or encourage, illegal or improper actions; this requirement covers relations with representatives of United Kingdom firms as well as nationals of other countries. Defence sales are to avoid so far as possible the use of agents. If agents are employed”—and this is the important thing about the subsequent document—“The agent should be reputable in the area in which he is operating” and a fee of 10% or more or any fee less than 10% which “would appear excessive in relation to the level and proper work the agent undertakes” is to be referred to the permanent under secretary.²² So it did not specifically refer to Section 31 of the Criminal Justice Act 1948 but it did pretty comprehensively set out the sort of behaviour which, if transgressed, would be a contravention of Section 31 of the 1948 Act. So it did the job although it did not refer to the actual piece of legislation.²³

Q24 Chairman: What it also said was, “What is ‘illegal’ or ‘improper’ will depend in the last resort on the law and practice of the country or countries concerned, and it is for the foreign government to determine what are acceptable standards within its jurisdiction”.²⁴ It then goes on to say—so that I cannot be accused of being too selective—“But where these standards are less restrictive than those applied within the UK, any relaxation of the UK standards should be applied by us with great caution”. Somebody thought it was quite important to stress that what is ‘illegal’ or ‘improper’ depends on the country concerned and not upon the 1948 Act. Somebody thought it was important to say that and not that where the standards are less restrictive than in the UK we should apply UK standards but specifically the words chosen were: “any relaxation of the UK standards should be applied by us with great caution”. I dare say, Secretary of State, you can apply different interpretations of the phrase “with great caution” but somebody here was sending a message that is not quite as firm, I would suggest, as the rule is according to the 1948 Act.

Des Browne: Just to highlight the disadvantage that both of us have, we have a piece of paper in front of us, we do not know the author of that piece of paper, we have no way of looking into that person's mind. What we do know is that both of these objectives are served by this paper, the question is which of them was most likely to impress the reader? I have no way of knowing but I just say to you that as far as Section 31 of the 1948 Act, the makings of it were there even if the reference to the Act was not.

Q25 Chairman: I want to ask a final question about the *Panorama* broadcast of 11 June last year. I have already referred to it in the context of what the late Lord Gilmour said but is it the case, as alleged in that programme, that MoD officials have processed quarterly invoices from Prince Bandar bin Sultan of Saudi Arabia?

Des Browne: What is the case—and this is in the public domain—is the written answer that my predecessor Geoff Hoon, when he was the Secretary of State for Defence, gave to Mr Hancock on 20 June 2004 and that is (I read this short but people can read it for themselves) that claims are processed by MoD officials but those are claims that are endorsed by the UK Government for payment only when they comply with the terms and the prices contained in the associated contract supported by documentation confirming contractual performance and that what we do is that we process presentation for payments of claims submitted by BAE systems. That is what our officials have been doing. Can I just say, for the avoidance of any doubt, that in the context of the SFO²⁵ investigation, the officials from the MoD cooperated fully with the SFO in relation to their engagement in this process and shared all the information that was asked of them with the SFO investigation. There has been no attempt to try to do anything other than show that these allegations—

²² 1976 Guidelines

²³ Ev 45

²⁴ 1976 Guidelines

²⁵ Serious Fraud Office

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which I still say are unfounded—against officials in the MoD are unfounded by transparency in terms of that investigation.

Q26 Malcolm Bruce: Secretary of State, perhaps I can make it easy for you by asking what you are going to do now rather than what has happened in the last 30 years. The Government signed an Understanding Document with Saudi Arabia in 2005 and under that Document the Saudi Arabian Government announced on 17 September that agreement had been reached to purchase 72 Typhoon aircraft for the Saudi Armed Forces at a cost of £4.4 billion. This is a new contract starting. Transparency International—which I think you will acknowledge is a well-recognised body—has suggested that in order to make clear at the start of this arrangement that the accusations that have been discussed in the previous questions will not arise again, that it would be useful to set up a body comprising respected institutions from both countries that would monitor the finance, equipment and associated support areas during the whole life of the contract. The suggestion is that this has been set up by the two governments; my understanding is that they have in fact put this proposition directly to you and that it would be consistent with recognised standards of corporate integrity and that putting such an operation in place would both improve the image of the UK and of Saudi Arabia as to their intentions of how they are going to conduct contracts that go from this day forward to avoid the problems and the embarrassment we have suffered over the last 30 years.

Des Browne: This contract which I think is very good for British industry and good for our broader security arrangements—the security of the United Kingdom and of the world—is an arrangement where the funding comes from the Saudi Arabian defence budget. Pedantically this process has not actually been put to us, it has been put to government, it was put to the FCO. The view of government is that these contractual arrangements are subject to the scrutiny of the NAO.²⁶ That is, in my view, a good enough and reputable enough organisation to be scrutinising them. Why create a new body to be arbiter of whether that body meets these criteria when we have a perfectly good body in the UK in audit terms which has a worldwide reputation and could scrutinise the conduct of this and will no doubt turn their attention to it at some time. The fundamental problem is that this is a government-to-government contract. The Saudi Government's view—and we respect this—is that the financial arrangements in relation to such contracting is confidential, so I do not understand how creating some other body is going to actually address the issue that people will look to in any event to criticise by inference or allegation what is going on. I am confident enough that the NAO can do this job personally as a minister; I am confident that they do not avoid tough scrutiny of the Government—

that is not my experience of them—and I do not see any advantage in setting up some body where in any event there is no international standard to set it against.

Q27 Malcolm Bruce: Just to make clear, Transparency International say they have written to the prime minister, the former Secretary of State for Trade and Industry, the Secretary of State for Defence and the Head of the FCO Middle East desk commending their proposals. Their proposals say that it is the governments that should set them up so it is a government-to-government arrangement. If you are saying—as I think you are—that you are not really interested in pursuing that proposal or any variation on it, other than what you have said how can you say with certainty that you can be confident that this new Al Salam contract will not be tainted with accusations of bribery as has been the case with previous contracts?

Des Browne: I cannot be certain that people will not make allegations and accuse anybody; I am saying that this is a perfectly proper contract in which there is no impropriety associated with this negotiation at all. It is a government-to-government contract. I apologise both to you and to Transparency International that I was misinformed about whether they had written to us or not; they may well have written to my office. However, that is neither here nor there, they wrote to government in any event. I have to say that in this area I suspect that were we to accede to this and that the two governments were to set this up, the next claim would be that it is not independent because the governments set it up even if it was in response to a suggestion from Transparency International. There is a perfectly good, independent body in the NAO that reports to Parliament that does this job, why do we need another one?

Q28 Malcolm Bruce: There was a perfectly good Serious Fraud Office that did not quite deliver the job on the previous accusations.

Des Browne: I have to say that I fundamentally disagree that officials behaved corruptly.

Q29 Linda Gilroy: Secretary of State, you announced the outcome of the review of defence attachés last September. To what extent did you take account of the need to have suitably qualified staff such as defence attachés to advise on defence exports and to monitor the use to which British arms imports are put? Did you take account of this role when you were making the decisions to either remove or reduce the numbers in the different embassies?

Des Browne: We looked across a whole host of defence attachés across the world and we re-evaluated their roles in the context of the 21st century. We looked at the job they were doing and saw how we could best maximise our resource and where we could make efficiencies. That is what you will expect of government. The principal role of the defence attaché in the 21st century is to help strengthen international peace and stability by working to prevent conflicts, to help boost peace

²⁶ National Audit Office

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support operations and to reduce the risks of terrorism. That is why we deploy them. Can I also say that the assessment that we made was that of the total defence attaché time; about 5% of it was associated with any aspect of defence exports. The principal responsibility in relation to licensing issues does not lie with the defence attaché, it lies with the Foreign Office. Because of the expertise of our people periodically we are asked to help in this regard as part of the team. They will still be able to do that. We have no doubt that they will be able to meet the high standards that we have been able to meet as a team in these missions abroad when work is necessary to be done. The defence attaché was a part of that but not the majority part of that process that people believed they were. In some countries they did more of it than in others, but it was about 5% of the total time of defence attachés.

Q30 Linda Gilroy: Part of the statement said that as well as reductions in military staff more of their tasks will be undertaken by civilian personnel. Can you assure us that these changes will not degrade the ability of the embassy posts to advise on applications? How does that figure in with your 5% of time?

Des Browne: I cannot divide it between military and civilian. Tony may be able to help us in that regard; he is more associated with the day-to-day working of the Defence Export Service. In all its manifestations, both military and civilian, you do not have to be a military person to be able to do this. Of course we will, as we reduce military force and replace it with civilians, take into account the need for certain skills and for trained people. I can reassure the Committee that there will be no reduction in the level of scrutiny that is necessary from posts abroad in relation to the licensing process by the process that we have gone through with defence attachés. It was not the majority of the work that we did that some people believed that it was. In actual fact the defence attachés, people will be pleased to hear, are more focussed on trying to prevent conflict, keeping the peace and counter terrorism work.

Q31 Sir John Stanley: Secretary of State, the joint funding arrangement between the FCO and the MoD goes back a long way and, to the best of my recollection, it was in place when I was minister for the Armed Forces. Is it not the case that in reality the defence attachés still perform responsibilities which come within the MoD but equally—and your answer confirms this—they discharge functions which come within the responsibilities of the FCO? Given that that remains the case, was it not wholly unreasonable—I cannot put it any other way—for the Foreign Office to unilaterally renege on their joint funding arrangement and basically say, “You, MoD, are left with picking up their slice of the bill”?

Des Browne: I spent a lot of my time across government encouraging people to do things across government and to work together across departments. That requires, I think, the ability to be able to respect the priorities and the changing priorities of government departments in a pretty

flexible way. We ask people across government who work with us to respond to changes that we make. I do not think it is unreasonable. I fully understand why that £10 million to £11 million became a hostage to other priorities in this complex and changing world and I was pleased to be able to work with them to re-shape our defence attaché team in a way that I think will ensure that we still do all the priority work that we need to do as well as we have ever done before and we have been able release resources towards other priorities. That, as you know from your own experience, is what government is all about.

Q32 Mr Borrow: I want to touch on the UK/US Defence Trade Cooperation Treaty. The Committee has received evidence from Saferworld expressing some concerns about the impact on arms exports and particularly suggesting that the Treaty puts the UK/US relationship into some imbalance in the sense that it allows the US to determine which goods are included in the Treaty and allows the US to override the UK arms exports controls and impose their own in terms of end use of particular goods. Would you like to comment on that?

Des Browne: It's easier to answer the last part of the question first. The integrity of our own arms export control system is entirely intact and the United States has no role to play in that; it is still our responsibility. It no way weakens it and no way affects it. It is a misunderstanding of the Treaty if people think that it does. The other part of the question is designed to identify that there are some sensitive technologies (which is a phrase that is used in the Treaty) which will be excluded from the Treaty. The fact that the Americans will identify certain technologies that they will exclude from the Treaty and they will do that in consultation with us in the implementation arrangements does not in my view in any way undermine or imbalance the Treaty. In fact the whole purpose of the Treaty is to bring the processes into alignment so that we can speed up and simplify the delivery of equipment to the UK but also to US troops who operate together around the world which is a longstanding policy of both countries. Since we have deployed together and operated together and are valued allies of each other that seems to me to be an appropriate and reasonable objective and it is in our interests as well as in theirs. In relation to the sensitive technologies, there will be about three or four of them. I am not able to specify what they will be but they will be a comparatively small number. I think given the advantages there will be in the treaty which will be manifest—and I am sure you know what they are—then this comparatively small area of restriction which is perfectly understandable because of the sensitivities of the technologies does not in any way undermine it.

Q33 Mr Borrow: In terms of the implementing arrangements, where are we up to with that? Where is the UK in terms of exchanging notes with the US Government and also in terms of Senate ratification of the Treaty itself?

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Des Browne: The current position in relation to the Treaty, as the Committee will know, is that the Treaty has gone through the parliamentary process here. The congressional process is an integrated process in the sense that both the Treaty and the implementing arrangements will be presented to Congress. The negotiation of the implementing arrangements is going on at the moment. I have in my mind a kind of timeline in relation to that but I do not think it would necessarily be helpful to the negotiations for me to publicly say that we expect them to be concluded on a particular day. However, they are advanced, they are going well; we have no reason to believe that they will not be concluded successfully in a reasonable timeline and then we will be in a position to present the Treaty to Congress. We hope to be able to do that at an early date and we are working with the American authorities to be able to do that. In case you ask me when I think we will get it through congress, I do not necessarily think it would be helpful to that process for me to say from here and feed into that process; I think we need to leave it to them.

Q34 Mr Borrow: A significant chunk of the UK defence industry is international in the sense that it is owned by several European countries' major companies that have invested to a large extent in the UK defence industry in the last five or 10 years. How do they fit into this particular Treaty?

Des Browne: You know the value of the Approved Community to this Treaty; the so-called List X is the Approved Community. We already have to take into account the fact that companies are owned by foreign owners when assessing applications to join that community of companies. Nothing substantially will change; we will still go through that same process and take that into account in relation to the Approved Community for the Treaty and it will not make that much of a difference.

Q35 Peter Luff: Secretary of State, the Defence Export Services Organisation is still with you until the first of April when defence sales moves to the UKTI. What was this all about? Was it doing its job too well as the NGOs²⁷ seemed to think? Or perhaps not well enough? Or is just change for change's sake?

Des Browne: People make changes in the machinery of government regularly and they are a matter for the Government. I have no knowledge of machinery of government changes being extensively debated, discussed and consulted about before they were announced in the past and this was no different. We promised that we would work through before Christmas with industry and with other stakeholders the nature and shape of this change and I am pleased that on 11 December when my colleague, the secretary of state for DBERR, announced the nature and shape of the future arrangements they were welcomed by industry and so they should be because we now have, I think, an ability which we were seeking to create of using the broader UKTI framework to support and help the defence exports

area and this will improve the one organisation which was doing well and the other and they will come together and do better.

Q36 Peter Luff: So your hope is that it will increase defence sales.

Des Browne: Defence sales are a very complex area, as you know. Our ambition to maintain a level of them for a number of reasons is very important. They make a big contribution to building capability where we need to build it for the purposes of peace keeping and other purposes that we share in terms of our foreign policy. The measure of improvement in this area is not just about the numbers. We happen to have had last year a very good year. We had a very good year a few years ago. We believe that we will continue in that way. Against all the objectives that we set for the defence industry I think that this change will be good.

Q37 Peter Luff: The NGOs have welcomed the change because they think it will put defence sales and defence exports on a level playing field with the rest of industry which presumably means will disadvantage defence sales. Is that the case?

Des Browne: I think that everybody at the end of the day will see that this change was to the advantage.

Q38 Peter Luff: Advantage of?

Des Browne: The advantage of the objectives that they set.

Q39 Peter Luff: This is getting rather circular.

Des Browne: No, it is not. This is not a zero sum game. It is not the case that in defence, in defence sales and in defence equipment you always have to fly in the face of the NGOs and their ambitions by what you do in the defence industry. The trick is actually to do the two. What I am saying is that it is not a zero sum game and there is no reason to believe that people will not see that the issues that they are interested in about transparency, about ethical behaviour and all the rest of it being improved. I am not suggesting that our defence industry does not conform to these. It will be improved by this but at the same time we will have the advantage that the very successful organisations such as UKTI will be able to deploy its extensive resources in support of the defence industry. The defence industry and the sales of certain equipment abroad is a humanitarian thing to do in many circumstances.

Q40 Peter Luff: I share your admiration of UKTI; I think it is an organisation that has got its act together with extensive consultation with industry on its new strategy. Why was there no consultation of the defence industry about this new strategy?

Des Browne: We discussed extensively the implementation of this policy objective with the defence industry to the extent that when the arrangements were announced the industry welcomed it. The fact that NGOs have seen that there is a renewed commitment to the highest business standards which we wish to seek to apply across this industry is a good thing.

²⁷ Non-Governmental Organisations

Q41 Peter Luff: Will you publish those discussions in some form?

Des Browne: I do not know whether it would be possible to meet the commitment to publish the discussions because I suspect a lot of them took place in different formats.²⁸

Q42 Peter Luff: Will you reflect on it?

Des Browne: I will reflect on the request but I am not conscious, to be absolutely honest, that the people who were involved in those discussions were asked to keep them confidential. In fact, as I recollect, we talked about them quite freely in the public domain.

Q43 Peter Luff: What difference will the defence exporters notice? Digby Jones—Lord Jones of Birmingham—becomes our leading defence arms sales spokesman; that will be quite a big change I expect. Apart from that what difference will the exporters notice?

Des Browne: What they will see is an integration into the Government's more general trade support activities while at the same time building on the success of DESO and still allowing the best of the specifics of DESO that were related to defence to be preserved such as, for example, the support that my department gives them. We will still put significant resources into that; it is entirely appropriate that we should be able to tell governments abroad who may wish to buy a particular capability through the mouths of our military people exactly how it can be used and how it can advance the ambitions that we have about deployable capability et cetera. They will see themselves in a bigger and more integrated organisation and they will have the advantage of the more extensive networks of that organisation in support. It may well be that Mr Pawson may be able to add to that because he has been in charge of this.

Q44 Peter Luff: Where will he be after the first of April?

Mr Pawson: There is going to be some form of open competition some time for the head of the new organisation. I think I want to make two points. As the Secretary of State has made clear, there is continued commitment by MoD to the support of defence exports which was an initial point of concern for the industry. That having been given, this is actually a very constructive, progressive development in two quite separate areas. Firstly, in terms of transparency, the very first question you asked Chairman was about the separation of promotion and licensing within the Ministry of Defence. This, of course, does make that separation much clearer and, rightly or wrongly, there is a misperception or concern about it. Working on the inside, that is a wrong perception but the perception is there. So it would help there. Secondly, inside the Ministry of Defence there has sometimes been a blurring between whether we are doing this for economic reasons, to support an industry, high-tech, good for the country and good for jobs et cetera, or are we doing this for defence reasons? In the future

we are going to have a service level agreement between the UKTI and the Ministry of Defence; that is going to be published so there is greater transparency and greater clarity there. One aspect of this is that some commentators have been asking for this greater transparency and greater clarity; this will provide it. In terms of support for industry, UKTI has a very extensive overseas network, for example. There are over 1300 people in UKTI overseas; DESO is in less than 20 countries. So there will be access to this network. DESO does not have any money to give industry; UKTI does under the industrial policies. Access to UKTI services in the broad sense will be easier for the defence industry. That is particularly true of companies who are new to exporting and are new to the market SMEs.²⁹ The defence industry itself is changing; it is not concentrating solely on defence in the way that it once did so that, for example, it is moving into border security, homeland security if you like. That is why the new group in UKTI is going to be the Defence and Security group. There are number of advantages both in terms of the transparency and accountability and in terms of developments in industry being reflected in the way in which the Government is supporting it.

Q45 Peter Luff: You are actually not transferring DESO, you are splitting it up. That is not a criticism, it is an observation. It seems from the Prime Minister's statement that government-to-government defence sales, including the current arrangements with Saudi Arabia, will remain within the MoD. What is the reason for the MoD retaining responsibility for these contracts? How long will that process go on for? Is it future government-to-government contracts too? It is a big slice of DESO's activities. Do you understand the concern that some people have that they see it as possibly being used as some kind of cloak for sensitive and controversial deals within MoD rather than moving into UKTI?

Mr Pawson: I was using shorthand in relation to DESO for the export promotion part of DESO. There is the export licensing part which is staying behind, hence the clarity I mentioned earlier. There are the government-to-government arrangements, including between Saudi Arabia and the British Government which remain with the Ministry of Defence, which in turn have detailed back-to-back contracts from the Ministry of Defence to defence suppliers and only the Ministry of Defence can operate those contracts. Future ones are going to be considered on a case-by-case basis but there are not any anticipated in the near future.

Q46 Mr Bailey: The theme of NGOs, UKTI, MoD and due diligence. It has been put by Transparency International that this change does give the opportunity to improve safeguards to ensure that the tax payer is not underwriting corruption abroad and to improve methods of due diligence. What is your view of that?

²⁸ Ev 45–47

²⁹ Small and Medium Size Enterprises

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Des Browne: We do not underwrite corruption abroad in any event but, as I say, if people see this as a commitment to the highest business standards then I welcome that because that is what we have. If they see it as assisting the defence industry to become more transparent and, in their perception, accountable demonstrably and supporting good governance then I welcome that because that is our objective and I believe that is the industry's objective. Certainly when I meet the leaders of industry those are the conversations that I have with them, among others. It allows us to set out some form of common code of good business practice which will help that process along the route and I welcome that as well. There are advantages. They are not advantages that could only have been achieved by this change but if you can get all of the other advantages that Tony sets out with that then that is good. I am determined to try to prove in my contribution to this area of policy that this does not need to be a zero sum game.

Q47 Mr Bailey: Will those improvements include the publication of names of intermediaries and advisors?

Des Browne: There are a number of issues which need to be addressed. Since I no longer have direct responsibility for these issues—or will not have from the first of April—I would much prefer that it should be the secretary of state for DBERR in his negotiations and discussions who takes these issues forward.

Q48 Linda Gilroy: On the EU single market some estimates have suggested that there is as much as three billion pounds per year in administrative and legal charges.³⁰ What is the MoD view of the creation of a single market to try to overcome the waste in some of that? Is the logic of any changes in that direction a reduction in the licensing for armed transfers between European States? What are the implications for the UK strategic export control system?

Des Browne: I had not heard those figures before; it may well be that Tony might want to comment on them. It seems to me to be grossly exaggerated but I suspect the source is a particular view of Europe.

³⁰ *Note by Member:* Recte euros.

Q49 Linda Gilroy: It is the Chairman of the European Parliament Sub-Committee on Security and Defence Estimates.

Des Browne: I had not heard those figures before. I would need to go and consider them but they do seem to be quite extraordinarily large. There is work going on in this intra-community transfer directive which is the legislative route for the work that is being done to change the way in which intra-community transfers of defence related items takes place. There is a document published and we are considering our position in relation to this document that has come out and there will be further discussions with the council working group but by and large our view is that this area of work addresses an objective that we have which is that our licensing practices in our view were ahead of most other Member States and we are trying to get them to bring their licensing practices to where we believe ours are. That manifestly would be in our interests.

Q50 Linda Gilroy: So you think it is possible to get a win-win situation.

Des Browne: Obviously we have to be very careful here. As I recollect—although I do not remember the detail—we did not agree with the early proposals. We argued for a set of proposals which were much more akin to the scheme that we have in this country. Those proposals have broadly been accepted, which we are pleased about. They are reflected in the current document which is out for consideration by other countries, including some who supported the earlier proposals. So this is a dynamic process. Insofar as the actual documentation, it shows that we have been persuasive in our arguments; we have won a lot of the arguments and we are pleased about that. Broadly we welcome the direction of this but we are alert to the possibility that it could slip back at any time and we will make sure that we try to prevent that from happening.

Q51 Chairman: Thank you. It is four o'clock and we did aim to finish at four o'clock. May I thank you and your officials for your written evidence and also for coming along this afternoon; it has been very informative and very helpful and we look forward to seeing you again. If you have any other suggestions or questions we can put to the Secretary of State for DBERR please put them in an envelope in my pigeon hole; that would be very much appreciated.

Des Browne: Thank you very much. I thought this was a once in a generation appearance.

Chairman: We hope not. Thank you very much again.

Thursday 20 March 2008

Members present

Roger Berry, in the Chair

Malcolm Bruce
Richard Burden
Mr Michael Clapham
Mike Gapes
Linda Gilroy

Mr Fabian Hamilton
Mr Bernard Jenkin
Sir John Stanley
Mr Mike Weir

Witnesses: **Mr David Hayes**, Chairman of the Export Group on Aerospace and Defence (EGAD), **Mr Brinley Salzmann**, Secretary of EGAD, **Ms Bernadette Peers**, Strategic Shipping Company and EGAD, and **Mr Barry Fletcher**, Fletcher International Export Consultancy and EGAD, gave evidence.

Q52 Chairman: Mr Hayes, welcome to you and your colleagues. This is the first meeting of the re-branded Committees on Arms Export Controls. It has taken us almost 10 years to discover that the Quadripartite Committee might not be well known outside so we kindly persuaded the House authorities to let us change our name. We persuaded ourselves to change our name so we are now officially the Committees on Arms Export Controls. You have re-branded over the years so you know what it is like. For the record, would you like to introduce yourself and your colleagues.

Mr Hayes: I am David Hayes, the chairman of the Export Group for Aerospace and Defence. I am in the export control section. On my right is Bernadette Peers from the Strategic Shipping Company; on my left Brinley Salzmann, the export director of the Defence Manufacturers Association and the secretary of the Export Group for Aerospace and Defence; on the end is Barry Fletcher who is an independent export control consultant and also a member of EGAD.

Q53 Chairman: Thank you for your written submission which I very much enjoyed reading. The standard question I always ask is: are you happy with the performance of the Export Control Organisation. Last year you indicated some concerns about their website. I gather you have been working with them and consulting users on the website. Have those problems now been resolved or are they in the process of being resolved?

Mr Salzmann: They are in the process of trying to resolve them by taking in the inputs from the industry about our perceptions of the website and its shortcomings and trying to put together proposals for the redesign of the website. There is a positive development. With regard to the performance of the Export Control Organisation, we are very happy in most regards with it but certainly the introduction of the SPIRE system, which was introduced on time and to budget remarkably for a government IT system, has resulted in a loss, to a certain extent, of the personal touch. We have made our views known to the ECO¹ in that regard and are hoping that can be addressed.

Ms Peers: In general the outreach that BERR² are conducting in the ECO in particular is seen as very good and very productive but the issues with SPIRE, the personal service, as Brinley pointed out, has diminished. There is no helpline. When you apply on the SPIRE system now for a licence, we were told that we would get an acknowledgement letter and it would then specify who the licensing officer was that there would be contact with. You get an acknowledgement letter but you do not get any personal contact so you will still be dealing with an unnamed person in the system. There have been some glitches with using SPIRE although, on the whole, it is a very good system. My concerns are how it interfaces with CHIEF³ which is what was meant to happen on the electronic system. It may be better if I talk to that when we talk about Customs.

Q54 Chairman: What about your relationship Customs? Do you meet regularly? Are you happy about the National Clearance Hub in Salford and is it working satisfactorily?

Ms Peers: We have had a visit. The EGAD sub-committee, which I am on, for Customs went up to the Hub and met with the staff up there who were very happy to receive us and were very happy and keen to learn about the industry side. We are going to do an awareness session with them about how we interface with CHIEF. Concerns with Customs are several. On the request by ourselves and yourselves to see what enforcement could be done on open general licences, that was addressed. There were some issues which apparently were fed back to them and ECO but we do not know what the outcome of that was, whether there were substantial discrepancies or whether it was very positive and there was good enforcement and good compliance by industry. On the interface with CHIEF, which is the electronic licence system that you apply through SPIRE, where you get an electronic licence which then feeds into CHIEF, checks whether the licence is correct and is decremented, it is not actually working. We are told it is going to be up and running at the end of this month but in the interim if I have

¹ Export Control Organisation at the Department for Business, Enterprise and Regulatory Reform

² The Department for Business, Enterprise and Regulatory Reform

³ Customs Handling of Import and Export Freight (HM Revenue and Custom's declaration processing system)

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applied for an electronic licence through SPIRE and the SPIRE licence is issued I cannot interface with CHIEF so I have to print-off the licence. I have to send it to the Hub. I have to get the Hub to decrement it and then the goods are allowed to leave. My concern is if I then print off another licence and send that up to the Hub and that is then decremented, what is to say I cannot send 40 when I actually have permission for 10. There do not seem to be any checks that I can find to prevent people just downloading another licence, sending it to Hub and then allowing the goods to go. There may well be some checks that the Hub is doing, but having been to the Hub and seen how it works I cannot see how they can actually physically do that. Perhaps you could raise that with the enforcement and customs when they come.

Q55 Chairman: We are going to see our good friends, Revenue and Customs, in Southampton quite soon.

Ms Peers: There was another issue we had which is the Crown immunity. When goods are the property of the Crown they do not need licences and there was supposed to be a system whereby you could enter those goods into the system through a code which would alert Customs that these do not need a licence, they are Crown immune. That did not work so we had a work-around where we had to reference an open general. The work-around now, we found out last night, is we enter the goods NLR⁴ but we then write "Crown immunity". That seems the best system we can have for Crown immune goods that do not need a licence. There is not a specific code for those goods but we can work with that. The other issue with Customs was that the Hub does seem to be working quite well in general. The interface we have with Customs is positive. We do have regular meetings with them and we hope that will continue.

Q56 Mr Clapham: In response to the consultation of 2007, the Government has suggested introducing a new category, Category 2. What do you think should be included in that new category?

Mr Hayes: We have actually had discussions with the NGO⁵ community on this and at the moment we are agreeing that the extent of that category will be small arms and light weapons.

Mr Salzmann: With clear definitions of what that actually constitutes.

Mr Hayes: We are, at the moment, having further discussions with the NGOs looking at ways in which the trade controls themselves more broadly might better be targeted so that we are addressing the areas of concern whilst trying to make sure the impact of doing so on legitimate industry is not too burdensome.

Q57 Mr Clapham: There is some concern because I understand there are quarters that would like to see missiles, like these long range missiles, as well as Unmanned Air Vehicles actually in that category.

You are opposed to that I understand. Could you tell us why you feel those types of weapons should not be included in Category 2?

Mr Hayes: There are several reasons for that. What I would like to do is ask Mr Fletcher to answer that because there are quite a few technical aspects to this which would be better addressed by him.

Mr Fletcher: Starting with the UAVs, this is a very difficult subject. In BERR's review dated 6 February it just talks about UAVs, so a lot of questions immediately arise. Are we only talking about military UAVs or are we talking about all UAVs, are we talking about long range UAVs? The answer to each of these questions raises other questions, none of which cannot be overcome but it is a very difficult area. UAVs, because they are so commonly used now, and probably more used by non-military organisations, there are real concerns about how you would bring them into Category 2 and not really mess up the system by having to stop at every single stage of a trafficking and broking-type of exercise to make sure that you were absolutely on firm ground. It is not black and white. With long range missiles we do not think that, from a UK perspective, they are trafficked and brokered on that basis. We are not saying that nowhere in the world does this go on but they are extremely regulated, not least of all within the UK within MTCR⁶ regulations. We do not see any need, therefore, for them to be brought into a Category 2 situation.

Q58 Mr Clapham: Would it be fair to say that in terms of UAVs you would feel much more comfortable if the Government was prepared to ensure a clear definition to the category it wanted included?

Mr Fletcher: If they were to be put into Category 2 that would be absolutely essential.

Mr Hayes: There is another point here and it is one we have made in the past but is probably worth rehearsing in this context. The then DTI's⁷ own Aerospace Innovation and Growth team identified UAV technology as being one of the key technologies for the development of the British aerospace industry over the next 20 years. That does not sit very easily with imposing burdens on that industry which cannot be justified in the context.

Q59 Mr Clapham: To be quite clear and for the record, you are saying that for long range missiles there is no need at all for Category 2 because you feel they are sufficiently regulated.

Mr Fletcher: Yes.

Q60 Mr Clapham: In terms of the further research that the Government is carrying out regarding the support activities, such as transport and promotional activities, what kind of activities do you think should be included?

Mr Hayes: I think control in the peripheral activities such as transportation is fraught with difficulties. If, for example, a UK company is arranging the movement of military goods between two other

⁴ No Licence Required

⁵ Non-Governmental Organisation

⁶ The Missile Technology Control Regime

⁷ Department of Trade and Industry

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countries, let us say two countries in Africa, it is extremely unlikely that the transportation company that is going to be used will have any connection with the UK at all. If we are talking about the British party arranging transportation, I suppose theoretically that could be brought within the scope of the controls but controlling the transportation activity itself would be extremely problematic.

Ms Peers: I am from a freight forwarding company and we arrange transport, mostly defence equipment, as a part of my daily job. At the moment we arrange transit permits for equipment to go from countries and to countries. We take great time and effort and money because it takes time. In some countries we have to pay somebody in that country to apply on our behalf because the transit legislation is such that as a UK person we cannot apply so we have to engage somebody. We do all that on a daily basis. I cannot see any enforcement of us in actually doing that job because there are other freight forwarders who do not go to those lengths or go to that detail in applying for these licences. If we have legislation, will that legislation be enforced and enforceable? At the moment we have legislation but I have rarely been asked by a Customs officer to even present our transit permits when we apply for them.

Q61 Mr Clapham: In terms of the transportation facility, all the material that is being moved presumably there would be end-user certificates?

Ms Peers: Which have to be submitted for an export licence. Once the export licence is issued, you then have to present the export licence to get a transit permit. All of this takes time. We recently lost a contract because we did not have a transit permit issued but I know that equipment was moved without licences and there is very little enforcement. Documentation is required to get the export permits but my concern is what are the checks to ensure those permits are in place and how could that be enforced in third countries.

Q62 Malcolm Bruce: In your memorandum you support the case for an International Arms Trade Treaty, which of course we would wholly agree with, but you then go on to criticise the British Government's attempt to try and pursue British brokers. You quote Rhian Chilcott, from CBI's Washington office, last month saying: "Business has gone global whilst the political world has remained fundamentally based on the concept of the nation state."⁸ You go on to say you believe there has been far too much public focus on the issue of trying to curb the activities of the British brokers and you are saying it does not make a difference what the nationality is if they are up to no good, they are just as bad, which is of course also true. Then you say that effectively what the British Government is doing is just re-arranging deck chairs on the Titanic. Given we do not have an International Arms Treaty, is it not appropriate the British Government does what it can to regulate British citizens' activities?

You seem to be almost suggesting that we should not bother and we should wait until we have an International Arms Treaty. Is that your position?

Mr Hayes: An International Arms Trade Treaty would be by far the preferable way to go because by definition it is far easier to effectively enforce a domestic law than it is to enforce a law extra-territorially. If arms were being moved between two countries, those arms would be an export from one of the countries and an import to the other by definition. If we could get to the stage where that transaction was being controlled effectively by the countries directly involved, that would be a far more efficient means of enforcement and far more likely to result in a successful prosecution than would the UK trying to control that transaction from one stage removed.

Q63 Malcolm Bruce: In other contexts a number of us have criticised the Government for ineffectiveness, and I take your point, in prosecuting corruption in third countries and so on, and there will be other questions on that. I take your point that it is difficult and we are not very good at it and all those things but is it not right that in the meantime we should be more active and that brokers out there who are British should be aware of the fact that frankly if they are up to no good there is a reasonable chance that they might be pursued? I am slightly concerned your memorandum seems to be implying it is so difficult that we should not even go there.

Mr Hayes: It depends on where the country chooses to focus its enforcement efforts. I submitted a paper in a previous evidence session which pointed out that some years ago Mike Coolican, then at the DTI, said that approximately 65% of the companies in this country who should be applying for export licences are not. We have a system which focuses exclusively on the defence industry. There is hardly any activity in relation to dual use at all, leaving aside the recent prosecution of the gentlemen for gyrocompasses, yet at the same time we are being told by government that the greatest threat to our national security is the potential use of a dirty bomb. All of the ingredients for a dirty bomb are controlled on the dual-use list not on the Military List. We are in danger of having a system which focuses increasingly tightly on the minority of industry that are operating legitimately and requires that minority to carry a heavier burden of compliance whilst a huge amount of activity in products and technologies of great concern goes unexamined.

Malcolm Bruce: I understand where you are coming from. From your point of view, as practitioners in the field, I can understand the difficulties that you are identifying but I think you need to accept that our concern, in terms of British citizens, is that actually leaving it on the basis it is too difficult or it is too interfering would leave the citizens feeling that the Government was not doing its job in pursuing people who are up to no good. I would suggest to you respectfully that the terms of your memorandum do not reassure.

Chairman: Take that as a comment not a question.

⁸ Ev 47

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Q64 Mike Gapes: Your memorandum to us refers to the proposal to consider extending controls to component level as a scatter gun approach that must in all certainty fail. Why?

Mr Hayes: I would like to defer to Mr Fletcher on this one.

Mr Fletcher: I think there is a terrific misconception that most military equipment is manufactured using specially designed or modified military components. That may have been the case 20 years ago but the case today is, particularly in the electronics industry, that many components which are manufactured for industrial use are finding their way into military equipment. Therefore, if one is trying to broker electronic components which happen to meet a military specification no way do you know at that particular time whether they are licensable products or not, you would spend an awful lot of wasted time trying to find out the answer to that before you continue with that particular activity. Therefore, to try and introduce components rather than just the equipment into this category would be catastrophic for the British defence industry.

Mr Hayes: Of course, even if those components are licensable, they are licensable as dual use not as military components and they would be outside the scope of the broker controls anyway. It brings us back to the point of why is the dual-use sector of industry apparently going largely unmonitored.

Q65 Mike Gapes: Is there not then a problem that unless we get the Arms Trade Treaty and every country in the world complying to a common approach there is going to be always this tension?

Mr Hayes: No, because anything which is dual use is, by definition, outside the scope of the Arms Trade Treaty.

Q66 Mike Gapes: Unless the Government includes components of small arms within its own criteria, it will not be able to have control of the system overall with regard to extraterritorial brokering or trafficking in small arms, which the Prime Minister said in the speech last November he wanted to bring about.

Mr Fletcher: If it was just for small arms the problem is a lot easier. In fact, the problem, from what I have just described to you, almost goes away in that in my experience 99% of the items used would probably be specially designed or modified for that particular use. We were talking on the submission of a possibility of extending the Category 2 controls to UAVs and missiles where it does become more problematic or even eventually to the whole of the Military List. When you go to that extreme, then it does become absolutely unworkable in our terms. If you just keep it to small arms and light weapons, then I do not have a real argument against what you are suggesting for components.

Q67 Mike Gapes: What is the way forward?

Mr Fletcher: To accept what we are agreeing with the NGOs of limiting it to small arms and light weapons, for which incidentally I do not think you need a definition. In fact, the definition would only

complicate matters because it has to be interpreted. You should stick to the existing ML control numbers where everybody would know exactly where they stood on what was and what was not controlled.

Q68 Mr Hamilton: Five years ago our predecessor committee, the Quadripartite Committee, received memoranda alleging that bribes were paid by the Defence Sales Organisation to senior Saudi Arabian officials in order to obtain defence contracts. The Committee then put these allegations to the Ministry of Defence and I suppose we should not be surprised that the response was that it was a principle that officials should not be engaged in or encourage illegal or improper actions whether in their relations with UK or overseas firms and the MoD no longer employed agents nor pays commissions in its government-to-government defence export programme. When the Defence Secretary gave evidence to this Committee on the 17 January this year he reiterated that those allegations were totally unfounded. Do you think that the decision of the Serious Fraud Office to end its investigation into the al-Yamamah case has created a negative impression of British companies overseas and damaged the UK's reputation for combating corruption?

Mr Salzmann: Yes, it is a political question.

Chairman: This is about perceptions of British business in the light of a political decision. You are a British business substantially. I think it is a very relevant question. How has that affected the view of British business in the wider community? The question is not a political one.

Q69 Malcolm Bruce: I am asking you to comment on the effect that that decision has had on the impression people have of your companies.

Mr Hayes: I do not think it has necessarily changed the positions greatly. I think people will probably, largely speaking, still have the impression of the defence industry that they had before this happened whether that is in favour of the defence industry or, broadly speaking, against the defence industry. The decision to drop the prosecution or drop the investigation was primarily a matter for the SFO and the decision was taken to drop the investigation. If you are going to take the view that by dropping the investigation it allowed the defence industry off the hook, then a pre-requisite to taking that point of view is that you must believe that had the investigation been continued something untoward would be found. It requires almost a presumption of guilt for you to take the view that the defence industry is somehow worse off as a result of the investigation having been stalled.

Q70 Mr Hamilton: What is the impression out there? Is the impression that there was some guilt here and it was squashed by government in a political decision or is the impression that this was just too complex, too political, and actually British companies are untainted?

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Mr Hayes: It depends who you talk to. If the person you are talking to believed before the event that the industry was tainted, they will still believe that. If they believed before the event that it was not tainted, then they still believe that. I do not think it made any material difference.

Mr Fletcher: I cannot see that it has damaged the defence industry. The UK defence industry is still broadly respected. If people really want the best defence equipment they still look to the UK and a couple of other countries for that equipment. I do not think it makes any difference to them what has gone on in the past in the UK. I see no evidence from talking to British defence companies that it has altered any perception at all.

Q71 Mr Hamilton: We had a reputation for combating corruption and not paying bribes. Do we still have that reputation?

Mr Salzmann: I believe so, yes. I think we do still maintain that reputation.

Q72 Chairman: Lord Gilmour, former Secretary of State, said it would be fair to say that the only way to do business with the Saudis was with bribery and corruption. Did this come as a complete bolt out of the blue when you heard that?

Mr Hayes: We have to say he is entitled to his view.

Q73 Chairman: Your answer was not “No, we were shocked, we were astonished” but “He is entitled to his opinion.”

Mr Hayes: Absolutely.

Chairman: I think I understand what you are saying.

Q74 Mr Weir: The NGOs consider the open licence regimes as too “light touch” and have suggested various changes including restricting the use to those companies that are correctly applying good internal compliance and due diligence procedures and also advanced notice of trade. Do you consider it to be too light touch and how do you feel about the NGOs proposals?

Mr Hayes: The Open General Export Licence system is fundamentally designed so that exports which would raise little or no concern, you would almost say exports where it is inconceivable that a licence would be refused, are achieved by using the open licence system. The UK is not the only country to operate on this basis, in fact the United States operates on a very similar basis. They would deny they do so because they do not like open licences but there are in excess of 50 exceptions under the International Traffic in Arms Regulations, many of which achieve exactly the same end result as the UK’s Open General Export Licence system achieves so we are not unique in that regard. Could the system be improved? Certainly one improvement that many would welcome would be the ability of BERR to remove the right of a company to use Open General Export Licences, something which does not currently exist.

Q75 Mr Weir: It has been suggested that you remove for a specified period. I take it from what you are saying that you would support that if there is a breach in the system.

Mr Hayes: We would.

Q76 Richard Burden: Could we move on to the question of end uses and the kind of procedures that could be adopted to tackle this. The NGOs have drawn attention to the situation in Germany where you have a single action catch-all clause that you can refuse the transfer of an unlisted item which you think could be used for internal repression even if it is not on the list at the start. Would you support that catch-all clause?

Mr Hayes: I do not think we know enough about it. We have heard a little about it. We have done our own research into it and, as far as we can establish talking to German colleagues they are only aware of one instance where this procedure has ever been used. The point that we would make is that what industry is looking for in relation to export controls, in fact what industry is looking for in relation to legislation in general, is that legislation is clear and predictable. We would not be looking for a situation where there was *carte blanche* to stop any shipment of anything at any time on the surmise that it might be used for a purpose that was claimed to be adverse to the policy of the day.

Mr Fletcher: I totally favour a catch-all for torture equipment. You referred in your question to internal repression. Are you actually referring to torture equipment?

Q77 Richard Burden: Not necessarily; it could go a lot wider than that.

Mr Fletcher: I think you need to feed us a little more information of what type of thing you are trying to control for us to be able to try and advise you on what we consider to be the best way forward.

Q78 Richard Burden: This is the problem in the nature of trying to deal with the issue of end use in that you are looking at pieces of equipment and components that may not of themselves be a problem but actually if they are destined for use in an item of equipment that is on the Military List they become a problem. It is very difficult to say.

Mr Fletcher: You already have some type of control for an embargo destination. Are you considering expanding that type of control?

Q79 Richard Burden: This is turning around to you questioning us. If you look back to our other discussions, we have covered some of these issues. Even in embargo destinations if items of equipment go through particular routes the embargo does not work very well. Could I just take you on to something that the NGOs have suggested as a starting point towards what they would regard maybe as a practical solution to this problem. If there is a non-controlled component that is destined for incorporation into a piece of equipment that is on the Military List, if the exporter has been informed by the Government that the goods might

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be destined for that sort of incorporation, or if the exporter has knowledge that the goods might be intended for use on something on the list, really the exporter could then protect themselves from breach of export controls if they make all reasonable inquiries about the proposed list. This is something that we have talked about before. Is a form of regulation that puts an obligation on the exporter to make reasonable inquiries the way we should go?

Mr Hayes: It is a form of regulation which would completely paralyse British industry.

Mr Fletcher: To all destinations.

Mr Hayes: The activity you just described is happening thousands of times every day, the export of uncontrolled items which might be incorporated into something which will be on the Military List.

Q80 Richard Burden: You are in favour of end-use control in principle. You say you are looking at what would be the practical way of that working. I have suggested a way and you have said that is not practical. What would be practical?

Mr Hayes: We have not got there yet is the answer. We are looking at it and we hope that there might be a system which would work in a practical sense but we have not yet come up with it.

Q81 Richard Burden: Have you any sense of the characteristics even if it is not fully honed yet?

Mr Hayes: Not really because whichever way you try to approach it there are always problems with the law of unintended consequences. Almost always you end up catching things where there is no conceivable reason to catch them within the ambit.

Chairman: We are really short of time and there are three more topics we want to cover. Can you make the questions and answers brief. Forgive me for moving on.

Q82 Linda Gilroy: On enforcement the NGOs have contrasted the United States enforcement authority's approach with their counterparts in the UK and they cite the case of the ITT Corporation which was criminally convicted and fined \$100 million for illegally sending classified night vision technology used in military operations in China and Singapore but the UK authorities have come nowhere near such a penalty. Why is there such a disparity?

Mr Hayes: I do not think it is for us to answer the question why there is such a disparity because the penalties are determined by the legislature not by industry. The point I think we would make is I have absolutely no doubt that there are companies in the UK who look at the UK export controls, look at the cost of compliance, look at the risk of potential non-compliance and make the obvious commercial decision.

Q83 Linda Gilroy: In general you do favour enforcement prosecution demonstrating to those that do not behave in the way that the best in the industry do.

Mr Hayes: Yes.

Mr Salzmann: And fully publicising it.

Q84 Linda Gilroy: The NGOs suggested that rather than relying exclusively on the criminal law that the Government amend the primary legislation to be able to proceed through the civil courts with the lower standard of proof. How do EGAD view that?

Mr Hayes: It was something we suggested in the paper to which I referred to earlier.

Q85 Linda Gilroy: One of the penalties open to HM Revenue and Customs is compounding fines, that is accepting a monetary amount in lieu of pursuing criminal proceedings. Does EGAD consider that fines as imposed by HM Revenue and Customs are fair and transparent?

Mr Hayes: We have no way of knowing because Customs' policy is they do not publish compound penalties. The Committee itself might have a way of finding out what is happening but we do not.

Mr Fletcher: In principle there is no problem.

Q86 Linda Gilroy: That is a whole area of weakness. Do you have any final observation in relation to enforcement and levels of fine and penalty?

Mr Fletcher: If you were an export compliance officer in a company trying to justify to your board that you needed to spend X amount of money to make your company compliant it is a very difficult argument at the moment because of what David has said: the penalties just do not seem to fit the crime.

Mr Hayes: If I was to contrast the situation in the United States with the situation in the United Kingdom, working as I do with both systems frequently, the main difference, from a company's perspective, is that non-compliance with the UK system can make economic sense but non-compliance with the US system never makes economic sense.

Chairman: That is very helpful.

Q87 Mr Weir: Last year you floated the idea of the single Export Control Agency, an idea that has now been taken up by the NGOs who suggested a viability study by the Government. HM Customs and Revenue seem to have thrown some cold water on the idea. How do you feel about their reaction to it?

Mr Hayes: I would always expect vested interests to pour cold water on any idea which does not coincide with those interests. I submitted a paper so I too have a vested interest I suppose but I would like to see the idea explored and given some serious consideration, perhaps by way of some sort of feasibility study, and then we could reach a conclusion based on the evidence available rather than just reacting to the decision and saying it is a bad idea but not basing it on evidence.

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Q88 Mr Weir: Basically you support the NGOs call for a viability study of the whole idea.

Mr Hayes: Yes, we do.

Q89 Mr Clapham: Could I ask about the Defence Export Service Organisation being transferred to UKTI?⁹ Do you feel that it is going to be beneficial or, in general, what are your views?

Mr Fletcher: My understanding is that on the 1 April the RDs¹⁰ from DESO will be moved into UKTI whereas DESP,¹¹ the administrative part of DESO, will remain in the Ministry of Defence under the Equipment Capability Organisation. That means, from what I can gather, in practical terms DESP will still be responsible for co-ordinating MoD replies on both 680s and export licences and will, therefore, still be able to filter and decide what they think is best to pass to the ECO or to the company via a 680 application. In other words, I do not see all that much practical change happening immediately.

Q90 Mr Clapham: Is there likely to be a cultural change in the sense that export defence equipment has all tended to have a priority? Do you feel that priority will still be given?

Mr Fletcher: I am not sure what their terms of reference will be under UKTI.

Mr Hayes: In those terms it is vital that the promotional activities that are undertaken by serving officers in our Armed Forces continues to

happen because that is one of the major factors which lends credibility to the items of equipment for export.

Q91 Mr Clapham: You would tend to feel government will give the same kind of support that it has given previously.

Mr Hayes: I hope so.

Q92 Mr Clapham: If there was to be a change in the culture and defence exports were treated on a par with all other exports, would that be detrimental or beneficial do you think?

Mr Fletcher: It would be detrimental, I would have thought, to the UK economy as a whole not just to the defence industry.

Q93 Mr Clapham: You do not see that culture changing at all. You still feel that the priority will be given.

Mr Fletcher: I would have thought the people who are transferring across are of such a calibre that they will make sure, to the best of their ability, that it continues, but that is a personal judgment.

Chairman: Mr Hayes, I thank you and your colleagues both for your oral evidence this morning and for the written evidence. It is pleasing to see the work you are doing with government and the NGOs, a point you stress in your submission. One never expects three parties to always agree on things but at least when people communicate we know what the issues that separate us might be. Thank you, it has been very helpful.

Witnesses: Mr Oliver Sprague, Amnesty UK, Ms Marilyn Croser, Oxfam GB, Mr Roy Isbister, Saferworld, Mr Mark Pyman, Transparency International (UK), gave evidence.

Q94 Chairman: Good morning and welcome. Do you have a leader?

Mr Isbister: We are an egalitarian group.

Q95 Chairman: Would you like to introduce yourself and your colleagues.

Mr Isbister: We have Marilyn Croser from Oxfam; Mark Pyman from Transparency International; Oliver Sprague from Amnesty UK; and myself from Saferworld.

Q96 Linda Gilroy: You have suggested that rather than relying exclusively on the criminal law to prosecute breaches of export control the Government should amend the primary legislation in the way that we were taking up with EGAD and the former witnesses. One main stumbling block is obtaining evidence from abroad which will not change if civil proceedings replace criminal. How would you overcome that problem?

Mr Isbister: As far as I understand it, that problem will still exist but the way around that is that the burden of proof required by using the civil action is

lower: “balance of probability” rather than “beyond reasonable doubt”. That may provide for cases to still be brought where they might fail that evidentiary test if they were for a criminal prosecution.

Q97 Linda Gilroy: I understand what you are saying but there is also the downside if you switch the onus of proof from the State to proving guilt to the exporter having to prove innocence, you then switch it to something that we do not see very often in our law: they would have to prove their innocence rather than prosecution prove guilt.

Mr Isbister: I am not a lawyer but, as I understand it, it is “balance of probability” rather than proving you are innocent. What we are talking about would not be unique. There was an item on the *Today* programme this morning about some financial impropriety and the questioner was asking can you catch the people who did this and the answer was if we can we will do it through a criminal process but if that is too hard we will look at using a civil process. We are talking about extending that into transfer controls rather than inventing a whole new way of operating the law.

⁹ UK Trade and Investment

¹⁰ Regional Directorates

¹¹ The Directorate of Export Services Policy

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Q98 Linda Gilroy: Can you quote any other countries who have this as a basis for such enforcement in this area of law?

Mr Isbister: I am not sure how widespread it is. I know, for example, Germany has it; Israel has just introduced a new law that does have this; and the country we hear most about is the US, to pick up on what was being said before by the defence industry. I have recently been in touch with officials in the US about this and what the implications of this are, and they make the point that the lower burden of proof is very helpful and that companies actually tend to dismiss the likelihood of criminal prosecution and are much more wary of civil procedures. The officials view this as a critical component in ensuring compliance from industry. To pick up on what David Hayes said before, our understanding is that the UK industry is far more concerned about complying with civil law in the US than it is about the law as it stands in the UK.

Q99 Sir John Stanley: Can we come to extra-territoriality? You will agree that the Committee has been commendably persistent, and equally commendably consistent, in its position. It has been somewhat blood out of a stone stuff for a long period. We get a straight no and then we got the principle conceded but not the substance and it was only extended to handcuffs, instruments of torture and long range missiles and nothing in between. Now we have some further progress and we have an extension to small arms and light weapons and unmanned air vehicles and man-portable missiles. Where do you feel the most acute gaps are still there to be exploited?

Mr Isbister: We very much welcome the fact we have moved on and we are now at the point where the Government has acknowledged that small arms and light weapons will be included in this category. It is very gratifying that UK industry seems to be comfortable as well. Obviously there are still areas of contention and we do feel that the list of equipment that needs to be covered by Category 2 needs to go wider. We have a very recent example of this which has just come up, the case which you may have heard about, where Victor Bout has been arrested in Thailand. We have seen the sealed complaint that has been deposited by the DEA¹² in the US on this case and we would be happy to circulate that to the Committee. To read through that there is some very interesting information. For example, Victor Bout is reported to have stated at one point that they could supply special helicopters that can wipe out their helicopters, meaning the Columbian Government helicopters, along with missiles and missile launchers for helicopters, armour-piercing rocket launchers and surface-to-air missiles. It is also interesting that the countries referred to in this complaint, in terms of where the deal was being arranged, are Denmark, the Netherlands, Antilles, Romania and Russia. There is no reference to the UK here at all. What is perhaps less widely reported is that the co-defendant in this case is a man called

Andrew Smulian, who, looking at the complaint, is just as involved in Victor Bout. The complaint itself does not say what his nationality is but he is reported in the press as being British. It is a very interesting case and highlights that this is not just an issue of small arms and light weapons. I do not think we would dispute that it is more likely that there are more cases involving small arms and light weapons but if you are talking about helicopters that can take out other helicopters this is clearly a very serious case and we think we need to go further.

Q100 Sir John Stanley: We would be very grateful for the Victor Bout material you offered to the Committee. Do any of your colleagues highlight any particular loopholes beyond that?

Mr Sprague: I would like to reinforce what Roy said about how we fully support the small arms and light weapons as a good way to start but we are repeatedly told here what is important is the evidence base. What does the evidence tell us about what brokers are doing? If you look back to the case of John Knight, the allegations that surfaced in 2004, the documents that Amnesty International produced to the Government were a series of end-use certificates with John Knight's name on it for the Government of Sudan. On those end-use certificates were a number of items which you would not want to be brokering uncontrolled and they were multiple launch rocket systems, tanks, various armed vehicles and artillery systems. Yes, there were small arms and light weapons on them. There was a consignment of pistols from a Brazilian manufacturer but the majority of those end-use certificates by a now convicted British broker were not small arms and light weapons. I do think the evidence points to the fact that brokers are increasingly offering a whole range of military equipment on the list, not necessarily the entire Military List but there are clearly items such as tanks, vehicles, rocket launch systems and helicopters which you may want to control.

Q101 Richard Burden: Continuing on the end-use theme, obviously there have been controls in place for some time regarding end use for components associated with different forms of weapons of mass destruction. A law is now being made to strengthen things as far as torture equipment is concerned. NGOs have suggested that it should go beyond that, that we should be looking towards effective end-use controls on items that could find their way into anything that would end up on the Military List. You probably heard the representatives of EGAD say if you tried to do that in the way suggested it would paralyse industry. How do you think that the kind of system you are suggesting would actually work if there was an obligation on exporters to make reasonable inquiries where they had suspicions, or they were alerted to suspicions by the Government? What would they be required to do particularly if they did not have any staffing or operation in the country where the end use is going to happen?

¹² Drug Enforcement Agency

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Mr Sprague: From the evidence before you might be under the impression that all of British industry is involved in selling non-licensed components for the development and manufacture of weapon systems. I do not believe that is the case but I do believe there are certain instances where specific non-controlled military equipment is incorporated into military systems. I think that the concept of supplying end-use controls on these things is already established. It is increasingly being established, as we have heard, in the dual-use regulations. Non-listed items into military systems going to embargo destinations are covered. It is covered for WMD.¹³ It is going to be covered for the torture equipment. The test in the torture equipment is quite interesting. The test is about knowledge or the Government informing; it is not about suspicion. I do not think we are saying there has to be a suspicion that these things are possible. There has to be knowledge or being informed by a competent authority that this is the case. In the appendices to your last year's report there is memorandum from the Foreign and Commonwealth Office, I could be mistaken, about the infamous Land Rover case and the follow-up from what happened in Uzbekistan. They are already running an informal military end-use control system which goes way beyond what we would be arguing for. You may wish to ask the Government for more details about it. Whether it goes beyond just the case of Turkey, Land Rover as a company are informing BERR, the ECO, of all exports of non-licensed vehicle kits going to Otokar in Turkey for turning into military vehicles and then passing information about onward export from Otokar to other destinations. That is working across all of Land Rover's arrangements. There are similar arrangements in place for Pakistan and Malaysia for example. If that system is working then there is already recognition within government that military end use controls of this nature need to be applied.

Q102 Richard Burden: Moving to a slightly different issue, this a question to Mr Pyman which relates to things that Transparency International have said particularly in relation to the A Q Khan case. You were very much of the opinion that what that case demonstrated was that the British system is built around pre-licensing checks and not a lot goes on in terms of checks after the goods have been exported. Could you perhaps say a little bit more about that, either in relation to that case itself but also lessons you learnt from that to improve the situation.

Mr Pyman: Our concern is not that the A Q Khan saga brought up British companies. Our concern is that, if we are worried about diversion, and, from our perspective, corruption causing diversion, without some degree of knowledge or some degree of auditing, you are very much in the dark as to whether this is a tiny problem, a medium problem, or a huge problem. I recall the surprise when the A Q Khan saga came to light. For us, it is a very simple issue, that we would really hope to see some kind of post end-use checking of what has happened to a

percentage of the licences, which would not necessarily pick up an A Q Khan-type of issue but it would certainly give you a much more sound base to know whether there is an issue of substance or whether it was remaining at lower, acceptable levels.

Q103 Richard Burden: How would that system of checking work? What would it look like?

Mr Pyman: The nearest analogy is the system that the US has with the Blue Lantern programme. You have a little set of red flags to say "Do we have any reason for concern about this particular export?" If you do, then you follow up in a small percentage of the cases to see whether you were right or whether you were wrong. In the case of the US system, it is very modest. If I remember rightly, they have about 70,000 licences a year and they check around 600 or 700, and of them they find with about a quarter or a third there is something wrong. To me, that would be a model and it would work through the representations overseas through the UK Government offices.

Mr Isbister: Just to pick up on that, the 600 or 700 checks that they do include pre-licence and post-licence checks, so the number of post-licensing checks is even lower than that. So it does not seem unduly burdensome.

Q104 Mr Hamilton: You will have heard me earlier putting questions to the representatives of EGAD about the al-Yamamah contract. I also mentioned the Secretary of State for Defence's evidence to this Committee on 17 January. At that evidence session we put to him Transparency International UK's proposal for the enhanced monitoring of the new al-Salam contract. He responded that he did not accept the proposal and it was unnecessary. Transparency International then stated to us that "There will be a body of opinion in Saudi Arabia that will welcome higher confidence in the integrity of this contract, given the damage and embarrassment caused by the al-Yamamah contract. There is no reason why both Governments cannot agree on measures to show that al-Salam is a 'perfectly proper contract'. This will require a degree of independent verification. We urge the Committee to impress upon the Government the importance of working proactively with their Saudi counterparts to agree such measures."¹⁴ My first question to you really is why is it—is there any particular reason why defence exports are more likely to be tainted with corruption than, say, civil exports?

Mr Pyman: We think they are more likely to be tainted with corruption. The evidence is mostly corruption perceptions evidence: if you look at the Transparency International Bribe Payers index in 2002, it is the one that asks many thousands of businessmen "In which sectors do you find the most bribes to be paid?" and the top three sectors are public construction, then arms, then oil. That would be a fairly wide evidence base. If you look at similar surveys—the Americans have done something similar—that come up with the top three or four

¹³ Weapons of Mass Destruction

¹⁴ Ev 52

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industries at risk, of which arms is one. One of their mechanisms is that their Commerce Department has a mechanism by which companies can register complaints about bribery. In the second half of the 1990s 50% of the complaints were about defence bribery, even though that is only about 1% of world trade. You hear the same thing borne out when you speak to either government officials or defence officials, who say that in the past bribery has been an extremely common practice. That is changing, but to us, that is enough evidence that says yes, defence is more at risk.

Q105 Mr Hamilton: You mention the top three being construction, defence and oil. Is that because the contracts in those areas are much, much higher than, say, other civil exports, the actual individual contracts? Is that the reason?

Mr Pyman: I think it is partly the nature of the contracts. All three of those are large, irregular contracts and that always offers more opportunity. In the case of construction, there is such a huge volume of large-scale construction contracts, and that is not true of arms. In the case of arms, the historical issue has been much more around secrecy, that if they are not openly competed and there is not open pressure on the contracts, it is that much easier to pay bribes or influence the outcome.

Q106 Mr Hamilton: Can I just come back to the point you made about al-Yamamah and Saudi Arabia? You said that there will be a body of opinion in Saudi Arabia that will welcome higher confidence in the integrity of this contract—that is the new contract—given the damage and embarrassment caused by al-Yamamah. Can you identify that body of opinion? Where is that opinion? Saudi Arabia is a very closed society. Who will express that opinion in a society that is not really very free?

Mr Pyman: Can I answer that in a roundabout way?

Q107 Mr Hamilton: Please do.

Mr Pyman: Firstly, one of my tasks, as the leader of the defence work for Transparency International, is to meet with a lot of defence ministries around the world on this subject, whether it is the Defence Minister or the equivalent, the Permanent Secretary, and we have been astonished at how many of them are interested in addressing this problem of corruption in defence. They see it as a historical problem, with all sorts of reasons of Cold War politics and the like, and they see it as a problem that they are increasingly trying to address because it wastes huge amounts of money and because the national security aspects of the country are compromised if the Defence Ministry is seen to be corrupt. That is a general comment and it applies to Middle East countries as well as countries in other parts of the world. Secondly, we have asked a lot of people in relation to the Saudi contract what would be the best way of restoring the UK's reputation for anti-corruption, and the regular answer has come back that even if there is no solution to all the saga around al-Yamamah, at least make it very clear going forward that there is integrity around the new

contract, and that includes people with very good knowledge or very good information from the Middle East. No government is a uniform composition of views, and in Saudi Arabia there is clearly change. Just last week when King Abdullah was opening the Shura Council, he announced very clearly that, as part of addressing the needs and concerns of society, they would amongst other things be setting up a national committee for protecting integrity and addressing corruption. Does that mean defence? I do not know. It might well not, but is it a sign of significant change in the society? Yes, it is.

Q108 Mr Hamilton: The question I asked the previous witnesses was: do you think that the failure of the SFO to prosecute on al-Yamamah and the corruption allegations there has damaged the British reputation for fighting corruption? Do you think it has?

Mr Pyman: Yes, I do, but it is not specifically a defence issue. If we speak to people in countries or people in large UK businesses, our feedback is yes, it has damaged the image of UK anti-corruption, which generally has been rather good. Has it specifically damaged it in defence? That is a much narrower question and I do not have enough industry discussions to give you a representative answer.

Q109 Mr Hamilton: Would other witnesses on the panel agree that we have been damaged by this?

Mr Isbister: I do not think we are experts in that but I seem to recall some conversations, possibly in South Africa, about a very negative response to the inquiries into the large South African procurement on the back of what had happened with the Serious Fraud Office investigation.

Q110 Chairman: May I briefly ask: were you astonished when the former Secretary of State for Defence said that you either bribed and got the deal or you did not bribe and you did not get the deal in relation to UK arms exports to Saudi Arabia in the past?

Mr Pyman: When we hear reports like that, or when we speak to companies, we get a very common answer, which is that 10 years ago, 20 years ago, yes, that was common. It was common not just in relation to the UK but in relation to defence companies selling and governments receiving. Is it becoming less common today? Yes, we believe so, and there are many reasons we could go into as to why that should be the case.

Q111 Sir John Stanley: I want to point out a paradox on cluster munitions and I hope you may be able to give us your views as to how the paradox may be overcome. As you know, cluster munitions, unexploded, are identical physically to all intents and purposes and have exactly the same effect on civilians as anti-personnel landmines. As far as anti-personnel landmines are concerned, we went through a period where people gradually became aware that the moral case for banning them was

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superior to the military case for retaining them and, as a result of pressure around the world and some very high-profile support for the campaign, we achieved the International Convention. We are nowhere near that as far as cluster munitions are concerned, and those of us who have been to see the clearing of cluster munitions in southern Lebanon, where we saw the largest ever use of cluster munitions unexploded in the fastest space of time, when we had the war in southern Lebanon, realised what a terribly dangerous form of weapon these are, and there have, of course, been the predictable numbers of civilians who have been killed or have been maimed for life. I would like to ask you what are your views as to what more the British Government can be doing to try to put the same degree of international momentum behind a ban on cluster munitions as was successfully achieved in getting a ban on anti-personnel landmines.

Ms Croser: There is a growing international momentum behind the call for a ban on cluster munitions. There is a conference coming up in Dublin in May at which it is very likely that a treaty will be negotiated and agreed. The UK Government have been involved in this process, the Oslo process, and were one of the original 46 signatories to the Oslo Declaration. They have also since then seemed to suggest a preference for pursuing the CCW process, the Convention on Conventional Weapons process, over the Oslo process. However, the CCW has failed to make inroads into making progress. What we do not want to see is the UK Government seeming to use the CCW as an excuse for not really getting right behind Oslo in the way that it should do. The UK Government have attempted so far to argue for certain exemptions within the treaty, exemptions based on type of munitions, transition periods, as you just described, and possible exemptions based on joint operations involving states that would not be party to such a treaty. We really want the UK to be right at the very heart of developing a new ban on cluster munitions. We do not want them to be at the edges, in discussions about exemptions. This is a new, international instrument, widely supported by developing countries, that will lead to the better protection of civilians in conflict and the UK Government should really be driving that forward.

Sir John Stanley: Do any other witnesses want to contribute to what the British Government might do more? Thank you.

Q112 Malcolm Bruce: There have been concerns specifically about the supply of arms and inappropriate equipment to Burma, particularly given the problems last year. The International Development Committee actually went to Thailand and visited a refugee camp on the Thai-Burma border, and, in the context of that report and your own memorandum, were concerned that actually the Indian Government seemed to be remarkably unconcerned about what it supplied to Burma, and actually possibly less concerned than the Chinese. The first question I want to ask is, in your own memorandum you quote *The Hindu* and the fact that

the Indian Government sold BN-2 ‘Defender’ Islander maritime-patrol aircraft to Burma. When the UK protested about this, an unnamed senior naval officer was quoted as saying “We should tell the UK where to get off.”¹⁵ Subsequently they took a different attitude when the EU intervened on equipment, military helicopters, supplied by other Member States—Belgium, France, Germany, Italy and the UK. Why do you think the Indian Government was more receptive to the EU than it was to the UK?

Mr Isbister: The obvious difference between these two cases is that the UK does not place any contractual re-export limitations on equipment that moves from the UK, and amongst the six EU Member states who had equipment or technology which makes up variants of those military helicopters, some of those states do place re-export controls in the contracts and, of those six, Italy probably has the tightest controls. For India to export those helicopters to Burma, they would have been in contractual breach in that case, and that would not have been the case with the UK.

Q113 Malcolm Bruce: You say the UK Government do not do it. Do you mean they never do it as a matter of policy?

Mr Isbister: Certainly it is almost never. There may be exceptional cases.

Q114 Malcolm Bruce: Should they not do it?

Mr Isbister: Absolutely, and you have had the then Foreign Secretary giving evidence to this Committee, saying that in this case of the aircraft going from India to Burma, with the benefit of hindsight, maybe we should have acted differently.

Q115 Malcolm Bruce: We still have no control over it given that they have just transferred two more, I understand.

Mr Isbister: Two sets of two have gone.

Q116 Malcolm Bruce: I just leave on the table the fact that, again, our Committee expressed concern that the world’s largest democracy seemed to be very happy to supply weapons to the world’s most oppressive regime. It does not reflect well, I have to say, on the country.

Mr Isbister: In the last few months it has been reported that the Indian policy on supply to Burma has changed. It was initially reported, I think in the *Washington Post*, that India had stopped supplying arms to Burma. There was a policy of not supplying arms to Burma. That has since been corrected, as I understand, to say India is still willing to supply to Burma but is looking at possible exports more carefully and has not transferred equipment in recent months.

Q117 Malcolm Bruce: I thought that transfer of the two aircraft took place in January.

¹⁵ Ev 66

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Mr Isbister: It has been reported in a couple of different places. I have seen it reported as taking place in 2007. It is often difficult to track exactly when these things happen.

Q118 Malcolm Bruce: It was reported in Jane's Defence Weekly on 16 January under the headline "Indian arms sales to Myanmar remain under scrutiny".

Mr Isbister: I am not sure if the transfer took place in January or whether it was just reported in January.

Q119 Malcolm Bruce: To finish on that issue, what about China? Again, we picked up some sensitivity that the Chinese, after all, are looking to get water and energy supplies out of Burma. There is some awareness that an unstable Burma with the possibility of disruption of those supplies is not in China's interest. The implication was that China asks more questions than India does. Is that in fact the case and, in the circumstances, do you think it is sensible for the UK and Europe to be talking about the restoration of arms sales to China, particularly perhaps not only in light of Burma but recent events in Tibet?

Mr Sprague: It is probably best for me to answer the first part of that question. I will come on to China in a minute but if we look at the sending of military and police equipment to Burma, it is not just China and India. We produced a report in the autumn and it fingers a number of governments. For example, the Russians between 2002 and 2007 sent 100 artillery systems; the Ukrainians in 2004 sent a number of armoured vehicles; Serbia and Montenegro in 2004 sent large artillery systems. It is a global problem. China is a significant supplier. It was reported that they supplied at least 400 military trucks in 2005, and you only need to look at the TV images and the press images to see those trucks in operation, involved in serious human rights violations. China is not exempt from the globalisation arguments that we have been talking about, because the two manufacturers that supplied this equipment, a Chinese company called Dongfang and another company called First Automobile Works have co-operation agreements with American and German companies to supply. We do not know that American and German components are in these actual vehicles. Burma is a very closed society and we cannot get in to look at the vehicles, but there is a reasonable risk that that is the case. They clearly do co-operate in supplying components to these two companies. A similar thing with the Ukrainian example of armoured vehicles. The Ukrainian company themselves still claim that those vehicles have been developed in co-operation with Germany and America for transmission systems and—

Q120 Malcolm Bruce: There has been a change of government in Ukraine since then.

Mr Sprague: It is still claimed the vehicles still went in 2004. They were reported in the UN register of conventional weapons. All this throws into the spotlight the issues we were talking about before about the incorporation of maybe non-listed

components, the use of maybe vehicles that fall just below the specification of what is a military vehicle but clearly being used in the commission of grave violations of human rights, which is why we argue that there is a need to push forward end-use controls not just on goods that are incorporated but also maybe on platforms, vehicle systems, utility trucks, et cetera, that are used in embargoed destinations.

Mr Isbister: It is an interesting case, is it not, because there is an EU arms embargo on China just as there is on Burma but it is less comprehensive, so there is equipment that can go from the UK to China which could conceivably then end up in Burma. What we would ask the UK Government to do is communicate their concerns to China about the possible onward export to Burma, state the terms of the EU embargo on Burma, which includes the indirect supply, so, for example, via China, and that in licensing decisions the Government should take account of the relationship between China and Burma and, where they perceive any risk of diversion or onward export from China to Burma, refuse those licences.

Q121 Chairman: May I come back to a further question on cluster munitions? Forgive me; I should have raised it earlier. I would like your view as to the argument that says there is a military justification for cluster munitions; there are no acceptable military alternatives to the use of certain kinds of cluster munitions. How do you respond to that?

Ms Croser: Cluster munitions have essentially been used as a weapon of convenience and when looking at the military utility, lots of different scenarios in which cluster munitions have and can be used have been put forward. For instance, unseen enemy fighters in urban areas, convoys of tanks, depots spread over a wide area. Ultimately, the humanitarian consequences of the use of cluster munitions outweigh their military utility. Alternatives to cluster munitions would have to be shown to have increased precision and a lower failure rate, so an argument for military utility of cluster munitions being used against the ban is not an acceptable argument.

Q122 Mr Clapham: Can I turn to open licences. General licences, I understand, are one of the fastest-growing areas for UK users for exporting weaponry. You expressed some concerns. Is there any evidence that the system is being abused and that some of the exports are finishing up in the wrong hands? Could you provide us with evidence, if there is such evidence?

Mr Sprague: I think it is for me to address this question. I think what you are getting at is, is there evidence that these licences are getting equipment into the wrong hands. I would like to answer that first by saying that there is an example of the wrong hands actually being able to use them, and it relates to the growing consensus between us and industry that these need to be licences in the true sense of the word, so there needs to be some form of scrutiny and some form of mechanism to revoke them. It is in our evidence but you can see from the court transcripts

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of John Knight's prosecution that his defence lawyer says that he is registered to use various open general licences for his brokering and trafficking activities and he wants to continue to use them after he has finished his sentence. I would go one step further: under the current system there is nothing to stop him using it now. As long as he has access to a phone, he could be using that licence. It seems crazy that somebody convicted of such a serious export control violation is eligible to use an Open General Export Licence for the movement of small arms and light weapons or of a wide range of goods on the Military List. The second thing I would like to say is that it is almost impossible, because of the way the transparency, monitoring and enforcement works with open general licences, to know exactly what is being exported under them because of the incompatibility between the way the Customs database and the Customs CHIEF system reports it and the way the ECO registers use of the licence. We asked a question of Customs about whether that was possible and the answer that came back was: in the six months alone to December 2007 that would involve the manual cross-checking of some 8,000 individual references. We have no way on our system of extracting information about what has been exported under these licences. So all we can go on is the compliance and audit visits which are mandated when you register for an OGEL. If you look at the figures, it is a growing trend of examples of misuse of open licences when the compliance officers come to visit. In 2004, 5% of OGELs were seen to be misused; in 2005, 8% were seen to be misused; and in 2006, 11%. That is just over one in 10, from compliance visits, are shown to have problems with their use. I do not know what the problems with those uses are, but still, if we go back to the point that you are not able to remove companies from using them, that would appear to be a problem. The last thing I would like to say on OGELs is the notion that all they do is allow non-sensitive equipment to non-sensitive destinations—if you actually look at the OGELs and the schedule 2 list of destinations of countries which you are not allowed to use them on, I am looking here, for example, at the export after repair, replacement under warranty, military goods, it basically means you are allowed to repair, service and supply components, et cetera, spares, manuals, for basically anything on the Military List. If you look at the schedule 2 countries to which these licences are eligible, you could use this licence for Chad, for example. There is nothing to stop you repairing a military vehicle after warranty in Chad or Colombia. You are not allowed to do the same thing to Croatia, which is an EU member. If you look across the OGEL licences, these anomalies are appearing all across them. If it is going to be such a permissive licensing system, we really do need to work on the list of sensitive destinations and make sure there is some consistency. I am pretty sure that you would not want any form of licence that would allow anything to do with military vehicles, small arms, et cetera, to be going to a country like Chad under the current circumstances, when it is involved in the current conflict in Darfur. That, I think, really

needs to be looked at. We are not saying that OGELs have no place; we are just saying that there needs to be a properly enforced licence.

Q123 Mr Clapham: So it really is a serious issue. You are saying some of the equipment could actually be finishing up in very sensitive areas.

Mr Sprague: It is legal to use the licence. The terms of the licence are quite specific but yes, you can use these licences for a number of destinations where you would raise questions about whether you would want a permissive licence like an open general to be in force.

Q124 Mr Clapham: And you feel that the way of actually controlling open licences would be to specify the destinations?

Mr Sprague: The destinations are specified. I think there is a real case for updating those lists and to make sure countries like Chad, Colombia, et cetera, are on them as destinations where these licences are not eligible.

Q125 Mr Clapham: Have you raised this issue at all with Customs or with government?

Mr Sprague: We have been writing and questioning about the enforcement of OGELs and that is where the figures have come from around compliance and how many compliance visits are showing problems. I think it is things we have raised over the years in a number of fora, including this Committee.

Mr Isbister: It is just worth mentioning that we have been speaking with industry about the notion of the eligibility to use an OGEL, and there is basic agreement between us and industry that it should not be open season, so we would hope that the Government will listen to this joint voice and we will see a change at least in that aspect in the near future.

Q126 Mr Weir: You have called for sustainable development to be added to the table of relevant consequences of the Export Control Act 2002. Have you any evidence that adding this would affect the number of applications turned down on grounds of sustainable development?

Ms Croser: At the minute, the only information we have available to us about the way in which the legislation as currently written is operating is the number of refusals. That seems to suggest that sustainable development is not given equal weight to the other criteria. One thing that would help us would be more information, specifically more information from DfID in reference to the point that they raised with you last year about the F680 process and the way in which the F680 process could potentially catch many licence applications, and those licence applications could be deterred at pre-approval stage if they were likely to be rejected under the sustainable development criteria. It would be useful if data were available on that specifically and, if it could not be made available to us, then we would argue that it should be made available to the Committee. Principally, change in the relevant consequences would mean that sustainable development had equal weight to the other criteria in

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the legislation, which it does not at the minute. Showing the direct effect of a transfer on sustainable development is tricky, and that is all the more reason to give it equal protection under the law.

Q127 Mr Weir: You mentioned there that it was tricky to show it, but have you developed a model for measuring sustainable development that could be applied to arms exports?

Ms Croser: We are currently doing a piece of work that is looking at financial opportunity costs of a number of transfers on sustainable development. We do have a model for assessing whether or not a transfer should go ahead. A methodology on looking at the consequence of a transfer would need to list a potential negative impact but also the possibility that a transfer could have a positive consequence or an unavoidable cost, and it would look at things like economic, developmental, human security indicators. DfID last year said that they were revising their own methodology and that they were considering publishing that methodology. We would very much encourage them to do that, partly because a very key part of applying sustainable development criteria to arms transfers is about transparency. We ask to see transparency ideally in procurement decisions from importers, looking at how that decision has been reached, whether it has been free of corruption, whether it has been democratic. Equally, exporters should make their criteria for exporting to countries with developmental concerns transparent. We would like to see DfID's methodology published.

Q128 Mike Gapes: As you know, this Committee has been pressing and has been congratulating the British Government for taking the lead on the International Arms Trade Treaty. Can you update us on where we are on that?

Mr Isbister: Yes. We are in the middle of a long game basically, but very good progress continues to be made. We continue to worry that we are going to come up against some quite hard walls at some stage in the future but we continue to make progress and it is very encouraging. If you go back to the end of 2006, 153 votes in the UN General Assembly in favour of looking at an arms trade treaty. Last year there were approximately 100 national submissions to the UN Secretary-General where states put forward their ideas about an arms trade treaty, and they are overwhelmingly positive. Sixty states ended up fighting for 28 places on the Group of Governmental Experts that is currently in process. Most of the big hitters are on that group. This level of interest in something of this nature is really unprecedented. In fact, the UN ODA that had to compile the submissions was running round in circles because the rules did not allow for such a weight of submissions in terms of being able to print them. It really came as something of a surprise. The GGE, the Group of Governmental Experts, will meet three times this year. They have met once so far and they have two more meetings to go. It is a closed process, so it is very difficult to get any kind of detail of what is going in there, but the general feedback is

the first meeting was a very positive meeting, and for the most part states feel things are going very well. If I can look at the role of the UK, perhaps that might be of interest. The UK continues to be one of the leading countries on this, and we congratulate the UK on that and welcome it, and encourage them to continue. There are, however, a couple of areas where we think the UK could do more or could act differently. The statements of support from the UK for an arms trade treaty tend to be very general: yes, an arms trade treaty is a good idea, we are pushing for it, et cetera, but we NGOs are not looking for any old arms trade treaty; we are looking for an effective arms trade treaty. There is no point in producing a piece of paper just for its own sake. The Government tends to be quite shy of saying what has to be at the centre of an arms trade treaty. From our perspective, it has to be about dealing with human rights abuses, breaches of international humanitarian law, and threats to sustainable development. The Government in its general statements and political statements does not tend to make these kinds of points.

Q129 Mike Gapes: Last year the former Foreign Secretary told us that this treaty should cover all international transfers of all conventional arms, including small arms, light weapons, parts, ammunition, technology to produce and maintain such equipment, and also that consideration should be given to related dual-use items. Do we have any idea yet what the treaty is likely to contain?

Mr Isbister: Not really, again, because the process is closed, and also the GGE is not about negotiating a treaty. It is just about looking at what a treaty might involve, and then it goes back to the UN General Assembly for them to look at what to do next. Certainly there is widespread agreement that an ATT should cover conventional weapons, including small arms and light weapons. As you move into those other areas that you talked about, that is where there are more contentious issues involved. At this point in the process I would not speculate on how far we could go.

Q130 Mike Gapes: Finally, is the US still completely outside of this system?

Mr Isbister: No. The US was not expected to attend the first GGE meeting, even though they are a member of the GGE, but they did turn up, and again, it is difficult to know exactly what was said in there but the general feeling seems to be they were not particularly problematic in that meeting, so they are engaging properly.

Q131 Mike Gapes: That is good.

Mr Isbister: Very briefly, two more things that the UK should be doing. The UK should be pushing as hard as it can to get the EU code transformed into a common position, because the idea of EU states, including the UK, arguing for a legally binding international treaty when the regional agreement to which the UK is party is only a politically binding instrument undermines their position. Also, the UK's position on the cluster munitions again

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undermines their leadership role in taking the moral high ground, if you like, in trying to push forward an international agreement on conventional arms transfers.

Q132 Sir John Stanley: Can you just explain a bit more why you say the UK Government's position on cluster munitions is undermining their position in the International Arms Treaty?

Mr Isbister: The UK has positioned itself at the forefront of the moves towards agreeing an internationally legally binding arms trade treaty. It

has a status in the international community in the area of conventional arms control. On the cluster munitions side, it is in the tent but it is just hanging around the fringes, and these two positions do not sit very comfortably together. States may mischievously point that out and take advantage of that.

Chairman: Can I say thank you very much again. That was a very helpful session and we are very grateful. Thank you for your written submissions, I think three between the four of you. That was really helpful. Thank you. I declare the meeting closed.

Monday 19 May 2008

Members present

Roger Berry, in the Chair

John Battle
Mr David S Borrow
Mike Gapes
Linda Gilroy

Mr Bernard Jenkin
Mr Mark Oaten
Mr Marsh Singh
Sir John Stanley

Witnesses: **Mr Malcolm Wicks MP**, Minister of State for Energy, **Mr John Doddrell**, Director, Export Control Organisation, and **Ms Jayne Carpenter**, Assistant Director, Export Control Organisation, Department for Business, Enterprise and Regulatory Reform gave evidence.

Q133 Chairman: Good afternoon. Minister, could I ask you to introduce yourself and your colleagues, please?

Mr Wicks: I am Malcolm Wicks, Minister of State at the Department of Business and Enterprise. I am accompanied by John Doddrell, who is the Director of Export Control Organisation, and also Jayne Carpenter, who is our Head of Policy at ECO.

Q134 Chairman: Thank you for your initial response to the public consultation on the review which we found very interesting. Perhaps you could clarify what the Government's current timetable is for completing the review and for any subsequent legislation?

Mr Wicks: I think the review has been a useful process and I am looking forward to discussing with my colleagues some of the outstanding issues with you. Our starting point would be our belief, which I hope the Committee share, that we have one of the most rigorous export control organisations in the world, but of course we are not complacent. We have now made a number of further steps. We have extended extraterritorial control on small arms, MANPADS,¹ which I remember discussing with one or two Members of this Committee when I last appeared before it, and also certain cluster munitions. These will come into force on 1 October 2008. Our target for introducing any further changes necessary for issues still under discussion is 6 April 2009. As you know, there are a number of issues that are outstanding. As things stand, we do not think there will be a need for primary legislation, although the issue of a register and whether it should be published could require primary legislation. We will continue to involve the Committee as fully as we can in the review and we will shortly send the Committee the draft legislation to implement the next set of changes, including those on small arms. Later in the year we will send the Committee the draft legislation to implement the further changes.

Q135 Chairman: The changes that you plan to introduce on 1 October—the ones you have just mentioned—the draft provisions will be before the Committee well before the recess. Is that right?

Mr Wicks: Yes, that is our plan.

Q136 Mike Gapes: This is topical in some sense. In the 1990s the US Commerce Department recorded that 50% of complaints that they received were about defence bribery, even though that was only about 1% of world trade. We have had evidence from Transparency International, who have said that the arms trade was one of the top three sectors in the world for bribery. When the Government through the Export Credits Guarantee Department, which you have ministerial responsibility for, assesses an application, what checks are made about whether there is a potential for bribery and corruption?

Mr Wicks: As you have said, the ECGD take these matters most seriously. As a matter of UK Government policy, we are fully signed up to fighting corruption. We also subscribe to the OECD² position and where there is any evidence to hand that there could have been bribery or corruption my colleagues at ECGD take that very seriously indeed.

Q137 Mike Gapes: You are saying you would need the evidence in advance. You would not, for example, ask for a declaration from the exporter that the transaction has not been tainted by, or associated with, bribery and corruption?

Mr Wicks: Where there is public knowledge, or indeed private knowledge, which suggests that there could have been bribery or corruption, we would act on that. Whether as a matter of procedure we ask about that, I would need to take advice from officials who are not those that are with me today and perhaps write to the Committee about that.

Q138 Mike Gapes: When you do, can you also look at the question about why, when we do export licences, we do an assessment for risk of diversion or whether the goods might be used for internal repression and why we should not also have an assessment as to why, if we do not, there should not be a check or declaration with regard to bribery and corruption?

¹ Man-Portable Air-Defence Systems

² Organisation for Economic Co-operation and Development

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Mr Wicks: You are asking there about the ECO?

Mike Gapes: The ECGD, and the ECO checking on ECGD. You have ministerial responsibility overall for these matters.

Chairman: I think the point Mr Gapes was making was that ECGD has explicit ways of discouraging bribery, including inviting clients to make it perfectly clear that they are clean. I think the initial point was why are not the same approaches adopted in relation to arms exports—that a licence, for example, is not granted unless there is a clear assurance given that there is no bribery involved? Was that your point, Mike?

Q139 Mike Gapes: Yes, it was. Transparency International said that there should be a series of tests for arms exporters like publishing the names of advisers and intermediaries and the due diligence test before appointing anybody as an agent with regard to an arms sale. Does the Government have a view on that? Would that be a sensible way forward or would it be impractical?

Mr Wicks: It is an interesting question which I have been reflecting on, as you say, Mr Gapes, the contrast with ECGD. I suppose we would argue at the moment that our main focus has to be on the potential risk presented by the export, not on the general process by which the contract was won. That is our primary purpose to present risk. There could be a danger of diffusing that focus. Obviously any company is subject to the law of the land and the law is clear about bribery and corruption. We do not, as far as I know, enquire into a whole range of potential criminal activities on the part of the exporter. We are trying to make sure that weapons, et cetera, do not get into the hands of bad countries or bad people. I am willing to take the advice of the Committee on this one.

Q140 Chairman: Repeating Mike's initial point, the reason for his question is that all surveys we have seen put the arms trade in the top two or three activities globally in relation to bribery. That is the reason. We are not just picking on it but the evidence is there that there have been real issues.

Mr Wicks: I would have thought *prima facie* that is likely to be the case. I am not naïve about that. I suppose it is a question of whether this Committee therefore, after you have reflected on this, feel that this should be another role of the ECO itself; whether that is going too far, what would be the capability that we would require from that and we certainly would not have the expertise at the moment to investigate bribery and corruption. The ECGD, which is essentially making a judgment about a financial support essentially for a company, is in a slightly different position and perfectly properly they take bribery and corruption very seriously.

Q141 Mr Singh: Taking that issue a little further but in a different context, the OECD has launched an investigation into our failures of complying with anti-corruption and bribery protocols. According to my brief, the scale of the investigation is huge

involving 114 sessions. Is this any kind of indication that we have been systematically failing in areas of anti-corruption and bribery?

Mr Wicks: There is one high-level case at the moment where the Attorney General is the person to discuss that.

Q142 Chairman: The high-level case is presumably the suspended SFO³ investigation into BAE Systems al-Yamamah. Is that correct?

Mr Wicks: I thought Mr Singh was referring to that. Is that right?

Q143 Mr Singh: I am referring to that as well, yes. Do you think there is a systematic failure on our part to have these protocols in place?

Mr Wicks: We are very committed to the OECD protocols. There has been that high-level case where suspension of the SFO enquiry was certainly controversial. I have to leave that to colleagues because it is not a matter for me or within my jurisdiction. It is a matter for the Attorney General. I think we have to be most careful to ensure that we implement such protocols; indeed, our own policy is that we want to see an end to bribery and corruption in all areas of trade and certainly in this very difficult area of the arms trade.

Q144 Mr Singh: The Secretary of State last year in giving evidence to this Committee indicated that this was just a routine issue by the OECD and that it was bound to happen in any case, but the Phase Two programme which I think only three other countries have been subjected to—Ireland, Japan and Luxembourg—would you now accept that this is actually a very serious investigation and that it is not routine at all?

Mr Wicks: It seems like a serious investigation and BAE Systems of course asked Lord Woolf to do the work that has recently reported. I do not want to go into too much detail as I do not know the detail, but clearly BAE Systems saw an issue, there clearly is an issue there and they now want to move forward, I assume, by implementing the detailed recommendations of Lord Woolf. That is a sensible position for that important British company to take.

Mr Singh: We will see what comes out of that investigation.

Q145 Sir John Stanley: Minister, as you know, when the Government first extended extra-territoriality to trafficking and brokering, the Committee was very critical of the extraordinarily limited extent to which this was done. As you know, it was done initially to apply only to instruments of torture and to long-range surface-to-surface missiles over ranges in excess of 300 km with nothing in between. The Committee, I believe entirely justifiably, said that the Government had conceded the principle of extra-territoriality but virtually none of the substance. Minister, I appreciate that it may seem somewhat churlish now that the Government has made a further significant step in the right direction

³ Serious Fraud Office

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still to be critical, but as I am sure you will understand very well, and no doubt you have read the debate that we had in Westminster Hall on March 27, and you may possibly have looked at my own offering in that debate, the present position is still absolutely riddled with anomalies. I set out in that debate the anomalies that continue to exist—the fact, for example, that you have some mortars which are now within extra-territoriality and other mortars of a slightly larger calibre that are outside, you have some missiles in, some missiles out and so on. What I would like to ask you, Minister, is this: is the Government at this stage prepared to adopt the recommendation that this Committee has been putting to the Government now for over a three-year-plus period and to fill in the gaps in the criminal law in this area to extend extra-territoriality to all the items that are broadly within the definition of weapons, bearing in mind that all we are seeking here is to ensure that British residents overseas who seek to breach arms controls in a way that would be criminal offences if committed from within the UK are themselves made liable to the criminal law? I believe surely that is a principle that the Government would wish to accept and endorse and would the Government now carry it through fully in policy terms?

Mr Wicks: May I say through the Chair, Sir John, that I would never accuse any Committee Member of being churlish, not least because I listened to you very carefully on MANPADS when I last came before the Committee and took your advice, so there is no churlishness anywhere there I do not think. I think we have moved in the right direction on small arms which many people in the past have described accurately as the true weapons of mass destruction in places like Africa. We have moved forward on that and on MANPADS and on cluster weapons. It is a question of do we now need to move further. There is a working group, as you may know, involving some of the NGOs⁴ and the industry who are looking at this to see whether some consensus can be reached and then no doubt advice can be put to both this Committee and to Government. As far as I am concerned, the door is wide open on this for us to take further steps should we deem that necessary. I guess in all of these things it is a question of degree. Perfectly properly under British law we reserve extra-territorial interventions for some of the most heinous crimes that exist—we track down paedophiles, for example—and, perfectly properly, those British people dealing in lethal weapons are also tracked down. I stand ready to join in the debate and take further advice on this.

Q146 Sir John Stanley: As you will have seen from the Committee's previous report, we did attach as an appendix advice which I was very helpfully given by the House of Commons Library listing the complete legislation on extra-territoriality since the 19th century. If you have been able to look at that particular appendix you will have seen that there is already on the statute book extra-territoriality

provisions for matters which I think most of us would regard as being very much less serious than a flagrant violation of an arms trade embargo. I think you will agree with me that the area is extremely well precedented. I have not heard from you any justification in terms of any particular weapon or weapons system as to why you believe there should be some exception for not making the ambit of criminal law applicable to somebody who trades in such a weapon overseas when it would be a clear criminal offence if they made that same trade from within the United Kingdom. Do you wish to offer any defence of that position?

Mr Wicks: No. You have not heard that from me because I have an open mind on that issue alongside my open door. I do not have an empty mind but I have an open mind and I want to take further advice on it. I would have thought, given that the key stakeholders—both the NGOs and the industry—are looking at this, it would be sensible to see what conclusions they reach.

Q147 Chairman: We would welcome that and by the same token you appreciate the strength of the Committee's view.

Mr Wicks: I do, yes.

Q148 John Battle: Could I shift the focus to extension of the extra-territorial controls to transporters, because that working group you have referred to has argued that transportation of Category 2 items should be subject to control, not least because I think they say “the roles of broker and transporter can be tightly linked, with the dividing line between them difficult to draw . . .” so perhaps transportation should be a supporting activity that is controlled under the new Category 2.⁵ What is the Government's view on that?

Mr Wicks: It follows what I was saying earlier to Sir John, we will still carry out some research to establish which supporting activities should be controlled in relation to the new Category 2 trade controls which, as you have said, include small arms. There may well be a case to include transport services because obviously transport services are vital to this trade, so we are certainly looking at this.

Q149 John Battle: Does your research into it include an estimate of the cost to UK transporters, for example, of extending the new Category 2 to them, almost like pre-empting the defence line that they will come up with that you will put us out of business and you have not estimated the costs of this? Has any work gone on in that domain?

Ms Carpenter: We would be required to provide a case impact assessment before introducing any new controls. We tried as part of the consultation to get evidence on costs going forward for options that were included. We did not get quite as much as we had hoped but we are still working with the industry to try and get costings that are as accurate as possible.

⁴ Non-Governmental Organisation

⁵ Ev 55

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Q150 John Battle: Are the difficulties in enforcing the law still looming as an insuperable barrier?

Mr Wicks: I think that is what has made us cautious on this one and why we need to look at the implementation issues very seriously. There are some quite serious difficulties about this but I certainly recognise the integral nature of transport when it comes to this kind of arms dealing. I promise that we will look at it again before reaching a definitive conclusion.

Q151 Mr Borrow: Moving on to the issue of a register of arms brokers, which I think the Committee has recommended in the past, on that particular occasion the position of the Government was that they were not persuaded that a register of arms brokers was necessary and there was some concern about the range of operational details for actually setting up such a register. I would be interested in (a) whether the Government has any problems with the principle of the registering of arms brokers, and (b) if there are operational matters, what those operational matters are that are preventing the setting up of a register?

Mr Wicks: First of all, we are not opposed to the idea of a register in principle—I can see certain advantages—but I am advised that there are some practical difficulties and we will have to consider those before reaching a conclusion.

Mr Doddrell: It is something that we are looking at. We do see advantages for a register in terms of increasing compliance, particularly if it is linked to some kind of awareness test in relation to the controls that people would have to satisfy us before they could be registered that they understood what the controls are. There is also a potential advantage in that if somebody commits a particular offence, demonstrates that they are not a suitable candidate to be conducting business in this area, the register would provide a means of preventing them from going about that activity in future, so there are advantages. The things that we need to look at are precisely what the criteria would be to accept somebody on the register; what the mechanism would be for removing them and stopping them from continuing their practice in that area; whether we might charge a fee for people being on the register; whether the register would be a public document freely published and made available or whether it would be something that would be just available for the department itself, and perhaps a final point to make on this is that there is a real balance on this as to whether the benefits in the terms that I have outlined outweigh the extra regulatory hoop that we will be imposing on business that they would have to go through in order to go about their business.

Q152 Mr Borrow: Would you agree with me that arms traders as against arms manufacturers are less likely to be aware of the full implications of the licensing arrangements for the exports of arms and therefore a register would be that extra hurdle for companies to get over would in itself increase the knowledge and increase compliance?

Mr Wicks: I have no empirical evidence to make a judgment on that. I do not know if it exists.

Q153 Mr Borrow: When Mr Doddrell was mentioning one of the advantages of having a register being the fact that it would mean that arms trading companies would be more aware of the regime under which they had to operate and obviously the Committee has heard from the past the argument that simply setting up a register would improve compliance from arms traders. The second point I would raise is Belgium, France and Sweden already operate registers of arms traders. Presumably the department is looking at the systems they have in place when working out these operational arrangements that need to be sorted out before we can introduce such a system in the UK?

Mr Wicks: There is different practice across Europe and we will look at that.

Q154 Mr Borrow: Are there any lessons that you have picked up so far?

Mr Doddrell: We have looked at the register in Sweden that I know is published. One of the issues I was asking Swedish counterparts about was whether that had led to any action by groups who are active in this area against perhaps legitimate firms and their employees who might be named on such a register and they have not got experience of that. I think that was a useful lesson that we drew. There is also the question that was implicit in what you were saying, Mr Borrow, as to whether we should draw the line at a register of brokers or whether there was any merit in extending the concept to a register of exporters as well, which is another thing that we would want to look at before coming to a decision on this.

Mr Wicks: We hope to come to a decision on that before the summer recess.

Chairman: We are very grateful that you are looking into this in such detail.

Q155 Mr Borrow: If I could touch on the open licence regime, the UK Working Group on Arms has considered that that regime is too light a touch and the suggestion that they have been making is that open general licences should only be available to those companies that are correctly applying good internal compliance procedures and that there should be a requirement for advanced notice of trades made under an open licence. Would you agree that the regime is too light a touch and the suggestions that they make would make an improvement to the existing system, or is that something you are looking at at the moment?

Mr Wicks: I do not think we do accept that argument. We do not accept that open licences are any higher risk than other licences. After all, open licences are granted only for lower risk transactions and certainly they are carefully assessed against our key criteria. I do not think we do accept the initial assumption.

Q156 Mr Borrow: Coming back to the specific case, which is the John Knight case where the company involved breached the extra-territorial controls and

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Mr Knight was sentenced to four years in jail. I understand that the company is still registered for open licences and that Mr Knight intends to continue to use them, which does raise this issue that if someone is operating with an open licence in areas that are not considered to be high risk, but that the company itself is evidently not complying with other aspects of the arms control regime, is it appropriate for that company or that individual to be given an open licence?

Mr Wicks: Two things: first, I would have thought the fact that Mr Knight is now in prison shows that enforcement can work which is a good thing. Second, because of the anomaly that really you have pointed to we have set up a review of this. We had our lawyers look at what could be done and I am pleased to be able to tell the Committee that a notice to exporters has been issued setting out the circumstances where the Secretary of State may consider suspension or revocation of open general licences for individual exporters. The notice sets out the circumstances where the Secretary of State may consider it appropriate to take speedy action to suspend or revoke such licences. John Knight has now been advised that his company, Endeavour Resources, is suspended forthwith from the use of the Open General Trade Control Licence for a period of four years from the date of his conviction. We have learned lessons, I think. I am bound to point out also that HM Prison Services rules—I hope this is no surprise to anyone—do not permit convicted prisoners to run a business when in prison.

Q157 Chairman: Obviously it was thought necessary to suspend the licence in any event.

Mr Wicks: Yes.

Q158 Chairman: Congratulations to those who successfully prosecuted and got this person sentenced. There is no doubt that the John Knight case was a major achievement in enforcement of the legislation, but as you say, Minister, notwithstanding the fact that one does not normally allow people to run businesses from prison, you kindly assured us that he can no longer use those licences because of action that you have taken. That is belt and braces and we are very keen on that.

Mr Wicks: Yes. It is an important thing to have done.

Q159 Chairman: We ask the question because we did raise this with the Revenue's prosecution service and they rightly referred us to you. We have heard no announcement that this licence had been suspended, so we are delighted.

Mr Wicks: We had to look at the legal issues and it has taken a while.

Q160 Chairman: Is it possible that, in future, somebody who is put in prison for breach of arms export control rules will automatically have licences taken away? Why does this not happen automatically? You are looking puzzled, Minister, but we are puzzled.

Mr Doddrell: One of the strengths of the register is that somebody can be struck off the register. The principle of the open general licence is somebody can just register by a click on the internet and so it is not something that has generally been factored in, but we have dealt with it now and will do so again in future.

Mr Wicks: Obviously you are right and crooks should not have licences and we will try to remove them as speedily as possible from crooks who have been proven to be crooks.

Q161 Mr Borrow: Whilst someone can be in breach of the regulations and have an open licence, there is an argument that if there is a breach by that individual of the regulations which leads to some suspension or some sort of punishment, whether it is prison or not, that ought really automatically to lead to an examination and suspension of that open licence, because they may have a breach which is not of the open licence but of something else that they are doing and there ought to be a mechanism which automatically examines what their status is in terms of open licences.

Mr Wicks: Yes. We have been looking at this and my colleagues may want to add something. The majority of non-compliance cases are usually minor record-keeping errors, incorrect references on documentation. There should be full compliance. I think these are always reported to HMRC.

Mr Doddrell: I can confirm what the Minister has said that any compliance reports from all of our visits to companies are referred to HMRC and if there are any breaches then they are referred and it is up to HMRC to consider whether to take any action or indeed to prosecute the company involved.

Q162 Mr Oaten: Does a minor non-compliance show up against their registration? For example, on eBay your grade gets worse and worse the more non-compliances there are, and there comes a tipping point. I just wondered whether there was a first warning, a second warning which shows against the licence so we get a sense of how good or bad they are?

Ms Carpenter: There is a compliance rating system which is updated after every compliance visit which runs on a traffic-lights system.

Q163 Mr Oaten: Is that public for people to see?

Ms Carpenter: No, it is an internal system that our compliance officers use and they can copy it to other people in licensing.

Q164 Mr Oaten: But if one wanted to look and check the appropriateness of somebody you would not then see that information?

Ms Carpenter: If you worked in the ECO or in Customs, for example, you would be able to see it. It is not a public system at the moment.

Mr Wicks: I am not complacent about this and I think we need to improve. We have now been able to reallocate some resources to compliance. You will recall that when you visited ECO we told you about

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the introduction of SPIRE,⁶ the new system. That does free up some resources. I am advised that in the last year the compliance team has increased by over 30% so that more companies can be visited each year.

Q165 Mr Jenkin: Minister, how do you actually tell what has been exported under an open licence?

Ms Carpenter: We cannot tell what has been exported under an open licence. Compliance auditors check during their compliance visit what licences have been used for; that is open general licences or open individual licences. What we do not do is collect together statistical information which shows everything that has been exported on open licences.

Q166 Mr Jenkin: The complaint the Committee received from Amnesty International is that there is an incompatibility between the Customs database and the Customs CHIEF⁷ system in the way ECO registers exports and that the very cumbersome problem of reconciling these records is not something you even attempt to do because it is not the purpose of the licence.

Ms Carpenter: There is a link between our new IT system and CHIEF, the Customs operating system.

Q167 Mr Jenkin: Is this used for spot-checking and audits rather than checking generally what people are exporting?

Ms Carpenter: My understanding is that it is used for spot-checking.

Q168 Mr Jenkin: The UK Working Group has given us evidence that, in 2004, 5% of open licences were seen to have been misused and in 2005 8% and in 2006 11%. Is this because you are doing more checking or is the situation getting worse and how are you addressing this?

Mr Doddrell: Two points, if I may, Mr Jenkin. The first point is that the interface between SPIRE and the CHIEF system was not operating fully to begin with. It is now operating fully and this provides a connection between what is being exported from the Customs Officer and a link into whether the exporter has the appropriate open licence that he is registered for under the SPIRE system. To an extent the links between Customs and ECO are now tied up on that. The second point is that we are concerned about levels of non-compliance in relation to use of open general licences. Partly this has come about because more people are using the open general licences and we now have the mechanism in place to remove entitlement to use open general licences if there are persistent breaches, so there would be a real incentive on exporters to get it right, make sure that they are following the rules, otherwise their entitlement to use an open general licence will be withdrawn.

⁶ Shared Primary Information Resource Environment (the ECO's fully electronic system for processing licence applications)

⁷ Customs Handling of Import Export Freight (HM Revenue and Custom's declaration processing system)

Q169 Mr Jenkin: Perhaps you could explain to me as a novice what is the open general licence actually intended to achieve? Are we actually achieving it? The rising misuse of open general licences would suggest that that is not the case.

Mr Doddrell: I can certainly try to explain what it is intended to achieve. It is intended to apply to those areas where we are talking about low-risk goods going to low-risk countries where, if an individual licence application was made to the ECO, the licence would invariably be granted. It is an attempt to take that burden out of the system by providing a general licence so that all the exporter needs to do is to register to use it on the internet. This has a great advantage to industry because it means that they do not need to go through the process of applying for each licence on a case-by-case basis. It also has advantage for the Export Control Organisation because it means that we do not need to worry as much about this low-risk stuff going to low-risk destinations and we can concentrate our efforts and our resources on goods that are of real concern going to destinations that are problematic from our point of view.

Q170 Mr Jenkin: If an open licensing system operates effectively it would be good for the defence industries because it is low cost of compliance and good for government because again a low cost of enforcement. What representations have you received from industry about this, because I should imagine the rising incidence of non-compliance is causing them a concern that these rather easier arrangements are going to be taken away from them if they continue to be abused. What do they say about it?

Mr Wicks: It is fair to say, as you have indicated, Mr Jenkin, that the industry sees this system of open licences as a major advantage. After all, we are trying to get the balance right between real risks and what is sensible regulation for legitimate exporters for the sensible function of the UK economy. I think it is fair to say that the industry is concerned that this licence arrangement can be maintained. You are right in that non-compliance puts it into disrepute.

Q171 Mr Jenkin: Have they been making any suggestions of how it should be better managed?

Mr Doddrell: They very much supported our proposal that we should be able to withdraw the rights of individuals to use open general licences if over a period of time they are shown to be persistently non-compliant.

Q172 Mr Jenkin: What about monitoring of non-compliance and catching non-compliance because at the moment you are working basically on a spot-check basis?

Mr Doddrell: We have strengthened our team of compliance officers. As we have already said, we have substantially increased the number of compliance visits that we undertake every year and every company that is registered for an open general

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licence will be covered by the compliance programme, so sooner or later their breaches will come to our attention and we will take action then.

Q173 Mr Jenkin: The industry supports that?

Mr Doddrell: The industry supports that.

Q174 Mr Jenkin: Do you have a kind of anonymous hotline—a Crime Stoppers feeding of information, no names, no pack drill? Do you have any arrangements like that? The gossip in the industry—it is a fairly tight knit industry and I should imagine there is a fair amount of chat?

Mr Doddrell: We do occasionally have representations made to us along those lines and we would follow up and sometimes they can be vexatious complaints so we do have to be careful not to react immediately in an over the top manner, but we would look into it and certainly follow up.

Mr Jenkin: Maybe we should take representations from industry on this question.

Q175 Chairman: Industry had an interesting comment to make on penalties for non-compliance when they gave evidence to us in March. Mr Hayes from EGAD⁸ told the Committee on 20 March: “If I was to contrast the situation in the United States with the situation in the United Kingdom, working as I do with both systems frequently, the main difference, from a company’s perspective, is that non-compliance with the UK system can make economic sense, but non-compliance with the US system never makes economic sense”.⁹ Is that not a sad comment on the effectiveness of our export control system?

Mr Wicks: Maximum penalties available to courts, as you know, Mr Berry, in terms of non-compliance go up to a 10-year prison sentence or an unlimited fine. I think I was receiving advice that those levels of fine and prison sentence are in line with Home Office guidelines, as you would expect. I guess the actual sentence will be a matter for the court.

Q176 Chairman: The Government has increased the sentence. The Government deserves credit in my book as it used to be seven years and it is now 10 years. You have increased the maximum penalty and yet we have one of the key people in the defence manufacturing community in this country who works both in the UK and in the States who says that in the States there is never any financial incentive whatsoever to break the rules; in the UK he comes across countless examples where breaking the rules can make economic sense. Can somebody look at it? The risk of prosecution and the penalty that you are likely to incur if you are successfully prosecuted are the two things that presumably determine whether or not you have an economic incentive to comply. Can the Government please look at these two issues? There have been recent examples of successful prosecutions that we are very pleased to see. There has been real achievement, no question about it, but it is deeply worrying when a spokesperson for the

defence manufacturers tells us of that contrast. Whether it is the judges you need to have words with, I do not know and it is not for me to say, but are you as shocked as we are to be told that by somebody who knows?

Mr Wicks: I am not shocked because I am always being told in my job that there is another country that does things better—that is part of the nature of politics—so, while not shocked in that sense, I am interested, Mr Berry, and we will investigate. As you say, there have been a number of successful prosecutions in recent times here in the UK but we will look at the point you have raised with us.

Q177 Chairman: I have just been reminded by our clerk, and I should recall this myself, the Committee has recommended in the past that the Commission on Sentencing Guidelines looks at this and they have said no, or the Government’s response to our recommendation was that they have decided not to look at this. Would it be possible to revisit the issue via the Commission on Sentencing Guidelines, Mr Doddrell, and to look at it again? The United States is not just a country plucked out of thin air; it is a country with which many manufacturers have dealings and knowledge of.

Mr Doddrell: I believe that we may have turned the corner on this, Dr Berry, in that the last few cases have resulted in significant prosecutions and sentences, particularly to mention that Mr Knight actually appealed his conviction and the judge, in considering and overturning Mr Knight’s appeal, set out some quite useful guidance on how sentences should be applied in cases of conviction under the arms control legislation. That is something that we would want to consider as well.

Q178 Chairman: Obviously the Committee has yet to consider this report and we may raise this again. Some have suggested that, rather than relying exclusively on a criminal law prosecution, the Government amend primary legislation to allow it to proceed through civil courts, as for example happens in the case of Germany and Israel, where the evidential basis is not quite as high as for a successful criminal conviction. Has the use of civil penalties been considered by the Government?

Mr Doddrell: We have been looking at this very carefully with Customs and will be planning to make an announcement if ministers agree in the coming months. Part of this is suspending people’s right to use OGELs—that is part of it—but¹⁰ also whether financial penalties can be imposed perhaps with a slightly less onerous burden of proof than if one had to go through a formal process in the courts. There may well be a place for that in the regime and we have done a lot of work on it and an announcement will be coming forward in the not too distant future.

Mr Wicks: Figures that will be published in our next report show that the number of seizures has increased. We were moving in the wrong direction at one stage but I am advised that that has now been reversed. In 2006/7 there were 44 seizures by HMRC

⁸ The Export Group on Aerospace and Defence

⁹ Q 86 [Mr Hayes]

¹⁰ Open General Export Licence

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and in 2007/8 the figure is likely to be significantly higher and we will be reporting on those figures in our next annual report.

Q179 Mr Oaten: We have spoken earlier on about some of these minor mistakes and minor errors that take place. There is no fine attached to any of those at the moment?

Mr Doddrell: There would be if Revenue and Customs decide to prosecute.

Q180 Mr Oaten: But at this moment there is no fine.

Mr Doddrell: It would not be a penalty. Yes, they would be in breach of their licensing conditions and therefore would be breaching the law and Revenue and Customs could decide to bring a prosecution. The difficulty in this area is that when we are talking about relatively minor, purely administrative offences for goods where the licence would have been granted anyway, then the courts might decide that they would not impose a penalty for that and the Revenue Prosecutions Office might not be willing to take it to court because the prospect of getting a significant worthwhile result was not great.

Mr Wicks: Sometimes we are, as I said earlier, only talking about minor record-keeping errors. We do not want to see such errors, we need to think this through but I do not think we would want to prosecute in all those cases.

Q181 Mr Oaten: I know a large number of companies that make slightly minor admin errors in their returns are pretty well picked up on by Customs and Excise and charged a great deal of penalties for that. It happens all the time by Customs and Excise.

Mr Doddrell: There may be a financial loss to the Exchequer in the tax context.

Mr Wicks: I think we want proportionate responses to our exporters, many of which are doing a good job.

Q182 Mike Gapes: Changing the focus, last year the Committees in our report expressed concerns at the Government's "light touch" towards academic institutions and pointed out that very few academics and scientists in academia seem to be aware of the legislation and many who seem to be aware of it seem to ignore it. We were very concerned that the Government's response to us said that you were taking our concerns seriously and that you were going to meet with the representatives of academic organisations and produce a plan to raise awareness and understanding. Can you update us what has happened since our report and your response and are you satisfied where we are now or do we need to do more?

Mr Wicks: One of my colleagues may add more information but this is an important area for obvious reasons. Can I emphasise again that the academic sector is required to adhere to UK export controls in exactly the same way as any other sector so it is covered by the law. I guess in practice our main area of concern rightly has been about the potential transfer of technology that could be used

for the weapons of mass destruction, so controls in this area are not lacking. However, I think we do realise that there is a significant problem, as we acknowledged earlier, which is partly about lack of awareness of export controls and we are working with the academic community on an improved awareness strategy. Perhaps one of my colleagues could give some details of that.

Ms Carpenter: We have met with the Royal Society and Universities UK and have been working with them on a strategy. Our awareness team has I think planned some joint events with them. One of the main problems with the sector is for us targeting the people who need to know about this and, for example, one of the suggestions that the people we met had was that we should look more at targeting registrars than doing broad based awareness, so that is something that we are doing. We have an ongoing discussion with them about the best sorts of events to put on and how one might do joint events with them in order to target the most appropriate people.

Q183 Mike Gapes: We have an absolutely huge higher education sector in this country. We have hundreds of thousands of foreign students and we also have academics on secondment and links between institutions and we have the internet and the ability for people to email all kinds of stuff which we might not necessarily want to get into the wrong hands. We are not just dealing here with individuals, are we, the next generations A Q Khan or whoever it is; we are actually dealing with a situation where somebody at a relatively low level could inadvertently and foolishly transfer some information to another institution or individual somewhere in the world which was then useful. It is not the actual hardware you are sending—it is the plans. What can we realistically do to stop this? Talking to registrars in itself is not going to solve the problem, is it?

Mr Wicks: One thing we do is to prevent students where there are legitimate concerns from entering the country to attend courses where such technology might be imparted. I am advised that this is now achieved by the recently introduced comprehensive and compulsory academic technological approval scheme.

Q184 Mike Gapes: Is that run by the Border and Immigration Agency by any chance?

Ms Carpenter: Yes, it is connected with the visa.

Mr Oaten: I will not make a comment on that. I have some issues with that organisation but this is not the place.

Q185 John Battle: Could I switch to the question of the re-exports because in the Committees' report last year there was a recommendation that it should be a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. I am a new member now but apparently this Committee raised the issue with the former Foreign Secretary, Margaret Beckett, and raised particularly the re-export of maritime patrol

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aircraft from India to Burma, explaining that it might have been better to have included a clause in the export contracts that prevented re-exporting them. I think the Foreign Secretary at the time accepted that. We just wonder why that proposal to require that clause has not formed part of the Government's response to the 2007 Review of Export Controls. Has it been dropped or are you still continuing with it?

Mr Wicks: First of all, where we understand that goods will be re-exported by the recipient country we assess the risks associated with that. There was the case of helicopters being re-exported from India to Burma and of course none of us wish to see anything being exported to Burma. We have been assured that the Indians have assured us that they had no intention of supplying the helicopter to the Burmese. If I read that correctly on the original application it would have said "for re-export to Burma". That, apparently, was not the intention. We would not have been able to have picked that up.

Q186 John Battle: Why not an initial clause to build it in to the terms of the agreement? Is there a legal barrier to that or are there practical difficulties?

Mr Doddrell: I think it is the practical difficulties. Once the goods have left the UK it is very difficult to stop them going anywhere else. Our preferred approach for some time has been to factor all these considerations into the initial licensing decision, and if we judge that there is a risk that helicopters going to a recipient in India would then be re-exported on to Burma then our preferred approach is to stop them going to India in the first place.

Q187 John Battle: You do not have to monitor them as it is retrospective, is it not, if the clause is there? If you have a clause saying "if you re-export this gear you are in trouble with us when it comes to your next contract", you do not have to be following the trail of where the goods are being sold.

Mr Wicks: I do not think it would always be illegitimate for a re-export to take place though, would it? It would to those countries but as a general provision that kind of thing happens.

John Battle: You are saying that you would have to list the countries under the caveat.

Q188 Chairman: In India, for a start, Ashok Leyland were going to export military vehicles to the Government of Sudan, as we all know, and thankfully our extra-territorial controls because a UK citizen or two could have been involved and those exports did not take place. With respect, India has some form on arms exports. The second point is that does not the United States as a matter of course have a re-export clause in its arms export controls for precisely this reason, that it just deals with a situation that could arise where British arms end up in completely the wrong place for want of a single re-export clause that requires that to be authorised? Is it that difficult?

Mr Doddrell: You are right, Dr Berry, the US does have this in. I return to the point that we factor the consideration into the initial application for an

export licence. One of the points we would take into account is the effectiveness of the export control regime in the recipient country and if the export was going to a country, for example, like Germany where we might have full confidence in the export controls in that country, we would say we do not need to monitor the onward transition of the UK goods because we have confidence in the German regime to do it. If it is going to a country that has a less effective export control regime then if we are in doubt we will say do not allow the goods to go there.

Q189 Chairman: We do export to countries that we do know have either tried to or successfully exported to countries subject to EU and UN embargoes.

Mr Doddrell: We would not then allow the export to go at another time. If it went to a recipient in India that was then exporting to a country that we would not want the goods to go to, then we would be aware of the type of business that that company was doing and we would look very carefully at any further export licence applications that mentioned that particular company.

Q190 Mr Borrow: In the arms defence sphere a lot of the goods that are being exported have a very long shelf life and therefore if we are exporting a military plane from BAE or a submarine or a warship or something, that could still be available for re-export by the country that we have sold it to in 20 or 30 years' time when the regime in that country is very different than it is now and therefore we are being asked to make an assessment now of the sort of regime that would be in place in 15-20 years' time in a country with whom we may have very good relationships with now—it may be a good strong democracy—and it would be an insult to that country to say we are not treating you in the same way as we treat Germany and therefore it seems to me that if we had a standard clause in contracts which says that if you want to re-export this particular piece of equipment at some time in the future when you want to update a piece of kit you need to come back to us and ask us for permission to re-export it. I would have thought if we had that as a blanket clause you are not insulting India or any other country by treating them differently than you treat Germany and you are not making an assessment on what their regime will be like in 20 years.

Mr Wicks: It all comes down to the practicalities of this, does it not? In that example where you are saying a perfectly reasonable country now turns nasty, yes, but I suppose nevertheless the implication of your recommendation is that they would not be so nasty that they would not abide by an agreement with the UK Government not to re-export. I am seriously thinking about the practicalities of this.

Q191 Mr Borrow: Countries who maintain relatively reasonable relationships with the UK, but if there is not a legal clause in the contract they will say irrespective of our good relationships with HMG, we feel perfectly free to sell this ship or helicopter to whoever we like, whereas if there was a clause in the

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original contract, because that government may well wish to continue to buy from us and we may very well wish, or certainly my British Aerospace workers in Lancashire may very well like to continue to make aircraft that could be sold to that country, we need to maintain a good relationship but also to make sure that things do not get into the wrong hands.

Mr Wicks: Let me look at this again. Mr Berry, I do not know whether your Committee want to look at this again to look at the practical implications of this?

Q192 Chairman: We will do, yes.

Mr Wicks: There is a general theme here, is there not, which interests me and that is, given our overall objectives which I summarised earlier in a very simple way by saying we do not want bad countries with bad people to get control of weapons while protecting the legitimate right of people in decent countries to arm their forces and their police and while protecting a major industry here in Britain, there is then that subsidiary question as we seek to meet those objectives, as opposed to the kind of ideals which we can all subscribe to, what is it reasonable to expect the UK Government to be able to do. That gets us into perfectly legitimate (no pun intended) territory about extra-territoriality and these issues. It also gets us into the realms of monitoring and what is practical as opposed to purely good principle.

Q193 Chairman: I agree with that. You must agree also that the only thing that matters in relation to arms export controls is end use. The only thing that matters is where arms go and how they are used. How they get there, all the steps on the way, the things we try to control to prevent nasty things happening, it is the ultimate end use of arms that is concern—that is the only reason any of us are bothered about it—so that is why we keep going back to ways in which a handful of unscrupulous people can actually get round existing controls.

Mr Wicks: Yes.

Mr Jenkin: There is one other consideration which is that we do not want an export regime which is so cumbersome and onerous that we are effectively doing away with thousands and thousands of jobs needlessly. It is about a balance to be struck.

Q194 Chairman: In terms of a policy that seeks to constrain arms exports, the purpose of that policy is the end use of those things. That is the ultimate thing—where does the stuff end up? If it is not in country X, it is country Y, then you should be concerned about country Y.

Mr Wicks: I certainly agree that we must do our best to control the end use.

Chairman: In pursuit of that theme, Mark is desperate to come in on another aspect of this end-use issue.

Q195 Mr Oaten: It is another one where is it realistic to be able to do something and what can we practically do on the issue of licence production overseas and when the Committee looked at this last

year we were concerned to find there were some inadequacies in the system and felt that there was a need to perhaps extend the number of controls on licence production overseas. I think we got the impression from the Government's initial response on public consultation that maybe it is something that you were keen on and thought there was something which needed to be done to tighten things up, but more recently in your final commentary on that I think you decided that the debate is more evenly divided and probably coming down against the idea of having any extra controls in this area.

Mr Wicks: At the moment the door is open. We are not convinced about the practical impact of that. That is our position.

Q196 Mr Oaten: Is the view really that if something were to go wrong the penalties that follow afterwards are probably enough control at that point than having to put something up front?

Mr Doddrell: We have quite a lot of control on what goes to licence production activities anyway under the existing controls because any technology transfer that would go from the parent company to the licensed producer overseas would fall within the controls. Usually if people are manufacturing under licence overseas they require parts from the UK or machinery from the UK and all of that would be controlled. There is a lot that is already controlled anyway. The argument as to whether we could extend it—I think we are at the point of not being convinced that we would get that much more out of an extension of the controls that would justify the additional burden that we were putting on legitimate businesses.

Q197 Mr Oaten: The door is not quite open; it is shutting a little on that.

Mr Doddrell: We went into the initial consultation in a completely open way. The responses to the initial consultation did not convince us that it was a route to go down but, as the Minister has said, the door is not finally shut.

Mr Wicks: It relates to the issue about military end use which is an issue we are considering.

Q198 Chairman: At this point could I raise the issue of overseas subsidiaries, which is a similarly important issue. The Committee has urged the Government to consider the position of UK subsidiaries overseas. An example in the press today illustrates the nature of the problem. According to some press reports I have seen, the arms that have finally arrived in Zimbabwe from China, some might say the Government's efforts to discourage the South African community from importing them—there has been a lot of campaigning by government and trade union against this—the word is that these arms have now arrived in Zimbabwe. I have seen some online accounts indicating the name of the company that has shipped these arms into Zimbabwe and a suggestion that it is a subsidiary UK company. This is an EU embargoed destination. If a UK national has been involved then under our existing extra-territorial rules that person could be

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subject to prosecution for a criminal offence, but if no UK person has been directly involved, but it is a subsidiary UK company, it is not breaking the law. This is another example that suggests, does it not, Minister, that we ought to look carefully again at UK subsidiaries and the extent to which their activities in the arms trade ought to be, in some circumstances, more closely controlled? Avient Aviation is the name online.

Mr Wicks: Can I say our general position on this but I will look at the implications of that case. On overseas subsidiaries we believe that we already have significant controls in this area. We can already control the supply of controlled goods and technology that an overseas subsidiary is likely to require so goods from this country; subsidiaries often need goods from this country if they are UK-owned. We are also looking at whether we can enhance controls on non-controlled goods under the military end-use control, but we do believe to attempt to directly control the activities of overseas subsidiaries—in effect to treat them as though they are based in the UK—is not legally viable and would be virtually impossible to enforce. It comes back to the practicality issues here.

Q199 Sir John Stanley: Minister, I wonder if you are able to give us further clarity on the point that the Chairman has raised. My understanding is that if offences have been committed by a UK resident in relation to this particular cargo, even assuming that the cargo is made up of small arms, MANPADS, I do not know whether there are cluster munitions—obviously I do not know what is in the cargo—but under present legislation, given the fact that your new legislation will not come into effect, as I understand it, until 1 October, these British residents, if they have conducted this trade from overseas would entirely escape the criminal law. Can you tell us whether that is the case and does that not further reinforce the case for the extension of extra-territoriality which we have been calling for?

Mr Doddrell: We would need to look at the details of the case and consider whether there has been a breach under existing UK law and, if there is, whether a prosecution could be brought. I do not have the full details of the case so I am not at this moment in time in a position to say definitively whether an offence has occurred or not, but clearly the changes to the legislation that we are making will extend the capability of the Government to act in cases like this.

Q200 Sir John Stanley: Could you not confirm that the only grounds for a criminal prosecution at the moment would be in relation to individuals who are presently resident in the UK and knowingly have participated or assisted in this particular breach of trafficking and brokering regulations? *(Pause)*

Q201 Chairman: May I help? As I understand it, this is an EU embargo so it is covered in terms of UK persons under existing legislation. If a UK person was not directly involved but it was a company that is a wholly-owned subsidiary of a British company

and it is subsidiaries we are talking about. If the current legislation automatically caught subsidiaries, we would not need to have this conversation. As we are having the conversation I am assuming it does not. If it is true that a British subsidiary is transferring these arms to Mugabe, I assume the Government will want to look at ways of trying to prevent this from happening again.

Mr Wicks: I will investigate very quickly and write to you as Chairman of this Committee within a week.¹¹ If that is a holding letter because we need to make further enquiries, then it will be a holding letter. I will come back to you as soon as I can.

Chairman: Sir John tells me that I have misinterpreted his question.

Q202 Sir John Stanley: Ultimately criminal prosecutions are against individuals unless you are into something like corporate manslaughter. The question I put to you, Minister, or to your officials, is can you confirm that the only basis for making a prosecution at the moment under criminal law, as it now stands, would be against an individual resident in the UK and present in the UK who knowingly had connived or participated or assisted in this particular breach of an arms embargo and the existing criminal law would not extend to any such person who was outside the territory of the UK when these offences were being committed?

Ms Carpenter: If there was a UK person involved, and these were military goods going to Zimbabwe, it would be a criminal offence whether the person was in the UK or outside the UK.

Mr Wicks: I will investigate further and will write to you.

Q203 Sir John Stanley: It is a very complicated area and it would be very helpful if you would like to write further to the Committee in response to the questions we have been putting to you on this point.

Mr Wicks: Yes, I have said that I will write. It may not be a full letter but I will tell you where I am with this within a week.

Q204 Linda Gilroy: What a lot of these questions show is just how complicated it is to do what I think we all agree we want to do and the UK Working Group on Arms has drawn attention to the single action catch-all clause used in Germany—I am not even going to try and pronounce it. Under this provision, even without a licensing requirement or prohibition, any border crossing, international action or illegal act can be prohibited or prevented. As I understand it, that can include in particular export or transit if the security of the Federal Republic of Germany, the peaceful co-existence of nations or the external relations of Germany are threatened. Has the Government made an assessment of the “single action” catch-all clause used in Germany?

Mr Wicks: Yes, we have. The advantage of it is that the German approach obviously gives the German authorities significant flexibility. The other side of

¹¹ Ev 68

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the story, however, is that it gives virtually no certainty to exporters about what is and what is not controlled. What we would like to do is to negotiate an approach through the European Union and that is what we are seeking to do. It is difficult to assess timescales on this for the usual reasons. It includes a level of support within the Commission and the role of Presidency and other Member States, but that would be our preferred approach. However, we are still considering the case of enhancing military end-use control and we aim to clarify our position in a further response later this year.

Q205 Linda Gilroy: Later this year you will be in a position to let us know more precisely what changes you would like to see and how long they will take to secure. In all of that will you be weighing up the other downside for industry which you have mentioned—the one that comes along with the German approach—but it seems to me that with the UK approach, as we have just been discussing, we go down the path of increasing complexity and, as you have mentioned, the German approach does have the advantage of simplicity. Will you be weighing those two things up as you proceed to estimate what further military end-use controls through the EU might achieve?

Mr Wicks: Yes and other factors will be weighed up too. You mentioned complexity—not this Committee, but I am always struck that the politician is sometimes asked for more controls and simplicity at the same time. They are two other things that we need to balance.

Q206 Linda Gilroy: What I am trying to say here is you have got on the one hand the German approach which does have an element of simplicity to it; no doubt it may bring its own complexities but it does seem to have some aspects of simplicity that could be an advantage, whereas with all of the things we have just been discussing it does take us down the path in our endeavour to meet the objectives we have of increasing regulation and controls, which is always a path which has burdens for industry in it. I am sure that they too will want to weigh up the relative pros and cons of that. A key component of end-use controls would be an obligation on government to monitor the use to which exported items are put and to alert exporters to use of concern and we have discussed that already. Is the Government not just willing but also capable of running such a system?

Mr Wicks: It would certainly be a tough system.

Ms Carpenter: Could I ask you to clarify the question?

Q207 Linda Gilroy: We have already discussed this to some extent but is the Government not just willing but capable of running a system which monitors end-use controls? That is the path that we feel we need to go down and we have discussed it already in earlier questions, but we have also discussed the capacity issue on what that would do. I am really asking as well as being potentially willing to improve on these aspects of it, is the Government capable and can it develop the capacity?

Ms Carpenter: To run another end-use control?

Q208 Linda Gilroy: Yes.

Ms Carpenter: It is a good question. We do have some experience of running end-use controls. We know that they do present some difficult issues and they can be quite complex, but they do offer a very effective approach in areas where you want to target the controls quite closely. As Dr Berry said, end use is the most important issue in these cases.

Q209 Linda Gilroy: Do you have the capability to monitor that? We have just seen some examples in earlier questions of how difficult it is. It is back to the *quid pro quo* thing in terms of the comparison with the German approach—which is the better of two? The one which gives you flexibility in circumstances where you determine it is needed, or one where you try to dot all the I's and cross all the T's? Does it bring certainty? I am not sure that it does?

Chairman: Part of the review of the legislation and everything is about the balance between control simplicity and sourcing, et cetera.

Mr Wicks: I have said that we will clarify our position.

Q210 Mr Borrow: On the idea that has been floated of a single export control agency, EGAD and the UK Working Group on Arms have both come up with this suggestion. I know there is some hesitancy within government. I just wondered whether ministers would be prepared to commission a study into the viability of merging those bits into a single agency just to see whether there is a possibility that it would be better than the existing system?

Mr Wicks: Our position at the moment is that we do not see the case for it. We think there could be considerable extra overheads associated with it. My own experience is that it is often tempting in any area which cuts across departmental or agency boundaries to say why not bring it all together, would it not be more sensible? I am not sure that it would. I think there are issues to be explored as to whether, for example, licensing and enforcement should be in the same agency. I can see arguments why that probably would not be a sensible thing. We do not see this as a priority or even as a desirable move.

Q211 Mr Jenkin: Can you say precisely what the transfer of DESO¹² from the MoD¹³ to UKTI¹⁴ was intended to achieve?

Mr Doddrell: My understanding was that it was to enable the defence industry to take more advantage of the very wide network that UKTI has available right across the world, including the expert staff in overseas posts who have a good knowledge of the local market conditions which make this whole infrastructure available to the defence sector as well.

Q212 Mr Jenkin: I think this is more a policy question for the Minister.

¹² The Defence Exports Sales Organisation

¹³ The Ministry of Defence

¹⁴ UK Trade and Investment

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Mr Wicks: The DTI, as it was, is the Department of Trade and Industry. We have very considerable expertise in both inward investment and outer investment.

Q213 Mr Jenkin: But industry was not actually clamouring for this change; on the contrary, industry was dismayed when this change was announced.

Mr Wicks: I hear what you say. I have not looked at all the views of industry on this one but I think there must be considerable arguments to be had for bringing this aspect of defence into the department, UKTI, which has a considerable reputation in assisting companies and exporters. I have seen this myself in bioscience and in the energy sector.

Q214 Mr Jenkin: This is nothing to do with some sort of perceived internal conflict within the Ministry of Defence that somehow it was not right for the Ministry of Defence to be promoting defence exports? It was not a sort of scruples thing?

Mr Wicks: I am not aware of that but I have seen it more from the DTI Department of Business and Enterprise point of view.

Q215 Mr Jenkin: Would it be possible for you to do a customer satisfaction survey, say after a year of this? We are now more than a year after this change. Could you ask your business customers/defence industry customers whether they are satisfied with the change or whether they would like it to be changed back?

Mr Wicks: I do not immediately see that as a priority for taxpayers' money.

Q216 Mr Jenkin: It need not be very expensive. I would just invite them to write to you with their views.

Mr Wicks: My concern is more select committee satisfaction and I am not sure I am doing terribly well most of the time.

Q217 Mr Jenkin: The advice the select committee receive from, for example, Jane's Defence Weekly—I will not bore you with reading the excoriating article that was written, they describe that previously it had been a centre of excellence—I do not want to detain the Committee unnecessarily but there was widespread dismay in the defence industries at this change. Should we not check that they are going to be happy with the new arrangements? Could he set out perhaps in a letter what improvements the defence industry is actually hoping to see?

Mr Wicks: I think it is best that we make a success of the new arrangements. The Department of Business Enterprise, formerly the DTI, is a centre of excellence when it comes to trade and I think it will bed down very well.

Chairman: We will have to call time, I am afraid. Minister, I thank you and your colleagues very much indeed for all you do and for this afternoon. It has been a very useful session. We have had productively rather more discussion than simply a question and answer session. It has been very helpful to the Committee and we greatly appreciate it.

Written evidence

Memorandum from the Ministry of Defence

The Committee requested a memorandum from the MOD prior to the evidence session with the Defence Secretary on 17 January 2008.

MOD ROLE IN ASSESSING EXPORT LICENCE APPLICATIONS

Export Licence Applications (ELAs) for military and dual-use goods and technology are referred by the Department for Business, Enterprise and Regulatory Reform (BERR) to the MOD, FCO and DFID for advice. Within the MOD, relevant specialists, including those in equipment capability and security, and defence intelligence, consider applications against the Consolidated EU and National Arms Export Licensing Criteria. They consider particularly closely Criterion Four (Preservation of regional peace, security and stability), Criterion Five (The national security of the UK, of territories whose external relations are the UK's responsibility, and of Allies, EU Members States and other friendly countries) and Criterion Seven (the existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions). The advice is consolidated and provided to BERR.

When considering ELAs for items controlled on the Military List, MOD's ability to respond to BERR in the required timescale is helped by the MOD Form 680 (F680) process. F680 clearance is the means used by the Government to consider authorisation of the release of classified information held by companies for use in export promotion. Although separate from export licensing in terms both of process and purpose, clearance benefits industry by indicating, when necessary, technical concerns which industry would need to take into account when making a subsequent ELA. Where F680 clearance is in place, the company can seek Government support for its marketing efforts, and an ELA can often be processed more quickly, because much of the groundwork has already been done. The process helps to limit the number of licences that need to be refused. Having an F680 approval is also a requirement to allow companies to use certain Open General Export Licences.

MOD processes F680 applications in the same way as ELAs, seeking advice from the same MOD specialists as well as the FCO, and where sustainable development issues are involved, the DFID. F680 applications are considered against the Consolidated Criteria, in the same way as ELAs.

US/UK DEFENCE TRADE CO-OPERATION TREATY

The Defence Trade Cooperation Treaty will simplify and make more effective the controls on transmission of military goods, technology and information between the United Kingdom and United States, in support of our joint operations around the world and collaborative efforts aimed at developing future defence capabilities.

Currently, controlled information and material supplied by the US to the UK is passed under an individual export licence, which is issued by the US Government to the exporter. This process is time consuming and can add significant delays to procurement projects. It also makes it difficult for UK and US companies to work together to develop new defence capabilities.

Under the treaty, the need for individual licences from the US will be removed. Instead, US material will have a UK security classification attached to it, meaning that its handling will be subject to the Official Secrets Act. HMG will take enforcement action in the event of any unauthorised disclosure. This builds on the many years of the UK and US protecting shared information under the overarching security agreement between the two countries. The current system for exporting equivalent material from the UK to the US, including under Open General Export Licence, will not be changed.

Only material that is destined for UK and US sole end-use, in support of UK/US joint operations, cooperative defence and security programmes, and certain HMG-only projects that rely on US material, will be covered by the treaty. The treaty will only cover material listed for export control on the US Munitions List, and will include a small number of additional restrictions on certain sensitive technologies.

The treaty will allow for such material to pass without additional authorisation within an "Approved Community" of UK and US Government establishments and UK and US companies that have met certain criteria, including the ability to protect classified material. Only personnel who meet appropriate security standards and have a need to know will be able to access material.

EU DEFENCE INDUSTRY RESTRUCTURING

With pressure on defence budgets throughout Europe, it is essential that work be undertaken to develop a rationalised, integrated and efficient European industrial base that can responsively and cost-effectively meet capability requirements. Achieving this goal will necessitate a number of steps by EU Member States collectively. Major initiatives are being pursued by the European Defence Agency (EDA), the European Commission and under the Letter of Intent/Framework Agreement (LoI/FA).¹

EU Member States that participate in the EDA (all Member States apart from Denmark) have agreed that work must be undertaken to develop an effective European defence industrial base through aligning and combining our needs in shared equipment requirements and meeting these through an integrated, interdependent but less duplicative European Defence Technological and Industrial Base (EDTIB).

The first steps were completed in September 2006 when the EDA Steering Board agreed the “Characteristics of a strong future EDTIB”—namely that it should be capability driven; competent; and competitive. This was followed in May 2007 with the approval by Defence Ministers of a Strategy for the EDTIB which aims to achieve these characteristics. In September 2007, National Armaments Directors approved a series of roadmaps that will take forward the initiative in the areas of:

- Clarifying the key defence-related industrial capabilities for the preservation or development in Europe.
- Achievement of mutual confidence on security of supply between EDA Member States.
- Increasing competition in the European Defence Equipment Market.
- Developing diversity and depth of the European defence related supplier base.
- Increasing Armaments Co-operation amongst participating Member States.

Other, complementary initiatives are being pursued by the European Commission and the LoI nations. These include reducing the bureaucratic burden of intra-community transfers of defence goods and services; providing procurement rules which are more appropriate to defence procurement, in order to facilitate greater competition; and addressing security of supply issues, such that nations have greater assuredness in procuring from other nations.

ROLE OF DEFENCE ATTACHES

Changes to the Defence Attaché network were announced by Defence Secretary in a Written Ministerial Statement on 17 September 2007 (*Hansard*, Column 125WS).

A key role of Defence Attachés is to promote the Government’s policies in the area of international security co-operation. The principal components of this policy are to strengthen international peace and stability by preventing conflicts, by contributing to the transformation of the security structures of vulnerable states, by assisting and building partnerships with those who may contribute to peace support operations and by helping to reduce the risk of terrorism through greater co-operation and communication. Another role of Defence Attachés is to provide support to current or potential UK operational commitments. They also give support for defence exports, where that contributes to security co-operation, and the Defence Industrial Strategy.

Defence Attachés do not have a formal role in export licensing issues. Policy advice on licensing issues is given to BERR by MoD staff in London and by the FCO. Monitoring activity after sales have taken place is under the direction of the FCO, who may ask the relevant Ambassador to ensure the task is carried out. Ambassadors may request any suitable staff to perform this function.

Where the number of attachés in a post has been reduced, such functions as were performed on export licensing or other international obligations will continue to be undertaken by reprioritising workloads amongst the remaining attachés. In the small number of countries where the Defence Section is closing, the MOD and FCO will work closely together to ensure we continue to sustain our high standards in meeting our obligations under the EU Code of Conduct on Arms Exports and other obligations.

CLUSTER MUNITIONS

Cluster munitions deliver suppression and destruction capabilities against dispersed and mobile armoured targets, other combat forces and military facilities in a defined footprint of terrain. There may be situations where using a larger number of unitary munitions causes more collateral damage than would be the case with cluster munitions. The UK Armed Forces only use cluster munitions in strict accordance with International Humanitarian Law. Having carefully considered the military and humanitarian factors regarding cluster munitions, the Government took steps domestically to address them on 20 March 2007 when the Defence Secretary announced the immediate withdrawal from service of two of the UK’s cluster

¹ In July 1998, the six major arms-producing European nations (France, Germany, Italy, Spain, Sweden and the UK) signed a Letter of Intent aimed at facilitating cross border restructuring of defence industries. The final agreement that was signed in 2000, the Framework Agreement, is a legally binding international treaty outside of the EU.

weapon systems: the air-launched BL-755 and the ground-launched MLRS M26. These two “dumb” systems had neither target discrimination nor fail-safe capabilities. The UK continues to urge other countries to take similar action.

The Government is retaining certain types of cluster munitions that have a valid role in modern warfare. A ban on the use of all types of sub-munitions would adversely impact on the UK’s operational effectiveness, impose serious capability gaps on our Armed Forces and take away one element of force protection.

UK policy addresses humanitarian concerns while at the same time retaining the capabilities essential for operational effectiveness. The UK shares the humanitarian concern about certain basic types of cluster munitions, which the Government also believes should be subject to a defined prohibition. The UK is engaged in the Conference on Certain Conventional Weapons (CCW). The UK supports the UN Secretary General’s call to address cluster munitions in the CCW. The UK has also declared its support for the “Oslo Process” which aims to prohibit the use of those cluster munitions which cause unacceptable harm to civilians. The UK view is that this does not mean a total ban but a ban on certain types, such as the so-called “dumb” cluster munitions that the Government took out of service in March of this year.

DEFENCE TRADE PROMOTION RESPONSIBILITY TRANSFER

The Prime Minister’s statement of 25 July 2007 announced a machinery of government change moving responsibility for defence trade promotion from the Defence Export Services Organisation to UK Trade and Investment. On 11 December the Secretary of State for Business, Enterprise and Regulatory Reform announced (*Hansard*, Column 16–17WS) the arrangements under which this transfer will take place. A copy of the Statement is attached at Annex [not published].

SUPPLY OF TYPHOON AIRCRAFT TO SAUDI ARABIA: THE SALAM PROJECT

In December 2005 the Government signed an Understanding Document which was intended to establish a greater partnership in modernising the Saudi Arabian Armed Forces and to develop closer service-to-service contacts, especially through joint training and exercises. Under the terms of the document it was also agreed that Typhoon aircraft would replace Tornado ADV aircraft and others currently in service with the Royal Saudi Air Force.

Following detailed discussions between the Governments on the commercial arrangements for the supply of the Typhoon aircraft, the Saudi Arabian Government announced on 17 September 2007 that agreement had been reached to purchase 72 Typhoon aircraft for the Saudi Armed Forces at a cost of £4.4 billion. We hope that this new defence programme, known as “the SALAM Project” and separate from the former Al Yamamah deal, will eventually include weapons, logistical and training packages, and provide an opportunity for RAF and Royal Saudi Air Force aircrews and ground technicians to train alongside each other in the UK. This Project also includes a commitment to a substantial programme of inward investment in the Saudi aerospace industry, including technology transfer and training for Saudi nationals that will provide thousands of skilled jobs in Saudi Arabia.

This agreement is clearly good news for the close relationship that exists between the United Kingdom and Saudi Arabian Governments and their armed forces, as well as for the sustainment of important UK industrial capabilities. It also recognises the outstanding qualities of the Typhoon aircraft and the UK’s ability to support Saudi Arabia’s legitimate defence requirements.

BRIBERY ALLEGATIONS CONNECTED WITH DEFENCE EXPORTS TO SAUDI ARABIA

In November 2004, the Serious Fraud Office (SFO) commenced an investigation into allegations of fraud and corruption involving BAE Systems and defence contracts with Saudi Arabia. MOD officials co-operated fully with the SFO investigation, disclosing all relevant material to the SFO investigators. In December 2006, the Attorney General announced the decision of the Director of the SFO to discontinue the investigation to protect national security.

On 26 June 2007 BAE Systems announced that the US Department of Justice had commenced a formal investigation into the company’s compliance with anti-corruption laws, including the company’s business dealings with Saudi Arabia. The Solicitor General subsequently confirmed during the debate on Alleged Overseas Corruption on 16 July 2007, that the Home Office had received a request for mutual legal assistance, associated with this investigation from the United States. This request is currently being considered by the Home Office in the normal way.

December 2007

Supplementary memoranda from the Ministry of Defence

I am writing in reply to your e-mail of 25 January in which you asked for information following the Defence Secretary's evidence on 17 January. The follow-ups concerned the criteria for inviting foreign government delegations to defence exhibitions in the UK; a 1976 directive from the MOD's Permanent Under Secretary to the Head of Defence Sales; and disclosure of the Government's discussions with industry on the transfer of defence export promotion responsibilities from MOD to UK Trade and Investment.

Q14: a note on the criteria for sponsorship of visits to arms fairs

As the Defence Secretary said in his evidence, John Reid's letter to Dr Berry of 17 February 2006 sets out the process we follow and how we went about considering the case of China in relation to the Defence Systems and Equipment International (DSEi) exhibition in 2005. This example illustrates how the Government takes account of all relevant considerations. The starting point is potential export market opportunities, based on each country's known requirements and the UK's ability to meet them. The latter is a function of what our industry can offer and the Government's likely stance on licensing of such equipment to that country. The licensing criteria thus inform our deliberations, but we do not rule out inviting representatives from a country to an exhibition purely because only a limited range of items are likely to be licensable for export to it. Wider factors may also be taken into account and may cover, as John Reid indicated, aspects of bilateral military dialogue, including involvement of the country in peacekeeping operations or our wish to encourage a contribution to international efforts to enhance global security. However, a country would not be considered where that would be contrary to the UK's international obligations and our wider defence and security interests.

The Foreign and Commonwealth Office (FCO) conducts its own assessment of the value or risk of inviting countries on the list. This will involve considering the approach and behaviour of a country on human rights and whether a company might reasonably expect to obtain a licence to export defence goods to the country, even if for a limited range of goods, in accordance with any current measure. Our Embassy staff in the country will be contacted if that is thought to be necessary. FCO agreement to invite certain countries on the list, such as China, is given at Ministerial level.

We do continue to have serious concerns about the human rights situation in China, and our engagement on these issues is a long-standing priority for the Government. There is a strategic policy on human rights in China which identifies a number of key priorities for Government action. A multi-layered approach is taken to working with China to achieve substantive improvements in human rights protection, including high-level messaging to encourage progress at the top, detailed discussions on sensitive issues through the UK-China Human Rights Dialogue and project work to deliver longer-lasting results on the ground. We cover human rights issues in depth with the Chinese during our regular biannual UK-China Human Rights Dialogue, the last round of which has recently taken place in Beijing. Ministers regularly raise human rights issues during meetings with their Chinese counterparts. During his visit to China last month, the Prime Minister raised our concerns with Chinese Premier Wen and President Hu Jintao.

After 1 April 2008, responsibility for defence export promotion will transfer to UK Trade and Investment (UKTI). In future, the UKTI Defence and Security Group will draw up the list of delegations for UK defence exhibitions. These will continue to conform to our international obligations and invitations will be issued with the agreement of the MOD and FCO.

Q23: a copy of the 1976 directive

The 1976 Directive from Sir Frank Cooper, the then Permanent Secretary, to the Head of Defence Sales, gave guidance on the standards of conduct in commercial or business deals that were expected of Defence Sales staff and of others who may have been acting on behalf of the UK Government in defence sales, including Government-to-Government arrangements. It explains that this special guidance for Defence Sales staff recognises the importance of maintaining strict standards in this area. It was released in August 2006 under Freedom of Information.

Q41: details responses to consultation on moving DESO to UKTI

The Committee asked about the possibility of publishing in some form the discussions with industry on the implementation of the transfer of responsibility for defence export promotion from MOD to UKTI. The following summary of these discussions has been prepared with the help of BERR, which was the lead Department for the Government's dialogue with industry.

The Prime Minister's statement of 25 July 2007 (HC Deb, 25 July 2007, col 83WS) announced a machinery of government change moving responsibility for defence trade promotion from the Defence Export Services Organisation (DESO) to UK Trade and Investment (UKTI). The statement made clear that the new arrangements would need to take account of the specific features of defence exports, including the continuing role of the Ministry of Defence.

Accordingly, in order to implement the change and to gain a better understanding of the requirement for support, a number of meetings were held with representatives of the defence industry and relevant Government departments (BERR, MOD, UKTI and Cabinet Office) between August and December 2007. John Hutton and Digby Jones met senior industry representatives in August 2007 and there were a further five meetings involving departmental officials. The matter was also discussed at meetings of the National Defence Industries' Council in October and December 2007 and in a number of conversations which took place between individual companies and trade associations and officials from MOD and BERR in the normal course of business.

This dialogue covered the following points:

- the Government's continued strong commitment to supporting defence exports and to the defence sector generally, as reflected in the Defence Industrial Strategy;
- the importance of defence exports to the UK economy, including the attractions of an effective DESO to inward investor companies;
- industry's concern about the perceived lack of consultation ahead of the decision and the implications for the defence sector;
- the particular requirements of defence export support where customers are overseas governments, rather than businesses;
- the continued need for defence export support for smaller companies, including availability of market data derived from information received from British Embassies/High Commissions;
- the role of defence exports in the MOD's objectives in the future;
- the role of Government Ministers in supporting defence exports in the future; and the working arrangements for this between relevant Government departments;
- how DESO would be resourced in future under UKTI and how strong links with the MOD could best be maintained. This included agreement that military staff would continue to serve in the new organisation on loan to UKTI and access to MOD Service and civilian manpower and equipment to support defence export campaigns; the terms on which such support might be provided; the retention of First Secretary Defence Supply posts overseas; and the need for personnel in the new organisation to maintain defence knowledge and experience;
- the importance of DESO providing "business as usual" to overseas customer governments;
- how support for defence exports could be delivered more effectively within UKTI;
- how DESO under UKTI would support major trade events such as the Farnborough International Air Show 2008;
- the DESO "brand" and how the new organisation should be named and promoted;
- the scope for the existing UKTI activity to combine better with defence exports in the future—for example on homeland security and offset/industrial participation;
- corporate governance issues: how the new organisation should be led and the constitution of the top level management structure; and
- how some negative public perceptions of the industry could be improved; how to build on the sector's work in producing a code setting out common standards of good business practice; and how UKTI could work together with the defence industry to promote strong standards of business conduct and corporate governance in the sector.

The dialogue assisted the Government departments in developing the implementation plan, "Creating UK Trade & Investment Defence & Security Group—Implementation Plan" published in December 2007. The plan can be viewed at:

<https://www.uktradeinvest.gov.uk/ukti/fileDownload/UKTIDESOImplementationPlanFINALEXCROPS.pdf?cid=412665>

John Hutton also made a Ministerial statement on 11 December 2007 about the arrangements under which the transfer will take place, which also reflects some of the points covered in our dialogue with the defence industry. This can be viewed at:

<https://www.uktradeinvest.gov.uk/ukti/ShowDoc/BEA+Repository/345/412664>

Further information was also contained in a Government press release on 11 December which can be viewed at: <https://www.uktradeinvest.gov.uk/ukti/ShowDoc/BEA+Repository/345/412660>

As the implementation plan makes clear, further dialogue with the defence industry will take place up until the UKTI Defence and Security Group is launched in April. This will assist in designing and putting in place appropriate delivery mechanisms, a principal purpose of which will be to provide the highest standard of defence and security export support under the new organisational and Government

arrangements which will come into force on 1 April 2008. This dialogue will also help scope out how best to build on existing work to further promote strong standards of business conduct and governance of the sector.

February 2008

Memorandum from the Export Group for Aerospace and Defence (EGAD)

THE OUTCOME OF THE ECO'S REVIEW OF THE ECA 2002

The Government is proposing that: the current two category structure which underpins the UK's trade controls should be replaced with a new, three category structure; the current inclusion of long-range missile/UAVs in the "Restricted Goods" category under the trade controls, but the exclusion of small arms and light weapons from this, should be reviewed again, with a view to creating a new, third category of goods which is also subject to extraterritorial controls (but of a less stringent, catch-all nature); a form of Torture End-Use Control should be created; and a form of trade controls on non-military explosive goods should be introduced—all of this entirely concurs with the separate proposals that came out of the deliberations of a joint Industry/NGO working group, which we had formed back in late-2005.

We have long argued that the creation of a dedicated Government/Industry/NGO working group looking in depth at the review of the UK's export controls system, in the immediate aftermath of the publication of the 1996 Green Paper, would have been able to reach a more positive, constructive and expeditious solution to the UK's export control needs than HMG's chosen route, and this now appears to be entirely vindicated by this experience.

We would like to put on record our strong desire to commend, very warmly, the unfailingly highly constructive approach adopted by the British Government, in general, and the ECO, in particular, on the consultations, both with Industry and the NGOs, that have taken place as part of this Review, which we have found extremely productive; we hope that the ECO, similarly, has found it to be a beneficial exchange of views. We only wish the US State Department (for one) was half as willing to engage with Industry in similar fashion, and we are sure that the ECO's willingness to engage with us is to be highly recommended as a model for others to follow.

Thus, Industry generally welcomes the Government's initial response, as published on 6 February 2008, and stands ready to assist with any further work required, as has been identified. We are concerned that, in the long-range missile/UAV sector in particular, the needs of legitimate Industry have still not been sufficiently distinguished in the trade controls arena from those of illicit proliferators. Specifically, more needs to be done to facilitate activities involving these goods where the end-user is demonstrably known to be a responsible Government, especially given that such activities are almost invariably approved from the marketing stage by our own Government.

The current proposal to consider extending the controls to the component level represents a "scatter gun" approach that must, in all certainty, fail—the sheer volume of transactions at the component level will just overwhelm the whole UK export control system, unless there is massive expansion of the UK's system of Open Licensing, such that HMRC and other agencies will not be able to identify and pursue the "bad guys", who will continue to do what they do already today. Oversight and monitoring of legitimate businesses and individuals by HMG officials searching out paperwork discrepancies upon which to levy "fines" for the benefit of the Exchequer, is not a constructive way to go.

We look forward to the future discussions with HMG on this, and other points.

EGAD has generally cautiously welcomed the announced intention to extend the extraterritorial controls in the small arms sector, having first sought the views of the Members of the DMA's Section 5 special interest group (which represents the interests of those firms who deal with prohibited firearms) to ensure that this was not perceived to present an unacceptably onerous additional burden on them, due to their much shorter supply chains. In our view, now and all along, what needs to be controlled are the illegal export and movement of lethal weaponry (the things that actually kill and maim; ie SALW such as pistols, rifles, machine guns, grenades, land-mines, mortars, and the bullets). This is what the HMG proposals are clearly aimed at addressing.

THE NEED FOR AN ARMS TRADE TREATY

The essential problem which has clearly illustrated from this Review by the British Government of its own national export and trade control legislation was summarised very succinctly by Miss Rhian Chilcott, the Head of the CBI's Washington DC office, at a briefing in London on 21 February 2008, when she stated that: "Business has gone global, whilst the political world has remained fundamentally based on the concept of the nation state". It seems as though national Governments, including our own, are essentially impotent and powerless to address this essential change in the dynamics of the way in which modern business is done.

They can only propose national solutions to what is, in reality, a global issue (like climate change, the internet, etc, etc), rather than being able to “think outside the box” and propose effective multilateral solutions to the problems that are confronting mankind.

We believe that there has been far too much public focus on the issue of trying to curb the activities of British brokers, and that this is in many ways a red herring in global non-proliferation terms. At the end of the day, if it is inherently undesirable for a supplier and a customer to come together and do a deal, then it is inherently undesirable, whether the broker who brings them together is British, French, Italian, Israeli, Ukrainian or Saudi, etc, etc, or whether there is no broker involved at all, and they do it directly—the nationality of any broker involved is totally irrelevant, and it remains inherently undesirable under any circumstances.

What is really needed, rather than focusing on the issue of British brokers, and controlling them in the UK and/or overseas, is drafting some effective international and multilateral control regime which will prevent these deals from happening at all! Many proponents of the introduction of extraterritorial controls by the UK we believe appear to be unable to gain a strategic vision. As an instrument to try to curb global proliferation and the sorts of deals that we all want to see stopped, the UK arbitrarily and unilaterally changing its regulations will be about as effective as rearranging the deck chairs on the Titanic!

Thus, the degree of support that the UK Defence Industry has been perceived to have given to the proposal to introduce an International Arms Trade Treaty, which would seek to address this lack of co-ordinated international action against proliferation, at least at the policy level.

Industry remains highly concerned that the introduction of the SPIRE system, coupled with the recent changes to its “Helpline”, and the non-user friendly nature of its website, has meant that the ECO has seemingly lost its “personal touch” in its dealings with companies, especially for those “novices” who do not have any personal contacts within the ECO to fall back on when queries arise. We believe that ECO must seek to be seen to address this, and have been delighted in recent weeks to have assisted the ECO in consulting with Industry on the proposed re-vamping of its website, which we hope will yield the required benefits for all concerned.

RECENT DEVELOPMENTS IN THE UK

Industry welcomes the introduction of the new SPIRE electronic licensing system by the ECO, which, almost unbelievably for a Government IT system, was actually introduced both on time and on budget!! Many of our Members have responded enthusiastically to the benefits of this new system, although some minority of companies have experienced the opposite effects of this (eg one dual-use company reported that the average turnaround timescales for its licence applications had gone up from 16 working days, to three and a half months, following the introduction of SPIRE!) We are certain that the ECO will be seeking to identify and iron out any such aberrations in the months ahead.

There is still some uncertainty with the adoption by HMRC of the National Clearance Hub, and we are keen to assist UK companies to identify and adopt best practice in their dealings with the NCH.

March 2008

Memorandum from Transparency International (UK)

1. Appendix 1 briefly introduces Transparency International (UK) and the defence against corruption programme.

QUADRIPARTITE SELECT COMMITTEE RECOMMENDATION: FOLLOW UP

2. Transparency International (UK) notes the recommendation (page 141) in the *Quadripartite Committee Strategic Export Controls 2007 Review*:

“We recommend that the Government press for the inclusion of provisions in the arms trade treaty to promote good governance and combat bribery and corruption in arms transfers”

3. Transparency International (UK) very much looks forward to hearing from the Secretary of State for Defence how this is being actively followed up.

DBERR AND MINISTRY OF DEFENCE

4. It is important to keep separate economic and security considerations at all times during the process of considering the issue of an export licence. Transparency International (UK) therefore welcomes the movement of the defence exports promotion group out of the Ministry of Defence and under the remit of the DBERR and FCO. It is hoped this will allow for a more objective and transparent debate by government of these issues.

5. Recent reports have indicated that the arms promotion group may be retained in a form closer to its previous DESO form than previously envisaged. Transparency International (UK) believes that the independence of this body from the Ministry of Defence must not be undermined.

COMMITMENT TO TRANSPARENCY

6. The new body's implementation plan states its commitment to "highest business standards and . . . appropriate clarity and transparency".² However, there is no detail as to what constitutes transparency and clarity. Given the problems of the last few years, it is essential that the new UKTI Defence and Security Group states clearly both how transparency will be ensured, and sets up structures that ensure regular communications with the public, civil society and interested bodies. Transparency International (UK) expects this to be absolutely explicit in the Service Led Agreement.

7. Transparency International (UK) outlines below two proposals for enhancing transparency, one specific and one more general. We would welcome an opportunity to meet with the new UKTI Defence and Security Group, as well as the Ministry of Defence, to discuss how transparency and accountability can be enhanced.

AL SALAM

8. A litmus test of the Government's commitment to fighting bribery will be the conditions surrounding the new "Al Salam" contract for the sale of military aircraft and related services to Saudi Arabia.

9. It is greatly in the interests of both Governments to show beyond doubt that the new contract is consistent with current recognised standards of corporate and public integrity. Transparency International (UK) would like to learn what proposals the Secretary of State may have for restoring confidence in these major transactions.

10. Transparency International (UK) believes a powerful, visible way to do this would be to set up a body comprised of respected institutions from both countries that would monitor the financial, equipment and associated support areas during the whole life of the contract.

11. This would be set up by the two Governments to demonstrate their commitment to showing that the contract is consistent with recognised standards of corporate integrity. We believe that such a positive initiative will improve the image of the UK and Saudi Arabia after the Al Yamamah saga and go a long way towards restoring faith in the UK's anti-corruption efforts.

12. Transparency International (UK) has written to the Prime Minister, the former Secretary of State for Trade & Industry, the Secretary of State for Defence, and the Head of the FCO Middle East Desk, commending this proposal to them, and would be happy to discuss this matter further with Secretary of State for Defence.

ENHANCED DUE DILIGENCE

13. In order to ensure that the UK tax payer is not under-writing corruption abroad in the name of arms exports promotion, the new arms promotion body should demand higher standards of due diligence from UK industry, including:

- (a) publication of the names of intermediaries and advisers utilized by UK defence companies and publication of all fees paid to them and the services provided by the latter;
- (b) commitment to undertaking face to face due diligence before appointing an agent, adviser or other intermediary, and on a regular basis thereafter, eg annually or bi-annually. (The issue of agents is expanded upon in Appendix 2);
- (c) demand that subsidiaries and joint ventures observe the same high standards of due diligence required in the UK. (The issue of joint ventures is expanded upon in Appendix 3); and
- (d) formal monitoring of any "offset" arrangements in connection with defence deals.

Because of their opacity, offsets are vulnerable to bribery and corruption. Transparency International (UK) would be happy to provide more details on this subject.

² UKTI announce new defence and security group" SBAC, 11 December 2007 http://www.sbac.org.uk/community/cms/content/preview/news_item_view.asp?i=17715&t=0

APPENDIX 1

TRANSPARENCY INTERNATIONAL (UK) AND THE DEFENCE AGAINST CORRUPTION PROGRAMME

Transparency International (TI) has been at the forefront of the anti-corruption movement since it was formed in 1993. TI is a not-for-profit, independent, non-governmental organisation, dedicated to increasing government accountability and curbing both international and national corruption. It seeks to work in a non-confrontational way with governments, companies, development agencies, NGOs and international organisations to build coalitions to combat corruption.

TI's international secretariat is based in Berlin and there are about 90 national chapters around the world. (www.transparency.org)

Transparency International (UK) is the national chapter for the UK and was among the first to be formed, also in 1993. (www.transparency.org.uk)

The goal of the Defence Against Corruption programme, which Transparency International (UK) leads on behalf of Transparency International worldwide, is to build integrity and combat corruption in the international official arms trade and defence/security sectors by developing and implementing practical tools.

APPENDIX 2

AGENTS

The ICC Rules of Conduct to Combat Extortion and Bribery, which include the following provisions in respect of agents (Article 3), are an excellent starting point:

“Enterprises should take measures reasonably within their power to ensure:

- (a) that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;
- (b) that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these Rules of Conduct; and
- (c) that they maintain a record of the names and terms of employment of all agents who are retained by them in connection with transactions with public bodies or State enterprises. This record should be available for inspection by auditors and, upon specific request,

AGENTS, ADVISORS AND OTHER INTERMEDIARIES

The enterprise should undertake due diligence before appointing an agent, advisor or other intermediary, and on an on-going basis as circumstances warrant.

The [anti-bribery] Program should provide guidance for conducting due diligence, entering into contractual relationships, and supervising the conduct of an agent, advisor or other intermediary.

Due diligence review and other material aspects of the relationship with the agent, advisor or other intermediary should be documented.

All agreements with agents, advisors and other intermediaries should require prior approval of senior management.

The agent, advisor or other intermediary should contractually agree in writing to comply with the enterprise's Programme and should be provided with materials explaining this obligation.

Provision should be included in all contracts with agents, advisors and other intermediaries relating to access to records, co-operation in investigations and similar matters pertaining to the contract.

Compensation paid to agents, advisors and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through bona fide channels.

The enterprise should monitor the conduct of its agents, advisors and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.”

It is worth noting the ICC Rules of Conduct to Combat Extortion and Bribery, which include the following provisions in respect of agents (Article 3):

“Enterprises should take measures reasonably within their power to ensure

- (a) that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;”

Chapter Four of the ICC book “Fighting Corruption—a corporate practices manual” reinforces this by spelling out “red flags” and making detailed practical recommendations.

“When evaluating a prospective agent, it is very important to watch for “red flags” which could serve as advance warnings of potential illegal activities or violations of company policy. Specifically the company should be on guard if a proposed sales representative:

- (a) does not reside in the same country where the customer or the project is located;
- (b) does not have any significant business presence within the country;
- (c) represents any companies with a questionable reputation;
- (d) requests that commissions be paid in a third country or to a numbered bank account or to some other person;
- (e) requires payment of the commission, or a significant portion thereof, before or immediately upon award of the contract by the customer to the company;
- (f) claims that he can help secure the contract because he knows all the right people;
- (g) has a familial or other relationship that could improperly influence the customer’s decision;
- (h) arrives on the scene just before the contract is to be awarded.

Therefore, the new arms promotion body should make clear its support for UK defence companies depends on companies doing the following:

- (a) write into their codes of conduct provisions requiring responsible company personnel to hire only qualified and reputable agents;
- (b) make clear in the code that all agents are bound by its anti-bribery provisions and by those of the OECD Convention;
- (c) before hiring an agent conduct a detailed background check on his professional competence and personal integrity;
- (d) require prospective agents to fill out a detailed application form listing their business details, product lines and references;
- (e) discuss the company’s “no bribery” policy with the proposed agent and be satisfied that he will comply;
- (f) establish specific compensation guidelines to ensure that an agent’s compensation is not excessive in relation to the services he renders;
- (g) require senior management’s approval of all sales representative appointments;
- (h) pay all agents’ commissions by cheque and not in cash;
- (i) require agents to sign a written agreement containing, among other provisions, a commitment not to pay bribes;
- (j) be alert to red flags which can signal questionable integrity on the part of an agent;
- (k) completely avoid, wherever possible, the appointment of agents in high risk countries where bribery is prevalent.

APPENDIX 3

JOINT VENTURES

The enterprise should conduct due diligence before entering into a joint venture.

The enterprise should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its Programme. Where an enterprise does not have effective control it should make known its Programme and use its best efforts to monitor that the conduct of such subsidiaries and joint ventures is consistent with the Business Principles.

Joint Ventures (including non-controlled subsidiaries, consortium partners, teaming agreements and nominated sub-contractors):

Due diligence should be conducted before entering into a joint venture, and on an ongoing basis as circumstances warrant. The Programme should provide guidance for conducting due diligence.

The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the Transparency International Business Principles.

Further memorandum from Transparency International (UK)

1. See Appendix 1 for background on Transparency International (UK) and its work in the defence sector.

BACKGROUND

2. Transparency International (UK) submitted written evidence to the “Quadripartite Committee” in December 2007, in advance of the Committee’s inquiry into export controls (17 January 2008).

3. Transparency International (UK) welcomes the Quadripartite Committee’s receptiveness to our proposals, as put by the Committee to the Secretary of State Des Browne on 17 January. Transparency International (UK) is disappointed with the Secretary of State’s response.

4. Transparency International (UK) is pleased to have this opportunity to present to the Quadripartite Committee. Our submission consists of the following:

- Clarifications in response to the Secretary of State’s objections to our “Al Salaam” contract monitoring proposals (as outlined on 17 January).
- Other proposals to enhance anti-corruption controls in the UK, building on the recommendations of the last Strategic Export Controls Review of 2007.

ENHANCED MONITORING OF AL SALAM CONTRACT: SECRETARY OF STATE’S COMMENTS

5. The Quadripartite Committee made proposals to Secretary of State for Defence Des Browne on January 17, based on the last TI (UK) submission,³ for enhanced monitoring of the new Al Salam contract. In the transcript of the proceedings the issue of corruption in arms deals with Saudi Arabia comes up in Questions 15 to 27, principally Q26. The Secretary of State was not supportive of pursuing the TI (UK) proposal. His main objections were:

- (a) “There is a perfectly good, independent body in the NAO that reports to Parliament that does this job, why do we need another one?”
- (b) “The fundamental problem is that this is a government-to-government contract. The Saudi Government’s view—and we respect this—is that the financial arrangements in relation to such contracting are confidential.”
- (c) “This is a perfectly proper contract in which there is no impropriety associated with this negotiation at all.”

6. Transparency International (UK) believes the Secretary of State is underestimating the damage that has been done to the UK’s previously good reputation in anti-corruption by the fall-out from Al Yamamah. Large UK companies, many of whom have worked hard at putting in place a good anti-bribery practice, tell us how dismayed they are by the negative perception of UK companies overseas. There is now an opportunity to restore the UK’s reputation by making the new Al Salam contract fully transparent and an exemplar of good practice.

7. TI (UK)’s response to the Secretary of State’s objections are as follows:

- *NAO*: The NAO is a very competent body. However, its report on the Al Yamamah contract was never published. If the public is to have any confidence this time, it is vital that the NAO’s views should be published.
- *Government-to-Government contract*: This does not need to be an insurmountable barrier. There will be a body of opinion in Saudi Arabia that will welcome higher confidence in the integrity of this contract, given the damage and embarrassment caused by “Al Yamamah”. There is no reason why both Governments cannot agree on measures to show Al Salam is a “perfectly proper contract”. This will require a degree of independent verification. We urge the Committee to impress upon the Government the importance of working pro-actively with their Saudi counterparts to agree such measures.

³ “A litmus test of the Government’s commitment to fighting bribery will be the conditions surrounding the new “Al Salam” contract for the sale of military aircraft and related services to Saudi Arabia. It is greatly in the interests of both Governments to show beyond doubt that the new contract is consistent with current recognised standards of corporate and public integrity. Transparency International (UK) would like to learn what proposals the Secretary of State may have for restoring confidence in these major transactions. Transparency International (UK) believes a powerful, visible way to do this would be to set up a body comprised of respected institutions from both countries that would monitor the financial, equipment and associated support areas during the whole life of the contract. This would be set up by the two Governments to demonstrate their commitment to showing that the contract is consistent with recognized standards of corporate integrity. We believe that such a positive initiative will improve the image of the UK and Saudi Arabia after the Al Yamamah saga and go a long way towards restoring faith in the UK’s anti-corruption efforts. Transparency International (UK) has written to the Prime Minister, the former Secretary of State for Trade & Industry, the Secretary of State for Defence, and the Head of the FCO Middle East Desk, commending this proposal to them, and would be happy to discuss this matter further with Secretary of State for Defence.”

EXPORT LICENCING

8. As a requirement for the granting of an export licence, companies should be required to adhere to strict anti-corruption measures, including:

- publication of the names of intermediaries and advisers utilised by UK defence companies, and publication of all fees paid to them and the services they provide;
- commitment to undertaking face to face due diligence before appointing an agent, adviser or other intermediary, and on a regular basis thereafter, eg annually or biannually;
- a requirement that subsidiaries and joint ventures observe the same high standards of due diligence required in the UK;
- formal monitoring of any “offset” arrangements in connection with defence deals. Because of their opacity, offsets are vulnerable to bribery and corruption. TI(UK) is happy to provide more details on this subject; and
- a register of brokers: TI (UK) welcomes the Quadripartite Committee’s recommendation that the Government “follow best practice to establish a register of arms brokers”. Registered brokers should be required to disclose to all payments made to them for publication by the central registry. Further, TI (UK) proposes the obligatory vetting of registered brokers by an agency such as TRACE International,⁴ a non-profit membership association specialising in anti-bribery due diligence reviews and compliance training.

9. Post-hoc checking: The present export control system is based on a strong set of criteria in advance of approval of the export. There is very little scrutiny of exports after shipment, and virtually no data to confirm whether or not shipments have proceeded as stated. The issues uncovered by the AQ Khan saga show how the lack of post-hoc checking can lead to a dangerous complacency about export controls. TI (UK) recommends that the Government initiate a system of more rigorous post-hoc checking of arms exports. We also recommend that the Government champions this for incorporation in the proposed Arms Trade Treaty. Post-hoc checking of a random sample of arms exports once completed would help to identify weak spots, act as a deterrent for those intent on flouting controls, and provide much needed data on the extent of diversion. Post-hoc checking should be conducted by a properly resourced and mandated team, which should aim to:

- assess whether the export reached the intended recipient;
- scrutinise all payments associated with the export, in particular those made through third parties; and
- assess whether enhanced anti-corruption procedures were adopted once red flags had been raised.

INTERNATIONAL ARMS TRADE TREATY

10. TI (UK) welcomes the Quadripartite committee’s recommendation that “the Government press for the inclusion of provisions in the arms trade treaty to promote good governance and combat bribery and corruption in arms transfers”.

11. Corruption greases the circumvention of export controls. Anti-corruption principles and measures therefore should constitute a central part of the export control regime. This would correct one of the major weaknesses of the EU Code on Arms Exports (the Code treats anti-corruption as a footnote rather than a central “principle”).

12. TI (UK) proposes that the Government makes the case for the proposed anti-corruption provisions to require presentation by exporting companies of rigorous contract-specific no-bribery warranties, best practice compliance systems, as well as a system for initiating enhanced controls when “red flags” are raised in relation to the proposed recipient. A template system is presented in Appendix 2.

13. The Treaty should require the provision of detailed, comprehensive, and publicly available information on the supply and receipt of exports—in particular the value of the exports and the entities involved. Such data should be collected and hosted centrally by the UN. States that do not provide timely and complete data should be debarred from future transfers for an appropriate period of time.

DESO

14. DESO’s incorporation into BERR presents the Government with an opportunity to enhance its anti-corruption safeguards. As a requirement for DESO support, companies should be required to adhere to strict anti-corruption measures. TI (UK) looks forward to continued engagement with BERR in this respect.

March 2008

⁴ www.TRACEInternational.org

Memorandum from the UK Working Group on Arms (UKWG)

INTRODUCTION

1. The following submission from the UK Working Group on Arms (UKWG)⁵ to the Committees on Arms Export Controls (CAEC) focuses primarily on the ongoing review of the Export Control Act (ECA). We first consider the review process itself, before addressing the recent *2007 Review of export controls: Government's initial response to the public consultation* (Initial Response), at which point we focus specifically on arms brokering. There are, however, other issues discussed in the Initial Response that are not addressed in this submission that the UKWG is pursuing in other contexts, eg controlling subsidiaries and licensed production agreements.

2. The submission then looks at two issues that the UKWG believes the Government should be addressing as part of this review process, but which the Government regards as outside its Terms of Reference. These are:

- Sustainable development
- Use of open general licences (OGLs)

3. In addition, in light of the recent developments regarding the Oslo Process, and the important role played by the UK therein, this submission considers what the UK Government could do to play a more constructive role in negotiations for an international treaty to ban cluster munitions.

4. This submission should be read in conjunction with the March 2008 submission from Amnesty International UK, the Omega Research Foundation and Saferworld, which also focuses on the review of the ECA.

THE ECA REVIEW PROCESS

5. The Government is to be commended for the way in which it has so far managed the ECA review process. It has shown a willingness to engage with external stakeholders in a serious and open manner, far more so than was the case during the original passing of the ECA. The UKWG looks forward to continuing to engage in a constructive manner throughout the rest of the review.

6. In terms of the content of the Initial Response, the UKWG welcomes in particular the decision to extend extraterritorial brokering controls to small arms and light weapons (SALW). We note that the Government is still considering whether to extend extraterritorial controls to other Military List items, and to ancillary services such as transportation. We encourage the Government to extend such controls to cover at a minimum other equipment generally recognised to be of particular offensive utility. Extending extraterritorial controls to transporters should also be regarded a matter of urgency by the Government.

7. The UKWG applauds the decision, in principle, to introduce an end-use control on torture equipment. We understand the logic behind doing this through the EU. If, however, the Government is rebuffed by EU partners on this issue, such a control should still be introduced unilaterally (thereby setting an example for others to follow), and a commitment in this regard from the Government would be welcome.

8. It is also encouraging that the Government has demonstrated a willingness to grapple with some other difficult transfer control issues, such as how to manage the export of non-controlled goods which might subsequently be militarised or used for a military purpose, and to continue to explore how best these might be dealt with. At the same time, on issues such as licensed production arrangements and transfers by foreign subsidiaries, the Government appears opposed to change. In some cases, the arguments put forward against change are not persuasive. For example, the reason identified in the Initial Response for not controlling licensed production agreements is that such controls could not be applied retrospectively⁶, an argument which if applied across the board would militate against any new legislation regardless of purpose.

9. The UKWG believes the review should have been cast more widely. The Government has been reluctant to consider changes to primary legislation. This is perhaps reflected in the failure to even mention in the Initial Response the issue of sustainable development, which the UKWG believes should be given greater weight in the Schedule to the ECA. The Government has also been reluctant to address issues that it believes do not require changes to the control orders, eg enforcement and use of OGLs.

10. The requirement to review the export control legislation three years after its entry into force was the perfect opportunity to see how well the new regime is working as a whole. The decision to limit the focus of the review to only one level (ie secondary legislation) of the (at least) three levels at which the regime operates risks undermining the effectiveness of the review process. The UKWG recommends that the Government either reconsiders this limited approach, or makes provision for a further, broader review at a specified time in the future.

⁵ For the purposes of this submission, the UK Working Group on Arms comprises Amnesty International UK, the Omega Research Foundation, Oxfam GB and Saferworld.

⁶ “2007 Review of export controls: Government's initial response to the public consultation” (Initial Response), para 7.5.

ARMS BROKERING AND THE GOVERNMENT'S INITIAL RESPONSE

11. While there are a range of issues covered in the Initial Response, for the purposes of this submission the UKWG has chosen to concentrate on arms brokering, in part because the proposed changes on this are among the most significant contained in the Initial Response. The UKWG accepts the principle set out in the Initial Response of distinguishing between the brokering of certain items or to destinations that will always, apart from in exceptional circumstances, be “inherently undesirable”⁷, and brokering other equipment or to other destinations where it is regarded that there can be legitimate trade.

12. The UKWG welcomes the decision to create a middle category (category 2) of items to which extraterritorial controls will be applied with regard to their trade with the exemption of “peripheral acts such as general promotion or advertising.”⁸ This change is based on the presumption that there are some items for which there is “legitimate trade, but which, on the basis of international consensus, have been identified as being of heightened concern.”⁹ The Government is to be congratulated for including SALW among the items to be included in this category. (According to the Government’s Initial Response, most Military List items will be category 3. For category 3 goods, trading between two countries overseas will be controlled “only if carried out from within the UK.”¹⁰)

13. This expansion of the range of goods to which extraterritorial brokering controls will be applied further acknowledges the principle that it is legitimate for the Government to control the arms brokering activities of UK persons regardless of where those activities are conducted. Unfortunately, and despite previous manifesto commitments, the Government appears reluctant to extend this principle to its logical conclusion, i.e. that the brokering of all Military List goods should be subject to a form of extraterritorial control. Moreover, the Government is so far undecided as to whether to control “supporting activities ... under category 2, including transport and promotional activities.”¹¹

14. The UKWG urges the Government to expand the range of goods to be included in category 2 as far as possible. As the Government itself states in the Initial Response, without extraterritorial control it is a simple matter to escape UK regulation: “unscrupulous traders [can] pursue deals that concern the UK simply by carrying out the business from another country.”¹² First among other items to be added to category 2 should be those with particular offensive utility, such as (non-SALW) munitions, artillery, attack helicopters and armoured vehicles.¹³ The Government should also ensure that the means by which the list of items included in category 2 can be changed is straightforward and simple to manage.

15. Furthermore, just as for category 1 situations (ie those regarded as inherently undesirable), involvement in the transportation of category 2 items should be subject to control. The roles of broker and transporter can be tightly linked, with the dividing line between them difficult to draw, and indications are that the role of certain transporters (of whom Victor Bout is the most infamous) has been critical to the supply of SALW to rival factions in many African conflicts. Exempting the transportation of SALW from the transfer control regime leaves open a dangerous loophole.

Brokering and open licences

16. For arms brokering, as for direct exports, the Government through the use of open licences has sought to focus its attention on the most sensitive proposed trades, while allowing the defence industry to carry out its less sensitive business with a “lighter touch”. While the UKWG understands the rationale behind this approach, there are concerns that the current regime may be too permissive (particularly with regard to brokering). According to the Export Control Organisation (ECO) website, the Open General Trade Control Licence (OGTCL) is likely to cover about 90% of all arms brokering situations. It “allows trade in most activities in respect of military and paramilitary goods on the UK Military List”¹⁴ where these are (1) sourced from almost any state to 32 specified states (including most EU Member States and a few other states that might be regarded particularly “friendly”), or (2) sourced from that same list of 32 states to all but 39 named states (countries to which the UK is bound by national or international obligations to

⁷ Ibid., para 1.2.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid., para 1.10.

¹² Ibid., para 1.7.

¹³ Note that the Export Control Organisation (ECO) in February 2008 circulated a letter to defence companies regarding the likely business costs and impact of two models that encompass additional equipment beyond SALW that could be covered by further extensions to extraterritorial trade controls. One model was all items on the Military List, the other was for a more restricted range of equipment, which it may be reasonable to assume reflects Government thinking in terms of a possible initial extension. This equipment included: mortars with a calibre greater than 75mm, non-man portable guns, rocket and missile launchers, aircraft-launched weapons (eg bombs, rockets) (as defined in ML2/4); ground vehicles (as defined in ML6) and vehicle-mounted weapons (as defined in ML2/4); body armour (as defined in ML13); police and paramilitary equipment (as defined in Human Rights Annex III/PL5001); training equipment (except where this is modified firearms used for training) (as defined in ML14); manufacturing equipment (as defined in ML18), and test and maintenance equipment for the above (as defined in ML11 & PL5017), and specially designed components therefor; and ammunition described in ML3 (and rockets in missiles in ML4) for any of the above and specially designed components therefore.

¹⁴ “Trade Controls Licences: General”, ECO website, <http://www.berr.gov.uk/europeandtrade/strategic-export-control/licensing-rating/licences/ogels/trade-controls/index.html>.

prevent the supply of some military goods). This is a far more liberal regime than is applied to direct exports, and when combined with the weaknesses in terms of registration and reporting (as highlighted in the section below on the use of OGLs, paragraphs 29–34), must raise concerns regarding the risks of diversion if nothing else.

17. The UKWG also has concerns regarding the use of Open Individual Trade Control Licences (OITCLs). For example, in 2006, OITCLs authorised the brokering to Angola of components for launching equipment for surface-to-air missiles, components for heavy machine guns, components for combat aircraft, components for combat helicopters, components for general purpose machine guns, components for small calibre artillery, components for airborne electronic warfare equipment, components for weapon control systems, and armoured all-wheel-drive vehicles; and to Nigeria of components for large calibre artillery; components for general purpose machine guns, components for naval light guns, and armoured all-wheel-drive vehicles. In addition, China, Guinea, Libya, Niger, Pakistan, Rwanda and Turkmenistan were all authorised destinations for brokered armoured all-wheel-drive vehicles.

18. Two OITCLs were issued (one in 2006, the other in first quarter 2007) covering the trade of military components for equipment ranging from submarines to heavy machine guns between a large number of countries including Cte d'Ivoire (then as now under UN arms embargo).¹⁵ The UKWG notes that when trade control licences were introduced ECO stated that “we do not expect to issue licences for trafficking and brokering to embargoed destinations except in exceptional circumstances.”¹⁶ While it is hoped that these licences specified end-users and consignees falling outside the embargo¹⁷, the latitude and lack of transparency regarding quantities and time-scale of transfers under OITCLs makes the inclusion of such destinations within such licences problematic.

19. The UKWG urges all stakeholders to explore how the open licensing system can be used more effectively, not only to lighten the regulatory burden but also to encourage higher standards within the defence industry. Measures could include:

- restricting the use of OGLs to those companies that are correctly applying prescribed internal compliance and due diligence programmes (such an approach would likely involve a system of registration to operate as a broker)
- advance notice of trades made under open licences
- a range of graduated sanctions for addressing imperfect or non-compliance.

20. Critical to any system, however, is that there is no relaxation in the rigour with which licence applications are assessed, and also that there is no drift over time to an increasing use of open licences as opposed to standard licences. In order to guarantee the ongoing integrity of the regime, as well as regular and thorough audits of industry compliance there is a need for regular monitoring and evaluation of the way the authorities are applying licensing standards.

Other issues for consideration as part of the ECA review

21. In addition to the issues addressed in the Initial Response, the UKWG believes the Government should be using the opportunity of the ECA review process to undertake a more comprehensive review of the UK transfer control regime. Other issues that we believe merit further examination include sustainable development and the use of open general licences (OGLs)

Sustainable development

22. Excessive or inappropriate arms purchases are a drain on social and economic resources that poor countries can ill afford. Weapons in the wrong hands have acute, immediate impacts on personal, economic, social and civil rights, which translate into longer term effects that destabilise development. In 2006, the FCO made sustainable development one of their key priorities in their White Paper *Active Diplomacy for a Changing World: The UK's International Priorities*. In July 2007, Prime Minister Gordon Brown joined with the UN Secretary General to call for a renewed international effort to achieve the Millennium Development Goals. The UK Government has acknowledged that as a major exporter of conventional weapons it has a particular responsibility to ensure that its arms exports do not undermine development.

¹⁵ The 2006 OITCL covered equipment traded to and from Angola, Belgium, Brazil, Cameroon, Canada, Cape Verde, Chile, Colombia, Denmark, Ecuador, Egypt, Finland, France, French Guyana, Germany, Greece, Guinea-Bissau, Guyana, Haiti, India, Italy, Ivory Coast, South Korea, Malaysia, Martinique, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Russia, Senegal, South Africa, Spain, Surinam, Sweden, Trinidad and Tobago, Turkey, United States of America, Uruguay and Venezuela. It is unclear precisely when this licence was issued, as it was not included in the DTI's quarterly strategic exports reports, but only in its 2006 Annual Report. The Q1 2007 OITCL covered equipment traded to and from the above countries, plus Argentina and South Korea.

¹⁶ “Trade in Controlled Goods to Embargoed Destinations, Order 2004”, ECO website, <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/eca-2002-orders/page9317.html>.

¹⁷ These were the UN Operation in Côte d'Ivoire and the supporting French troops; other foreign State forces evacuating their nationals; or certain equipment for restructuring the Ivory Coast's defence and security forces under the Linas-Marcoussis Agreement.

23. Despite evidence from DFID last year detailing its role in the licensing procedure, UKWG remains concerned about the way sustainable development has been included in the ECA. The omission of sustainable development from the table of Relevant Consequences gives the issue a secondary status, evidenced by the fact that hardly any licences have been refused solely or in part on sustainable development grounds since the ECA entered into force. Despite the fact that these issues were raised in the UKWG submission to the recent consultation exercise undertaken as part of the ECA review, the Initial Response makes absolutely no mention of sustainable development. This further suggests that the issue is regarded as a secondary concern within the licensing regime.

24. Calculating the impact that a transfer of controlled goods has on sustainable development can be difficult, but this difficulty makes it all the more important that sustainable development receives full protection under the law. The current wording of the legislation allows a future administration to remove easily all references to the issue. Elevating sustainable development so that it is included in the Schedule as a Relevant Consequence would eliminate this possibility.

25. While the UKWG is of the opinion that sustainable development should be a Relevant Consequence, if reference continues to be limited to section 9 of the ECA, it is essential that the ability of the Secretary of State to remove this reference is restricted, and that the term “if any” is replaced with “so far as relevant”. According to legal advice, this would impose a duty to consider sustainable development where relevant. This would give the Government considerable flexibility, allowing the option of not considering sustainable development in cases where it is clearly not relevant, (such as an uncontroversial low-monetary-value shipment of arms to, for example, Canada) but it prevents the Government from ignoring sustainable development where it is relevant.

26. Furthermore, in order for the legislation to accurately reflect the UK’s commitments under international law, specific language should be inserted to reflect the commitment in Article 26 of the UN Charter that all governments “should promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources”. A specific reference to this commitment would decrease the likelihood that UK weapons would be transferred to destinations where they would undermine sustainable development or indeed undermine the UK’s political and economic support for the alleviation of poverty in the developing world.

27. The UKWG welcomes the CAEC’s recommendation that the Government should consider including an assessment in its criterion 8 methodology to test whether the contract behind an application for an export licence is free from bribery and corruption. People living in poverty are disproportionately vulnerable to and disadvantaged by corruption. Corruption diverts public resources away from social sectors and the poor, increasing the cost and lowering the quality of public services, and often restricting access to such essential services as water, health and education. Corruption acts as a drag on the development and economic growth of a country, and perpetuates unequal distribution of power, wealth and resources. Corruption in one sector of the economy can also lead to an increase in corrupt practices across the board in the form of extortion, bribery and intimidation, many of which disproportionately affect poor people. While corruption impacts negatively on most segments of society, people living in poverty lack the economic, social and political power necessary to challenge corrupt practices and are more vulnerable to extortion, bribery, double-standards and intimidation. Incorporating a corruption methodology into criterion 8 would make it even more important to give sustainable development an equal status in the law to the other Relevant Consequences.

28. It should be noted, however, that reference to corruption within the “sustainable development criterion” will need to be very clearly worded to ensure that consideration of the risk of corrupt practices is not confined only to those transfers where sustainable development is an issue: the risk that an arms transfer will involve corrupt practices must be considered in all cases.

Use of open general licences (OGLs)¹⁸

29. The UKWG is concerned about both the coverage and, crucially, the operation of OGLs. Data provided by the Export Control Organisation indicates that OGL registrants constitute the largest and fastest-growing body of “users” of the UK’s export control machinery, rising from 779 licence-holders in January 2003 to 3114 licence-holders by December 2007.¹⁹ Yet almost no information is published regarding exports and trading activity taking place under OGLs. As detailed below, this may partly be because this information is not systematically collected by ECO or HMRC.

30. It is likely that much trade taking place under OGLs involves relatively non-sensitive equipment being exported to uncontroversial end-users in European and NATO countries, and the UKWG recognises that

¹⁸ Note that in this section we use the term OGL (Open General Licence) to refer to Open General Licences of all kinds, including Open General Export Licences (OGELs), Open General Transshipment Licences (OGTLs), the Open General Trade Control Licence (OGTCL) and the Community General Export Authorisation (CGEA). Where data refers only to Open General Export Licences, “OGEL” is used.

¹⁹ OIEL-holders also rose, if not quite so rapidly, from 118 in January 2003 to 543 in December 2007. By contrast, SIEL-holders fell slightly from 2779 in January 2003 to 2475 in December 2007. Figures taken from correspondence with Export Control Organisation, 18 January 2008.

many licensable exports, often unconnected to military, security or police activity/from camera lenses to desktop computer parts/should not be unduly impeded. Nonetheless OGLs can in certain circumstances be used to export lethal military and security equipment to sensitive destinations. Open General Export Licences (OGELs) could be used to export, for example, military small arms and their components to Guinea, if imported from the Guinean government to be repaired or replaced;²⁰ or instruction manuals and blueprints for military equipment to inter alia Burkina Faso, Congo (Brazzaville) and Guinea (Conakry).²¹

31. The UKWG is not suggesting that such exports take place frequently under OGLs. But since OGLs authorise not only the export of innocuous components to “friendly countries”, but also “hard” military and security equipment to sensitive destinations, they should not be regarded as blanket authorisations for export or trade, essentially exempting particular kinds of transactions from effective governmental scrutiny.

- OGLs should instead be treated as licences in the proper sense, requiring meaningful pre-registration screening of their users, and oversight of exports taking place under their authorisation. This is not currently the case.

Absence of control over OGL users

32. According to the ECO, “all registrations [for OGLs] that are correctly completed [on the ECO website] are accepted so there is no question of invalidity at the registration stage”.²² Indeed, in July 2007 the ECO stated that goods could be shipped even before an exporter’s OGEL registration had been checked and acknowledged by ECO, effectively removing any prior scrutiny over users.²³ This renders such registration essentially meaningless as a way of preventing OGL use by unreliable or unscrupulous traders. According to figures provided to the Quadripartite Committee, 202 companies (around 8% of all registered OGEL users in 2006)²⁴, were found to have breached the terms of open licences during 2006.²⁵ Yet despite such problems, it seems that unsuitable users cannot be excluded from using OGLs post-registration.²⁶

- Registrants for OGLs should need authorisation from ECO staff prior to use. Such authorisation should not be automatic: registrants should have to meet certain standards as part of the registration process, with issues such as prior export record considered. If found to have misused licences in the past, they should be required to apply for individual licences rather than use general licences. OGLs should also provide for registrants’ removal, for example if they are found to be in breach of the terms of such licences or guilty of arms export offences.

²⁰ The “Export After Repair/replacement under warranty: Military Goods” OGEL (24 May 2007) authorises a wide range of military equipment, including those covered by licensing category ML1a (“Rifles, carbines, revolvers, pistols, machine pistols and machine guns”), to be exported after being repaired or replaced, if it has been imported from “a Government which sent them to the United Kingdom for the purpose of repair/replacement under warranty”. If the weaponry is being repaired or replaced for a private individual or company, it must have been originally exported from the UK under a UK export licence within the last five years; this requirement does not apply to equipment being repaired for government and NATO users. See <http://www.dti.gov.uk/files/file39779.pdf> (last accessed 22 December 2007).

²¹ The Technology for Military Goods OGEL (24 April 2007) authorises the export of goods within licensing category ML22 (specific information necessary for the “development”, “production” or “use” of any item on the UK Military List, including “blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions”) to a range of countries including The Technology for Military Goods OGEL (24 April 2007) authorises the export of goods within licensing category ML22 (specific information necessary for the “development”, “production” or “use” of any item on the UK Military List, including “blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions”) to a range of countries including Burkina Faso, Congo and Guinea. There are exclusions for some countries (including these three countries) for technology relating to bomb and missile detonators, missiles capable of travelling over 300km, some explosives, certain advanced radar and navigation systems, radar reflective paints and coatings, certain high velocity kinetic energy weapons systems, anti-personnel landmines, unmanned aerial vehicles, MANPADs and certain policing equipment prohibited for export due to its use in torture. See <http://www.berr.gov.uk/files/file39778.pdf> (last accessed 22 December 2007). There are exclusions for some countries (including Chad) for technology relating to bomb and missile detonators, missiles capable of travelling over 300km, some explosives, certain advanced radar and navigation systems, radar reflective paints and coatings, certain high velocity kinetic energy weapons systems, anti-personnel landmines, unmanned aerial vehicles, MANPADs and certain policing equipment prohibited for export due to its use in torture. See <http://www.berr.gov.uk/files/file39778.pdf> (last accessed 22 December 2007).

²² Letter from ECO to UKWG researchers, 8 October 2007.

²³ Message posted on ECO website, July 2007: “Due to absence through illness of a key member of staff, confirmation letters for OGEL registrations have fallen behind expected timescales. If you have sent a letter or fax to us to register for an OGEL, you do not have to wait for the acknowledgement letter to start using the licence.” See <http://www.dti.gov.uk/europeandtrade/strategic-export-control/help-advice/page40424.html> (last accessed 6 December 2007).

²⁴ OGEL registrant figures taken from letter from John Doddrell (Director, ECO) to UKWG researchers, 18 January 2008.

²⁵ Quadripartite Committee First Report 2006–7, Table 4, drawn from written evidence provided by the FCO. We have been unable to determine why these figures are so much greater than the figure for 2006 provided by ECO to this submission’s authors. One possibility is that some breaches were not reported to the authors because they were uncovered by methods other than ECO compliance visits.

²⁶ For more on the need for control over OGL users, see “Submission on the review of the UK Export Control Act to the Committees on Arms Export Controls from Amnesty International UK, the Omega Research Foundation and Saferworld”, March 2008, paragraphs 20–27. This details the stated intention of a UK small arms trader to continue to use the OGTCL even after being convicted of illegal arms trafficking.

Inadequate monitoring of exports under OGLs

33. In its consideration of OGELs during the 2006–07 session, the Quadripartite Committee concluded that it had “found no evidence that the open general licences were being abused or that they provided a conduit for the export or transshipment of goods into the wrong hands.”²⁷ Given the lack of systematic oversight of exports taking place under OGLs, such lack of evidence or detections of illegal use is unsurprising. The architecture of ECO’s and HMRC’s data systems appears to mean that neither ECO nor HMRC is able to produce systematic data regarding exports under particular OGLs. When asked by UKWG researchers for details of shipments under nine OGELs, HMRC explained that “retrieving accurate information from CHIEF [the national Customs database into which export shipments are logged] on individual OGELs is not practically possible”, since shipments are not categorised in the Customs database according to the specific OGEL used.²⁸ Thus in order to scrutinise shipments under a particular OGL to ascertain whether these shipments have complied with the terms of that licence, the original customs documentation which accompanied each shipment would have to be examined manually. This would be an enormous task, given that in December 2007 HMRC reported that it “hold[s] more than 8,000 Customs export declarations for the last 6 months alone, relating to OGELs”.²⁹

34. It is therefore difficult to see how HMRC or ECO can determine whether exports under OGLs comply with the terms of those licences, unless unauthorised exports are detected by an ECO compliance check, well after the export has taken place. Even this limited oversight has detected a steadily increasing number of breaches of OGLs since 2004: by 2006 over one in ten checks on exporters found OGELs being used incorrectly.³⁰

- HMRC’s CHIEF database should categorise shipments authorised by OGLs according to the particular licence used. Shipments authorised by OGLs and recorded on CHIEF should be systematically checked according to the terms of the licence used.

UK Government and cluster munitions

35. A new landmark international treaty to ban Cluster Bombs will be agreed in Dublin in May 2008. The UKWG welcomes the UK Government’s support for the Oslo process, but remains concerned that it is part of a small grouping still pushing for certain exemptions which would seriously weaken the treaty. The Oslo process was initiated in February 2007 by a group of 46 governments frustrated and disillusioned with the failure of the UN Convention on Certain Conventional Weapons (CCW) process to deliver any meaningful progress on cluster bombs, despite several years of negotiations. The Wellington Declaration, which provides the draft treaty text to be negotiated and agreed at the Dublin conference, was signed by 80 governments on 22 February 2008.

36. The most contentious issues to be taken to the Dublin conference include possible exemptions to the ban for some types of cluster munitions, possible transition periods in which cluster munitions could still be used after being banned, and the use of cluster munitions in joint military operations by states that are not party to the future treaty. The responsibility of countries with regard to clearing up the cluster munitions they have used in the past is also at issue. The UK Government is part of a small group of states that support these limitations.

37. In particular, the UK Government maintains that two types of cluster munitions it holds in stock, and one type it has recently placed orders to procure, should be exempted from any international treaty prohibition on cluster munitions negotiated in Dublin.

- The munitions the UK currently holds in stock should not be exempted from an eventual cluster bomb treaty. The case has not yet been made as to why the UK’s recently ordered munitions should be exempted.

38. The details of these munitions are as follows:

CRV7 rockets with M261 warheads containing M73 submunitions

39. In 2007 the Government sought to reclassify these as “not cluster munitions” even though they had been categorised as cluster munitions previously.³¹ The Government argued for this reclassification, and still argues for an exemption from prohibition, on the basis that each warhead contains only nine submunitions.³²

²⁷ Ibid., para. 183.

²⁸ Letter from HMRC to UKWG researchers, 5 December 2007: “In order to retrieve accurate and complete information HMRC would, as previously explained, have to manually check information against the documentation that accompanied each customs declaration.”

²⁹ Ibid.

³⁰ Letter from John Doddrell (Director, ECO), 12 November 2007. In 2004, 5% of compliance visits to OGEL users found problems with OGEL usage. This figure rose to 8% in 2005 and to 11% in 2006.

³¹ Compare HoC Hansard, 16 Jul 2007 (Defence: Bombs) with HoC *Hansard*, 8 Nov 2006 (Defence: Cluster munitions).

³² HoC *Hansard*, 25 July 2007 (Defence: Bombs).

40. However, these rockets are fired from pods of 19 rockets, and four such pods are typically mounted onto an attack helicopter/providing a capacity for 684 submunitions.³³ The UK argues that, in practice, such a deployment is not done/this provides little reassurance as the basis for an exemption to an international treaty.

41. Even under controlled testing environments, the M73 has an unacceptably high failure rate of approximately 6%.³⁴ Evidence from numerous conflicts such as Afghanistan, Iraq, Kosovo and Lebanon clearly demonstrates that under actual battle conditions, cluster bomb failure rates are significantly higher.

42. The UK has neither made a detailed case for the specific military utility of these weapons nor explained why other unitary CRV7 rocket warheads might not be used to provide the same capability. The UK has never used these munitions in combat.

43. An exemption for a cluster munition with 10 or fewer submunitions would be a major treaty loophole. It would allow the development and continued use of weapons that have exactly the same problematic effects as have been associated with cluster munitions for decades. In a short-term effort to secure an exemption for one specific weapon, the UK seems prepared to create loopholes that will result in long-term shortcomings for an international treaty.

L20A1 artillery shells with M85 submunitions

44. The UK continues to claim that these submunitions should be exempted from prohibition because their “self-destruct” (SD) mechanism means they do not cause significant post-conflict contamination. However, M85 submunitions with SD were used by Israel in Lebanon in 2006 and have caused contamination and subsequent casualties. Analysis by the head of the UN mine action programme in southern Lebanon, by NGOs, by government defence research bodies and independent ordnance analysts has all concluded that the performance of M85 with SD in Lebanon demonstrates that the presence of SD mechanisms does not provide an adequate basis for civilian protection.³⁵

Ballistic Sensor Fused Munitions

45. The UK has recently placed orders for Ballistic Sensor Fused Munitions. These weapons have not yet been used in combat and little data on them is publicly available. If the UK believes these weapons will not cause unacceptable civilian harm they should make a case to this effect within the Dublin negotiations.

- The UK Government should sign the treaty to be agreed in May 2008 to ban cluster bombs. The Government should commit to banning all existing stocks of cluster munitions, including its current stocks of M85 and CRV-7 rockets armed with M261 warheads. The UK should join the majority of governments within this process and not seek other limitations to the treaty that would only serve to weaken it and create loopholes for the future.

March 2008

Memorandum from Amnesty International UK, the Omega Research Foundation and Saferworld

INTRODUCTION

1. The following submission from Amnesty International, the Omega Research Foundation and Saferworld to the Committees on Arms Export Controls (CAEC) focuses on the ongoing review of the Export Control Act (ECA). In this submission we address the issue of military, security and police end-use controls raised in the recent 2007 Review of export controls: Government’s initial response to the public consultation (Initial Response). There are, however, other issues discussed in the Initial Response not addressed in this submission that its authors are pursuing in other contexts, eg arms brokering, controlling subsidiaries and licensed production agreements.

2. The submission then looks at two other issues that the authors believe the Government should be addressing as part of this review process, but which the Government regards as outside its Terms of Reference. These are:

- Enforcement.
- Post-export controls.

3. The submission should be read in conjunction with the March 2008 submission from the wider UK Working Group on Arms, which also focuses on the review of the ECA as well as other issues.

³³ M73 submunitions do not contain any self-destruct mechanism.

³⁴ HoC *Hansard*, 16 July 2007 (Defence: Bombs).

³⁵ See “Humanitarian, military, technical and legal challenges of cluster munitions”, report of experts meeting, International Committee of the Red Cross (ICRC), 18–20 April 2007; and “M85: an analysis of reliability” NPA, Colin King Associates & Norwegian Defence Research Institute, 2007.

MILITARY, SECURITY AND POLICE END-USE CONTROLS AND THE GOVERNMENT'S INITIAL RESPONSE

4. While a system of controlling goods contained within specific military and dual-use lists is the cornerstone of most transfer control systems, Amnesty International, the Omega Research Foundation and Saferworld believe that the ultimate purpose of transfer controls should be to prevent certain types of activity or consequences, rather than simply to control particular technologies. Given the trend toward globalisation and the increasing importance of dual-use and civilian off-the-shelf (COTS) goods in the development and manufacture of modern weapons systems, there is a clear risk that over time more and more goods critical to the operation of these systems will bypass the licensing system on the grounds that they do not fall within the definitions or specification of the control lists. In such circumstances, end-use catch-all controls can help avoid loopholes whereby items not included on control lists are beyond regulatory reach.

5. Our organisations have provided examples in recent years where uncontrolled UK-made parts and components for military and security equipment/and in some cases finished goods/have been used in regions of instability and by human rights abusers. The components and systems in question are not generic, exchangeable nuts and bolts, but specialised electronic subsystems; complex mechanical parts; and even complete vehicles and surveillance systems, including:

- Land Rover vehicles and knocked-down vehicle kits used as internal security vehicles in Sudan,³⁶ and as military vehicles in the Andijan massacre in Uzbekistan.³⁷
- Electronic processing units vital to US-made Predator UAVs, used in extra-judicial executions in Pakistan.³⁸

6. While we recognise the challenges of extending controls in the area, some licensing authorities have incorporated elements of military end-use into their regulatory regimes.

7. For example, Germany has developed the “Einzeleingriff” or “single action” catch-all clause, whereby the transfer of an unlisted item can in principle be refused. The Einzeleingriff has been applied to non-listed communication equipment to a country under UN arms embargo, where it was believed the equipment would be used for internal repression. As the equipment had no military end-use (ie no use in the development of or incorporation into weapons), the catch-all clause under the Dual-Use Regulation did not apply. This approach has considerable advantage as it does not establish an obligatory licensing requirement for industry, while at the same time it allows the authorities to prevent suspicious transfers in specific cases.

8. In Belgium, a military end-use catch-all clause has been included in the transfer controls regime of the Flanders region. This catch-all clause provides a licensing requirement for the export or transit of equipment intended to support military actions. This requirement includes related components, software, technology, machinery etc. One such case includes the integration of visualisation screens, which are non-controlled items, to be exported for integration into controlled items such as fighter jets and military vehicles. Other types of goods which require a licence under the catch-all include airport lighting systems, software and other non-licensable components for vehicles, planes and ships.

- *The Government should ensure it has sufficient powers under the ECA to control any non-listed item it believes poses relevant serious concerns around military, security or police end-use.*

9. We are pleased that the ongoing ECA review has been extended to allow further discussion regarding these areas. In this submission, we identify a range of options that could be contemplated as part of this review. These should be regarded as illustrative of the types of changes that should be considered, and not as an exhaustive list.

10. At the most comprehensive level, components intended for controlled goods should themselves be controlled, regardless of the intrinsic military or security specifications of the components themselves. Indeed, it is already the clear intention of the Military List to control unspecified components for controlled goods, under the “components therefor” sections of each Military List category. One way of achieving end-use-type provisions would be to simply amend the Military List and remove the phrase “specially designed or adapted”. As a starting point, end-use provisions could be applied to all components destined for items within specific Military List categories where proliferation concerns were most acute, such as small arms and light weapons, ammunition, other munitions, artillery systems, rockets and missiles, attack aircraft and helicopters and military vehicles.

- The Government should consider whether any non-controlled component destined for incorporation into items specified on the Military List should itself require a licence, if:
 - the exporter has been informed by a competent authority that such goods are or may be intended, in their entirety or in part, for a controlled item on the Military List; or
 - the exporter has knowledge, or grounds for suspecting, that such goods are or may be intended, in their entirety or in part, to be used for a controlled item on the Military List, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

³⁶ “Sudan: Arms continuing to fuel serious human rights violations in Darfur”, Amnesty International, (AFR 54/019/2007).

³⁷ Memorandum from the UK Working Group on Arms to Quadripartite Committee, 2005–06 session.

³⁸ Memorandum from the UK Working Group on Arms to Quadripartite Committee, 2006–07 session.

11. Amnesty International, the Omega Research Foundation and Saferworld recognise that such comprehensive controls would place new burdens on industry. We are keen to work with Government and industry to ensure these burdens remain reasonable, perhaps through new OGLs for non-sensitive destinations, which could cover some generic electronic and mechanical components.

12. As an interim step, where there has been specific evidence of the use of non-listed items in the commission of human rights violations, then these items should be brought within the licensing system at the earliest opportunity. For example there have been frequent reports of military utility and transport vehicles which are not in themselves of a licensable specification (although are often subsequently adapted for military use with armouring, gun mounts and other military fittings), but which have nevertheless played a central support and logistics role for forces involved in serious and persistent human rights violations.³⁹

- The Government should consider amending the ML6 category of the Military List to cover “utility and transport vehicles supplied for military, security or police use”, including those supplied as complete items or in kit form; and the ML10 category to cover “utility and transport aircraft supplied for military, security or police use”.⁴⁰

13. Specific catch-all controls should at a minimum be applied to components and technology for all items currently restricted or prohibited. End-use controls already operate in relation to items or technology that “are or may be intended ... for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.”⁴¹ According to the Initial Response, end-use controls will be extended to cover items restricted due to their use for torture. In light of the Government’s intention to move certain types of cluster munitions into a ‘restricted’ category essentially subject to an export ban, similar catch-all end-use controls should be placed on any components and technologies known by the exporter or the government to be intended for the production, use or delivery of such cluster munitions.

- The Government should consider applying catch-all end-use controls to components and technology for all prohibited/specially restricted goods, including cluster bombs and their delivery systems

14. The EC Dual-Use Regulation (1334/2000) already provides for controls on unlisted items, intended for export to an embargoed destination, which the exporter has been informed are intended for incorporation into a controlled item. Non-controlled items intended for use by non-military security or police forces are currently excluded from this control. For example, Land Rover vehicles were legally supplied during 2006 to the Sudanese Ministry of Interior, whose police forces had reportedly carried out previous armed attacks in Darfur using similar utility vehicles.⁴² Under the current regime, policing equipment such as handcuffs and non-controlled police surveillance equipment could likewise be exported freely from the UK to destinations such as Myanmar or Zimbabwe. Such transfers are in many cases as potentially damaging to security and human rights as those for strictly “military” use.

- The Government should consider expanding the “embargoed destinations” catch-all to cover unlisted items which the exporter has been informed are intended for a military, security or police end-use

OTHER ISSUES FOR CONSIDERATION AS PART OF THE ECA REVIEW

15. In addition to the issues addressed in the Initial Response, Amnesty International, the Omega Research Foundation and Saferworld believe the Government should be using the opportunity of the ECA review process to undertake a more comprehensive review of the UK transfer control regime. Other issues that we believe merit further examination include enforcement and post-export controls.

ENFORCEMENT

16. Amnesty International, the Omega Research Foundation and Saferworld have longstanding concerns that insufficient resources are being allocated to implementing transfer controls, thus undermining the ability of the controls to be properly enforced. There are also concerns about lack of action to enforce controls even where credible evidence comes to light that companies or individuals are in breach.

³⁹ For example, Chinese “Dong Feng” and “First Automobile Works” trucks were widely used by Myanmar security forces on the streets of Yangon in September 2007 to move security forces around the city and detain protestors (“Myanmar needs a comprehensive international arms embargo”, Amnesty International (ASA 16/014/2007), 28 September 2007), while Antonov transport aircraft were used in bombing raids in southern Sudan during 2007 (“Sudan: New photographs show further breach of UN arms embargo on Darfur”, Amnesty International Press Release, 24 August 2007).

⁴⁰ As evidence comes to light, other items, for example such as specialist surveillance equipment with a military, security or police end-use, should also be added to the appropriate lists.

⁴¹ Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology (the Dual-Use Regulation), Article 4.1, 22 June 2000, <http://www.berr.gov.uk/files/file8989.pdf>.

⁴² “Sudan: Arms continuing to fuel serious human rights violations in Darfur”, Amnesty International, (AFR 54/019/2007).

17. To our knowledge there have been nine reported prosecutions since 2000 under the ECA; virtually all have been for relatively minor (and on occasion procedural) offences, and subject to relatively small penalties.⁴³ This is in contrast to the 504 detected breaches of arms export controls (export seizures and unlicensed exports referred to HMRC by DTI/BERR Compliance Officers) reported in answer to a Parliamentary Question in March 2006.⁴⁴

Willingness to investigate, prosecute and penalise breaches of the ECA

18. In several cases authorities have failed to launch or pursue prosecutions when there would appear to be strong grounds for doing so. Previous submissions made by the UKWG⁴⁵ to the Quadripartite Committee have detailed cases involving UK companies in the brokering of arms to embargoed Sudan; the transportation of arms to the eastern Democratic Republic of Congo; and companies breaching export controls by promoting electro-shock weaponry at UK arms and security exhibitions and on websites, or offering to supply banned items. As far as Amnesty International, the Omega Research Foundation or Saferworld are aware, none of these companies or individuals has been prosecuted under the ECA.⁴⁶

19. This apparent reluctance to investigate breaches of export controls and to impose sufficiently-detering penalties contrasts with the approach in the USA, where for example the ITT Corporation was criminally convicted and fined US\$100 million for illegally sending classified night-vision technology used in military operations to China and Singapore and setting up a front company to escape detection.⁴⁷ By contrast, in 2007 a UK company, Avocado Research Chemicals Ltd, was found to have unlawfully exported two controlled chemicals/100g of 2-diisopropylaminoethyl chloride hydrochloride, a possible precursor to VX gas, and 10g of hafnium, which can be used in the production of nuclear fuel rods/to a broker in Egypt (a non-signatory to the Chemical Weapons Convention). The company was fined just £600 (plus £100 costs).⁴⁸

20. To date, the only significant custodial sentence imposed has been through the successful prosecution of John Knight of Endeavour Resources Ltd, who in November 2007 was sentenced to four years in prison for the illegal sale of 130 MPT 9 machine guns from Iran to Kuwait without the necessary trade control licence.⁴⁹ A licence for the deal was refused on two separate occasions by the ECO on the basis of concerns over the authenticity of the stated end-user and the likely subsequent risk of illicit diversion. As the first successful enforcement under the 2004 trade controls, this is an extremely significant and welcome development. However, evidence emerging from the court case hearings raises serious concerns about the effectiveness of the licensing and enforcement regime, and willingness of the DTI/BERR to pursue clear breaches of the ECA.

21. Firstly, it emerged that Mr Knight was registered to use an OGCTL in 2004, and intended to continue using it after his prosecution:

Mr Shay (*defence lawyer in Regina vs John Knight, Blackfriars Crown Court, 23 Nov 2007*): “He [John Knight] was in possession of an open, general licence. That licence permitted him to broker deals between certain countries . . . He is at the moment still, by the way, in possession of that open licence. He wishes to continue in his career”. (emphasis added)⁵⁰

22. Evidence provided to the Quadripartite Committee in 2007 confirms that companies are not “deregistered” from OGLs even if found to be in breach of export controls⁵¹, and indeed there appears to be no provision within the terms of OGLs for barring users in this way. Despite evidence being presented that Mr Knight had attempted to supply military equipment to embargoed Sudan without authorisation in 2004 (see below, paragraphs 24–25), he was able to register to use the OGCTL. And despite being convicted and imprisoned in 2007 for unauthorised small arms trafficking, including the wilful abuse of the licensing system and providing false and fraudulent documents to HMRC, there is no power to remove or revoke the eligibility of Mr Knight (or other similar unscrupulous traders) from using such open licences.

⁴³ UK Strategic Export Controls Annual Report 2005; UK Strategic Export Controls Annual Report 2006; “Fine and compound penalty for exporting without a licence”, BERR Press Release, 27 July 2007; Regina vs John Knight at Blackfriars Crown Court, 23 November 2007. In addition to these nine successful prosecutions, there have also reportedly been compound penalties levied in lieu of criminal proceedings on three companies for export control breaches.

⁴⁴ Parliamentary Question posed by John Bercow MP, Hansard, 22 March 2006, Column 427W.

⁴⁵ The UK Working Group on Arms comprises Amnesty International UK, the Omega Research Foundation, Oxfam GB and Saferworld.

⁴⁶ In June 2007 one of these companies was found guilty of illegally possessing a weapon classified under Section 5 of the Firearms Act 1968 but was not prosecuted for trade control offences, despite video and photographic evidence of such an offence being provided to the West Midlands police. See “Salesman’s torch plan to smuggle stun guns: exclusive”, *Sunday Mercury* (UK), 10 June 2007.

⁴⁷ “Asia, DOJ fines ITT \$100M for illegal exports”, *AFX International Focus*, 27 March 2007, as cited by CNN Money.com.

⁴⁸ Government News Network, 27 July 2007.

⁴⁹ ‘Arms dealer jailed for 4 years’, ECO website, 26 November 2007, <http://www.berr.gov.uk/europeandtrade/strategic-export-control/licensing-rating/licences/ogels/trade-controls/page42597.html>.

⁵⁰ 15 Court transcript proceedings, Regina vs John Knight before Judge Powles, Blackfriars Court, 23 November 2007.

⁵¹ Further memorandum from the Foreign and Commonwealth Office to the Quadripartite Committee, February 2007.

- No OGLs should be available for use by entities found to be in serious breach of the terms of such licences, or found guilty of arms export offences. OGLs should require authorisation by ECO staff prior to use. Such authorisation should not be automatic: issues such as registrants' prior export record should be considered prior to their registration. If they are found to have misused open or individual licences in the past, they should be required to apply for individual licences.

23. Secondly, documentary evidence has previously been presented by NGOs, both privately to the Government and publicly to the Quadripartite Committee, on undesirable activities by Mr Knight. For example, a UK newspaper reported in September 2004 that it had obtained documents showing that Mr Knight had been involved in negotiations for arms deals to supply £2.25 million worth of arms to Sudan.⁵² Sudan has been subject to an arms embargo since 1994. The documents, which have been seen by Amnesty International and other researchers, were made available to the Government in November 2004.

24. Documents included a series of End-Use Certificates (EUCs) dated and stamped after March 2004, when the new trade controls came into effect. EUCs were ostensibly issued by Sudan's Military Industry Corporation to Knight's company Endeavour Resources UK Ltd to negotiate for the supply of multiple rocket launchers, main battle tanks, armoured personnel carriers, armoured fighting vehicles, field guns, and pistols from factories based in the Ukraine and Brazil. In answers to parliamentary questions, despite the existence of such strong documentary evidence, the Government stated that it believed there was insufficient evidence to investigate the matter further. While denying supplying military equipment, Mr Knight admitted to a Sunday newspaper to supplying Antonov transport planes⁵³ and non-licensable items, and to conducting negotiations over possible arms transfers to the Sudan government: When questioned why he was prepared to deal with military contracts with Sudan when it was clear it was not a reputable regime, Mr Knight is reported to have said:

“Nor was Hitler, but people were supplying him with stuff. He was the biggest tyrant of the lot . . . I was involved in negotiations with them. . . . What you've got to remember is that, until the law was introduced, it was not illegal . . .”⁵⁴

25. One might assume that Mr Knight's clear intention to trade with an embargoed destination (Sudan) would raise serious doubts about his suitability as a reputable arms broker. Yet according to his defence lawyer, the ECO continued to award trade control licences to Mr Knight, at least one of which is identifiable in the Government's annual reports on Strategic Export Controls. Details of these licences also emerged during the recent court case. According to Mr Knight's defence team, in 2005 he was awarded one licence to broker military equipment from Iran to Botswana⁵⁵ and another to broker SALW from Brazil to Kuwait (despite Brazil having been one of the sources of weapons listed on Mr Knight's Sudanese EUCs).⁵⁶

- Given previous documentary evidence and concerns about Mr Knight's trading relationship with Brazil, Ukraine and Sudan, and in light of evidence available to the HMRC prosecution team surrounding the trading relationships with Mr Knight's Kuwait based agent, Al Boury, and his Iranian supplier Tusa Overseas Ltd, Amnesty International, the Omega Research Foundation and Saferworld recommend that the CAEC seek to analyse these licences, including the equipment contained within them and the specified end-users, and to investigate the circumstances by which they were granted.

26. Finally, it was also revealed that the ECO were aware that Mr Knight had been in breach of export controls long before being arrested for the Iran-Kuwait deal, yet declined for some time to take action. It should be stressed again that Mr Knight had applied for trade control licences on two occasions. It was revealed at the first application that Mr Knight had already started to negotiate the deal before the licence was granted, notwithstanding the fact that under the trade control legislation of 2004 a licence is required in order to be permitted to undertake such negotiations. Internal email correspondence from the ECO at the time, cited in Mr Knight's trial, stated that:

“We appreciate that there may have been a breach of the controls and that arrangements have progressed during the application process, but would not see this as a cause for action on its own.”⁵⁷

⁵² “Briton supplies arms to Sudan”, *Sunday Times*, 5 September 2004; and “Sudan Arming the perpetrators of grave abuses in Darfur”, Amnesty International Report, November 2004.

⁵³ It is possible that these planes are “specially modified for military use”, and thus constituted controlled goods whose transfer also required a trade control licence. The relevant EUCs list An-26 transport aircraft, which have “provision for chaff/flare dispensers pylon-mounted on each side of lower fuselage below wings” and “provision for bomb rack on fuselage below each wingroot trailing-edge”, according to the standard reference work, Jane's *All the World's Aircraft* (1998–9, p. 490). It is unclear whether this capacity is the result of a mechanical modification or the aircraft reportedly provided by Mr Knight were thus modified.

⁵⁴ “British arms dealer defends attempts to supply Sudan”, Gethin Chamberlain, *The Scotsman*, 18 November 2004, <http://www.scotsman.com/world/British-arms-dealer-defends-attempts.2581092.jp>.

⁵⁵ UK Strategic Exports Report, 4th Quarter 2005, lists a SITCL issued for “Small Arms Ammunition” from Iran to Botswana, the only such licence reported since 2004.

⁵⁶ Court transcript proceedings, *Regina vs John Knight* before Judge Powles, Blackfriars Court, 23 November 2007.

⁵⁷ *Ibid.*

27. Thus despite evidence that a known control offence had been committed by a trader previously known to have negotiated deals with an embargoed country, a permissive attitude towards such transgressions appears to have prevailed within the ECO at that time. Given the seriousness of the subsequent trafficking for which he was imprisoned, and the published reports about Mr Knight's previous dealings with Sudan, it seems extraordinary that the ECO chose to let this pass unchallenged.

Resources for enforcement

28. The low ratio of prosecutions to detected breaches of the ECA strongly indicates the need for more effective resourcing/both institutional and legal/to enforce UK transfer controls. In particular, it would seem there is a need for greater integration of licensing evidence with the investigation of export control breaches. In the John Knight case, ECO officers continued to issue a broker with trade control licences to supply arms from a country (Brazil) from which he had previously attempted to supply an embargoed regime (Sudan), and apparently overlooked evidence arising from Knight's final licence application of a possible breach of the ECA. In other areas there has been some benefit from the creation of single compliance agencies, such as the Financial Services Authority, the Serious Fraud Office and the recently created Serious and Organised Crime Agency.

- The Government should initiate a viability study into the creation of a single regulatory agency, drawing together the personnel, experience and authority of the ECO and the controlled-goods section of HMRC to create a unified organisation for the compliance and enforcement of export controls. This would assist in the implementation, detection, investigation and prosecution of offences under the ECA.

CIVIL PENALTIES

29. One of the main difficulties for a successful criminal prosecution is that the burden of proof is extremely high; the prosecutor is required to disprove all possible defences. In cases involving exports of controlled goods, given the opacity and complexity of many such deals, establishing the evidence sufficient to meet this burden of proof is often very difficult, especially when offences are committed overseas or involve non-UK actors.

30. In 2006 the Quadripartite Committee recommended that the ECA review “examine whether the evidential tests and requirements in the export control legislation are impeding the prosecution of breaches of the controls on strategic exports and whether the Revenue and Customs departments need greater powers to compel questions to be answered and documents produced when investigating alleged breaches of strategic export controls.”⁵⁸

31. There is nothing in the Initial Response to suggest the Government has seriously considered this recommendation. Nevertheless, we support the Committee in its stance on this issue and would further urge that the review process consider the possibility of amending section 7 of the ECA to include civil penalties as well as the current criminal sanctions. Civil penalties would create a lesser test for prosecutors and therefore enable a greater number of breaches to be successfully prosecuted, creating stronger deterrent against transgressing the export control regime. While civil penalties may not provide scope for imprisonment, they would enable the courts to levy stringent fines on corporations and individuals who breach the export regulations. This would create an incentive for compliance from those who would stand to lose financially and would generate a more cooperative stance from companies under investigation.

POST-EXPORT CONTROL

32. The UK licensing regime is premised on concentrating resources at the licensing assessment stage, rather than on tracking delivery or attempting to apply post-export controls. Amnesty International, the Omega Research Foundation and Saferworld support the use of a rigorous pre-licensing process, but believe that in addition more should be done during the later stages of the arms transfer life-cycle in order to minimise the risk that UK-sourced controlled goods will be misused or diverted and to guarantee that the licensing authority is acting with due diligence. In particular, we urge the Government to include a “no-export without permission” condition in end-use certifications and/or transfer licences, and to reserve the right to carry out end-use monitoring where concerns arise (so as to maximise the impact of any “no re-export” conditions).

33. EU NGOs have prepared a report which examines end-use and post-export controls in use in EU Member States.⁵⁹ While illustrative rather than exhaustive, this report identifies Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Poland, Romania, Spain and Sweden as all using re-export controls to differing degrees. The report reveals that practice in this area varies across the EU, but all these states listed above go further in this area than does the UK, for example by requiring delivery verification and by making licences contingent upon a “no re-export without permission” commitment from the recipient.

⁵⁸ Quad Committee Joint Report 2005–06, recommendation 50.

⁵⁹ “Submission to COARM on harmonisation among EU Member States on end-use and post-export controls”, EU NGOs, forthcoming.

34. Provision for end-use monitoring by EU Member States is more limited, although Sweden includes a clause in all licences whereby the recipient commits to make facilities available for on-site end-use inspections by Swedish authorities.⁶⁰ The US includes significant provision for post-export monitoring within its end-use control systems, the most well known of which is the State Department ‘Blue Lantern’ programme.⁶¹

35. While we recommend that the UK transfer control regime should contain all these elements, this submission concentrates on the issue of re-export conditionality.

36. We are not suggesting that diversion or misuse of UK-sourced equipment or technology is an everyday occurrence, however previous submissions and reports from the UKWG and its members have highlighted problematic cases.⁶² And recent examples of transfers and potential transfers of military equipment from India to Myanmar can be used to directly consider the impact of post-export conditionality.

37. In February 2006 it was reported by *The Hindu* that the Indian Government was in negotiations to sell BN-2 “Defender” Islander maritime-patrol aircraft, originally supplied by the UK, to Myanmar. It is understood that the UK Government made representations to the Indian Government opposing the transfer but, according to *The Hindu*, the Indian Defence Ministry was unmoved in the absence of a resale clause in the contract. An unnamed senior naval officer was quoted as saying “we should tell [the UK] where to get off.”⁶³ According to *Janes Defence Weekly*, a second set of two aircraft have since been transferred.⁶⁴ In March 2007, when questioned by the Quadripartite Committee about the first transfer, the then Foreign Secretary, Margaret Beckett, admitted that with the benefit of hindsight, a ban on re-export “might have been desirable” and that “if a similar export took place today one would consider” putting such a clause in place.⁶⁵

38. By way of contrast, EU NGOs revealed in July 2007 that India was, according to newspaper reports, planning to transfer a type of military helicopter (the Advanced Light Helicopter/ALH) to Myanmar. Variants of the ALH contained technology, parts or munitions supplied from five EU Member States (Belgium, France, Germany, Italy and the UK) and by a foreign subsidiary of a Swedish company.⁶⁶ The six EU states involved all placed different levels of restrictions on re-export. These ranged from Italy, which as a matter of routine requires end-use certificates to include a contractual obligation by the purchasing country not to re-export military goods without the prior authorisation of the Italian authorities, to the UK, with no restrictions.

39. As a consequence of the NGO report, EU Member States made representations to the Indian Government opposing any such transfers. The contrast with the case of the Defender aircraft is an interesting one, as the Indian Government has since given assurances that the ALH is not to be transferred to Myanmar. There is little doubt that the “no re-export without permission” conditions used by a number of Member States put them in a stronger position in discussions with India.

40. Where evidence comes to light that recipients have refused to honour their end-use obligations, it is critical that the UK tightens its transfer policies to those recipients. This would involve refusing transfers to the same end-user (or, depending on circumstances, involving the same intermediaries) and revocation of existing licences until such time as the UK Government were confident that the misuse or diversion would not be repeated.

41. Another example of the importance of post-export controls concerns Turkey and Sudan. It was reported in mid-2007 and again in January 2008 that a Turkish military delegation visiting Khartoum held talks with the Sudanese army regarding future military cooperation between the two states.⁶⁷ The talks allegedly addressed cooperation between the two countries in areas of military industrialisation, transfer of military technology, training and the provision of military services.⁶⁸ Sudan has been under an EU embargo since 1994. Given the significant relationship between some EU Member States and Turkey, in terms not

⁶⁰ Sweden’s National Report to the UN ODA on the implementation of the UN PoA, 2005, <http://disarmament.un.org/cab/salw-nationalreports.html>. Although such checks are rare (due to capacity constraints), post-delivery checks have been carried out by Sweden in, for example, Singapore and the Baltic states (Saferworld correspondence with Swedish arms export control expert, January 2008).

⁶¹ The UKWG has included information on “Blue Lantern” in previous submissions (see, for example, “Submission to the UK Quadripartite Select Committee”, UK Working Group on Arms, January 2006, p. 8, <http://www.saferworld.org.uk/images/pubdocs/060117-UKWG-QSC-Submission.doc>). For more on this programme, see “Submission to COARM on harmonisation among EU Member States on end-use and post-export controls”, EU NGOs, pp. 12–13, forthcoming.

⁶² See, for example, the “change options not specifically identified” section of the UKWG submission to the UK Government 2007 review of the Export Control Act, 28 September 2007, <http://www.berr.gov.uk/files/file42914.doc>.

⁶³ “Curbs apply only to aircraft spares: UK”, Sandeep Dikshit, *The Hindu*, 04 February 2006, <http://www.hindu.com/2006/02/04/stories/2006020403311300.htm>.

⁶⁴ “Indian arms sales to Myanmar remain under scrutiny”, Rahul Bedi, *Janes Defence Weekly*, 16 January 2008, http://www.janes.com/news/security/capabilities/jdw/jdw080111_1_n.shtml.

⁶⁵ Quadripartite Select Committee oral evidence from Margaret Beckett, 15 March 2007, Q. 232, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmquad/117/117.pdf>.

⁶⁶ “Indian helicopters for Myanmar: making a mockery of embargoes?”, a report by EU NGOs, July 2007, http://www.saferworld.org.uk/publications.php/270/indian_helicopters_for_myanmar_.

⁶⁷ EU Council Decision 94/165/CFSP.

⁶⁸ “Sudan, Turkey to discuss ways to boost military cooperation”, *Sudan Tribune*, 11 January 2008.

only of arms transfers but also arms-production co-operation, these reports underscore the need to ensure that Member States do all they can to control the downstream supply of items produced elsewhere as a result of the transfer from the EU of controlled goods and production capacity.

42. Increasing globalisation, particularly in the context of an emerging tier of sophisticated arms producers that do not necessarily enjoy the transfer control culture shared by “North Western” states, gives greater urgency to the need to more effectively address post-transfer issues. Others do this routinely, and a then Foreign Secretary has admitted its potential utility. Given the increasingly important role that the UK plays in the supply of technology, components and subsystems for third-country production, it is unclear why the UK Government is so reluctant to address this.

The Government should:

- Introduce a system of post-export controls, including more specific contractual limitations on end-use and re-export, and provision for end-use monitoring
- Work with others to develop a forgery-proof internationally standardised end-user and delivery-verification certification process
- Provide details to the CAEC regarding the number of end-user checks carried out by overseas posts each year, the number of physical post-export checks undertaken and the reasons for them

March 2008

Memorandum from the Secretary of State for Business, Enterprise and Regulatory Reform

AMENDMENT TO THE MANAGING THE RISKS GUIDANCE FOR ASSESSING EXPORT LICENCE APPLICATION

As you will be aware, we currently assess Export Licence Applications (ELAs) for normally non-controlled goods under the Managing the Risks Guidance which was drawn up in 2002.

Under the guidance, Departments involved in the export licensing process consider a range of questions including whether the end-use country has a WMD programme of concern; whether the goods are of high, medium or low utility in relation to such a programme; whether the goods are relevant to the identified procurement requirements of such a programme; whether the stated end-use is credible; and whether the end-user, exporter, or third party are known to be of concern.

The overall level of risk in relation to a case is then assessed in the round bearing in mind these and other relevant factors—including any specific links.

I am writing to you now to inform you that we have amended this procedure and the Managing the Risks Guidance to take account of the varying levels of overall concern that HMG has about different foreign WMD programmes. Whilst all applications will continue to be assessed on a case-by-case basis, the intention is to introduce a more nuanced approach to managing risk so that, for countries with programmes we are less concerned about, export licences are denied only where we have substantive grounds for doing so, rather than to avoid any possible risk of diversion to a military programme. This approach will involve:

- (i) ranking foreign WMD programmes as being of “high”, “medium” or “low” concern to HMG, on the basis of advice from the Counter Proliferation Committee;
- (ii) utilising that ranking in the consideration of cases where there are no substantive grounds for believing that a dual-use item is in fact destined for a WMD programme. For programmes of “high” concern, there will be a presumption that application for uncontrolled dual use goods would be denied if the goods have a utility in the particular programme, as the existence of the programme itself will be held to present an unacceptable risk of diversion, even in the absence of any substantive grounds for believing that diversion will take place;
- (iii) for those programmes deemed to be of “low concern”, and where there are no substantive grounds for believing that a dual-use export is destined for a WMD programme, creating a presumption in favour of approving licences for uncontrolled dual use goods which are potentially relevant to the programmes of low concern.

The key purpose of this amendment is that it will allow us to distinguish between WMD programmes of high concern, such as Iran, and those where our concerns are less pronounced. The amended guidance is compatible with our NPT obligations since there will still be no exports where we know or ought to have known that they were destined for a nuclear weapons programme.

I attach an amended version of the Managing the Risks Guidance. [not published]

August 2007

Supplementary memorandum from the Department for Business, Enterprise and Regulatory Reform

I promised during my appearance before the Committees on 19 May that I would write to you about the alleged involvement of a UK company in a shipment of arms to Zimbabwe. I indicated that there might be limits to what I could say at this stage.

I can confirm that HMRC, as the enforcement body for export controls, are fully aware of the issues, and I will write to you with a fuller report as soon as I am able.

May 2008

Supplementary memorandum from the Department for Business, Enterprise and Regulatory Reform

As you are aware from our initial response to the public consultation on the 2007 review of export controls, (published on 6 February 2008; see <http://www.berr.gov.uk/files/file44407.doc>), the Government has committed to making change to the legislation in a number of key areas, including the extension of extra territorial trade controls to small arms, Man Portable Air Defence Systems (MANPADs), and cluster munitions of heightened concern.

Prior to these changes coming into force in October 2008, the Government will lay the Amending Order before Parliament and issue guidance to help industry prepare adequately and put appropriate processes or procedures in place. As we are required to issue this guidance at least 12 weeks before the changes to the legislation come into effect, we intend to lay the Order and issue the guidance simultaneously in early July.

We had previously promised to give the Committee the opportunity to see this legislation when it was in draft and repeated this commitment when the BERR Minister, Malcolm Wicks MP, recently gave evidence. I am therefore now attaching the draft legislation and accompanying draft guidance to cover these changes.

There are a few points that the Committee might bear in mind as it begins its examination. Firstly, in order to make this process easier for you, we have attached both the draft amending order (unformatted) and an unofficial copy of what the current Trade in Goods (Control) Order 2003 would look like taking on board these amendments. The latter document is of course, unofficial and for illustrative purposes only. As only one definition is being amended in the Trade in Controlled Goods (Embargoed Destinations) Order 2004 we feel it is not necessary to prepare an unofficial amended version. At present we are amending existing legislation only, but we aim to consolidate the various Orders as part of the third tranche of legislative change, coming into effect on 6 April 2009.

Secondly; cluster munitions. We have just heard yesterday that there have been significant developments in international negotiations. ECO does not have an active role in those negotiations, but we remain committed—as we always have been—to apply the most stringent controls to those cluster munitions that are agreed to be unacceptable. However, as I write, we do not have sufficient clarity about precisely what has been agreed over what timescale, and where the borderlines should be drawn, to enable lawyers to agree a sound definition. Therefore at present, both the draft legislation and the guidance reflect our commitment to apply more stringent controls to cluster munitions, but leave square brackets for a definition of those munitions to be controlled. We aim, during the course of June, to resolve this matter and will of course advise you further when we have done so.

Thirdly, it is important to note that this legislation is the second of three tranches and so will be superseded by the third tranche which will consolidate the earlier changes. Further work is currently being carried out with regard to other issues that remain unresolved and we will make our position clear on these issues in the next government response. We know already that a further change—to extend extra-territorial trade controls to light weapons—will come into effect in 2009, and it is possible that other changes may also be announced. These would also come into effect at that time. It would therefore be most helpful if, at this stage, your comments focused on the initial changes only.

I do apologise for the relatively short time that we can allow the Committee. However, there are two common commencement dates for legislation to come into force. If this legislation is to come into effect on the next available date of 1 October 2008; and if we are to lay it and issue the accompanying guidance 12 weeks prior to that time, we do need your response by 13 June 2008 to allow some time for any adjustments to be made. The timetable outlined above will not allow us to consider views received after that date, but we will try to give the Committee significantly more time when we run the third tranche of legislation past you later in the year.

We very much appreciate your assistance in this matter.

May 2008

Memorandum from the Secretary of State for Foreign and Commonwealth Affairs

Thank you for your letter of 26 July about reports from NGOs of India selling advanced military helicopters to Burma, containing components from the UK.

As you rightly point out, and as Meg Munn made clear in her response to your written question on 25 July, India has confirmed that it does not intend to sell this equipment to the Burmese.

Since then, on 27 July the EU Troika in New Delhi delivered a demarche on the Indian Government about the reported sale of such equipment to Burma. The Indians reiterated that no such deal was under consideration. The Troika reminded the Indian government of the long-standing Common Position on Burma and Europe's deep concern about the situation there. I hope that these representations will have reinforced with the Indian Government the seriousness with which the EU, including the UK, views the EU arms embargo on Burma,

You also asked about what measures the Government can take to prevent re-exports to Burma. As Meg Munn has indicated, we consider all applications for the export of military equipment on a case by case basis against the Consolidated EU and National Arms Export Licensing Criteria. This includes an assessment of whether there is a risk that the goods in question will be diverted within the buyer country or re-exported under undesirable conditions. If a licence application is deemed inconsistent with the Criteria, a licence will not be issued.

Finally, thank you for your best wishes on my appointment. I look forward to building on the excellent working relationship that has been established between the Foreign Office and the Committee under my predecessors.

August 2007

Further memorandum from the Foreign and Commonwealth Office

CHANGES TO SCREENING FOR FOREIGN POSTGRADUATE STUDENTS APPLYING FOR COURSES IN SENSITIVE TECHNOLOGIES

I thought the Committee would appreciate an update on the status of the Academic Technology Approval Scheme (ATAS), following the Committee's visit to the Counter Proliferation Department (CPD) in April this year. I am copying this letter to the Clerk of the Foreign Affairs Committee (FAC).

As you may recall, the ATAS will replace the Voluntary Vetting Scheme which has been screening postgraduate students for counter proliferation purposes since 1994. The ATAS is due to "go-live" on 1 November 2007 with a subsequent amendment to the Immigration Rules on 26 November 2007. The scheme will make the possession of an ATAS certificate a mandatory requirement for those non-EEA postgraduate students applying for Entry Clearance and wishing to study in specific, limited subject areas. These subjects are broadly Maths, Sciences, Technology, Engineering and Computing generally at PhD or Masters by Research level, but including a few taught Masters courses that have been identified as being of particular concern. The list of subjects has been drawn up on the basis of technical advice from MOD Defence Intelligence Service (DIS). The need to hold an ATAS certificate will also apply if a student wishes to extend their stay in the UK; including if they are already studying one of the identified subjects at postgraduate level.

The ATAS, like the VVS, will continue to be administered by the Foreign and Commonwealth Office (FCO). There are dedicated ATAS webpages (www.fco.gov.uk/atas) on the FCO website where students will be able to find comprehensive information on the scheme and access the free, online application form. Once they have received an offer from a Higher Education Institution (HEI) they will be able to make an ATAS application. The information they provide will be assessed for proliferation concerns by the FCO and its advisers (MOD DIS and the various intelligence agencies). We aim to respond to all applications within a maximum of three weeks, with the vast majority being answered within 5-10 working days. Once an ATAS clearance certificate has been issued a student will apply for their Entry Clearance or extension of stay in the usual manner.

An ATAS certificate will be specific to the course and institution applied for. Students are free to make any number of ATAS applications and hold several ATAS certificates. Entry Clearance Officers will verify that the information provided on their ATAS certificate matches that contained in their offer letter from their HEI.

Our aim for this scheme is not to refuse all applications but to ensure the UK takes suitable precautions to mitigate the risk that WMD technology could be acquired here and used against us or our allies. We are keen to meet the UK's national security needs while at the same time running a system that will not have any adverse effect on international students coming to the UK. We carried out a significant period of outreach to convey this message to the academic community which has been invaluable to gain their support of the scheme and enable us to make improvements.

We also commenced a pilot of the ATAS in September, receiving applications from students and issuing certificates, in order to test our systems and processes. We have received useful feedback from both the academic sector and stakeholders within HMG and are encouraging a wider group of contacts to continue to test the system. The pilot is scheduled to run for two months, allowing us to rectify any identified flaws and improve our processes before we formally launch.

As part of our outreach work we asked our network of overseas Posts to inform their host governments of the impending changes. The feedback from this exercise has been very positive, with a number of countries expressing an interest in implementing similar schemes in their own countries. We are keen to encourage this and, following successful implementation of our own scheme, will be working closely with those countries that wish to put their own counter-proliferation checks in place.

October 2007

Further memorandum from the Foreign and Commonwealth Office

Thank you for your letter of 13 June 2007 about exports to Iran.

After careful analysis of the article attached to your letter by officials at the FCO, BERR and HMRC, we have determined that the article is factually inaccurate. We know of no undeclared cases in which Iran has successfully obtained uranium from third countries.

As the article is substantially inaccurate, it would be inappropriate for me to speculate on the responses to the questions raised in your letter.

I would however, like to take this opportunity to make clear to the Committee, that while we know of no undeclared cases in which Iran has obtained uranium, we are aware that Iran could seek out suppliers of uranium in the future—in contravention of UNSCR 1737. We remain vigilant about the activities of the Iranians and any possible collusion by an UK individual or organisation.

We will as ever attempt to provide as much information as possible to the Committee.

2007

Memorandum from HM Revenue and Customs

I am writing in response to your e-mail [. . .] of 20 September 2007, in which you enquired into the citizenship of a named individual, and asked whether or not that individual would require an export licence to sell and/or promote electro shock weapons.

Section 3(2) of the Trade in Goods (Control) Order 2003 states that:

“(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly—

(a) supply or deliver;

(b) agree to supply or deliver; or

(c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country”

For the purposes of this Order, restricted goods are defined as those listed in paragraph (c) or (g) of PL5001 in Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003. Paragraph (g) includes:

“Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (eg, electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns (tasers)) and components therefor specially designed or modified for such a purpose.”

As such, any UK person undertaking any act calculated to promote the supply or delivery of electro shock weapons between two third countries requires a trade license, wherever in the world they may be operating. The particular licence required will depend on the destination country in each case.

The Committee will be aware that section 18(1) of the Commissioners for Revenue and Customs Act 2005 prohibits HMRC from disclosing information held in connection with its functions except in the circumstances set out within section 18(2). The information you request is, if held by HMRC, held in connection with our functions and is, therefore, subject to the general prohibition against disclosure in section 18. It inevitably relates to persons whose identity is specified in the information, as you name a specific individual and company within your request.

HMRC takes its duty of confidentiality very seriously, so much so that when they take up employment our officers have to sign an undertaking to ensure they adhere to it and face criminal prosecution which may result in imprisonment if they breach it. The fact that the information may already be in the public domain does not set aside our duty of confidentiality.

However, I can assure the Committee that we will investigate any credible evidence of a breach of export and/or trade controls.

I understand that BERR will respond to your additional enquiry regarding export licenses in due course.

November 2007

Further memorandum from the Foreign and Commonwealth Office

SECTION A: SPECIFIC LICENSING DECISIONS (QUARTER 1 (2007))

The Committees need to see sufficient information about the Government's licensing decisions to come to a reasonable understanding of why the Government has granted or refused a licence in any particular case. This should include an intelligible description of the goods, an indication of their value, the identity of the end user, and the stated end use of the goods.

1. The Committees would be grateful for more information on the following licences issued during the third quarter (January to March) of 2007:

* * *

(n) Libya: SIELs for armoured personnel carriers and water cannons; more specifically how the Government was satisfied that these exports would not breach Criterion 2;

The Government was satisfied that these exports would not breach Criterion 2

The Government placed a proviso on the licence that the goods were to remain in the control of the exporter until the end-user, the Libyan Police, had successfully completed, and been assessed against, appropriate training on the use of this equipment and best practice in public order situations.

One aspect of the training was the 'underpinning theories and models related to Human Rights and the proportionality of response'.

Independent assessors from the UK MoD Police and the Humberside Police evaluated this training.

HMG considered the level of risk that the goods would have been used contrary to Criterion 2 to have been mitigated to an acceptable level by the training and evaluation.

* * *

SECTION B: QUESTIONS APPLYING TO SEVERAL LICENSING DECISIONS (QUARTER 1 (2007))

* * *

3. *Kenya*: the total value of the SIELs is £8.5 million; did DFID carry out an evaluation for the purposes of Criterion 8 before any licence was granted; if it did, could the Committee have a copy?

Licences are referred to DFID by BERR for an assessment against Criterion 8 when the destination is on a list of countries where sustainable development is most likely to be an issue, and where the value of the licence is above a certain value threshold determined on a country by country basis. The committee highlighted SIELs issued for exports to Kenya totalling £8.5 million. Only one exceeded the value threshold and was sent to DFID for an assessment. The licence was for the provision of spare parts for secure communications for Government and Peace keeping forces. We judged that no further evaluation was required and approved the application.

4. *Solomon Islands*: the SIELs have a value of £2 million; did DFID carry out an evaluation for the purposes of Criterion 8, if it did, could the Committee have a copy?

Licences are referred to DFID by BERR for an assessment against Criterion 8 when the destination is on a list of countries where sustainable development is most likely to be an issue, and where the value of the licence is above a certain value threshold determined on a country by country basis. The committee highlighted SIELs issued for exports to the Solomon Islands with a value of £2 million. Only one licence was sent to DFID for an assessment against Criterion 8. As the end user was a private company DFID did not carry out a Criterion 8 evaluation and the licence application was approved.

5. Where an application relates to an item covered by EC REG 1236/2005 (The EU "Capital Punishment and Torture" Regulation) it would be of assistance to have a note explaining how such applications are assessed and on what basis licences are granted.

Export licence applications for equipment listed in EC REG 1236/2005 are assessed as follows:

- Annex II of this regulation describes goods that have “no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment”. EC REG 1236/2005 bans the export of goods listed in this annex, with an exception made for such goods where they are solely intended for public display in a museum. All other applications for export licences for goods listed on Annex II are caught by this prohibition and would therefore be refused under Criterion 1 (respect for the UK’s international commitments).
- Annex III of the EC “Torture” Regulation describes equipment that “could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”. Some of these goods, including stun guns, leg-irons and gang-chains, were banned from export or transshipment from the UK by then-Foreign Secretary Robin Cook on 28 July 1997. An export licence for these goods would be refused under Criterion 1. Any application received for the export of other Annex III-listed equipment would be assessed against the Consolidated Criteria as with any other application. An export licence would only be granted where HMG was satisfied that the proposed export was not to be used in breach of any of the criteria, with particular attention given to Criterion 2, “The respect of human rights and fundamental freedoms in the country of final destination”. Applications for the export of such equipment would also be assessed in each case by the FCO’s Human Rights, Democracy and Good Governance team.

6. * * *

SECTION D: OITCL RELATING TO 2006 AND 2007

7. According to the 2006 Annual Report an OITCL was issued in 2006 for trade between a large number of destinations (Angola, Belgium, Brazil, Cameroon, Canada, Cape Verde, Chile, Colombia, Denmark, Ecuador, Egypt, Finland, France, French Guyana, Germany, Greece, Guinea-Bissau, Guyana, Haiti, India, Italy, Ivory Coast, South Korea, Malaysia, Martinique, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Russia, Senegal, South Africa, Spain, Surinam, Sweden, Trinidad and Tobago, Turkey, United States of America, Uruguay, Venezuela), covering components for equipment ranging from submarines to heavy machine guns. Can you confirm whether or not it was reported in outline in 2006?

This information was inadvertently included in the Annual Report for 2006. The application was received in late 2006 and completed in February 2007.

8. A similarly wide OITCL was reported in first quarter 2007; can the Government confirm what equipment it covers?

* * *

9. In both cases, the OITCLs list of destinations includes one country under UN embargo, Ivory Coast. Did these OITCLs specify consignees and end-users, and what steps were taken to ensure that these fell within the exemptions of the arms embargoes imposed by UN Security Council Resolution 1572 (2004) and EC Common Position 2004/852/CFSP? What sort of trading entity were the 2006 OITCL and the Q1 2007 OITCLs granted to? What sort of consignee and end-users were the 2006 OITCL and the Q1 2007 OITCLs granted to?

The licence was granted to the UK office of an overseas government, and the end-user is the navy of that government.

We are unable to provide further details of this case, as the information is commercially confidential.

October 2007

Memorandum from Reed Exhibitions

INQUIRY: REVIEW OF EXPORT CONTROL LEGISLATION

1. Reed Exhibitions Ltd organises several aerospace and defence exhibitions both in the UK and overseas. That therefore is the company’s main interest in this inquiry, while noting that the issue of trade shows does not appear specifically to have been addressed in the Annual Report 2006.

2. There is little to add to the evidence offered for the previous review of the new legislation but this update may be helpful. Close liaison has been maintained with the Ministry of Defence and the Department of Business Enterprise and Regulatory Reform to ensure compliance with the relevant Export Controls. Appropriate Trade Control licences are in place, mindful, in particular, of the impact of the more recently introduced Controls on British citizens operating extra-territorially.

3. Of the Reed aerospace, defence and security events held in the UK, the most significant is DSEi. The others are Helitech—a helicopter exhibition aimed principally at the commercial operator, ITEC—which covers military training and simulation, and a recently relaunched exhibition, ISNR (formally APTS), which

serves the security sector. Outside the UK other defence events run in the last year have been IDEX in Abu Dhabi, LAAD in Brazil and TADTE in Taipei. Since British citizens have been involved in promoting and organising these latter three exhibitions, they too, have been included within Reed's Trade Control Licence.

4. DSEi is a biennial international defence exhibition last held in September 2007 at ExCeL, in London's Docklands. 1352 exhibitors were present from 37 different nations, 27 of which had National Pavilions. 85 Official Defence Delegations from 56 countries attended, as guests of HMG. The event attracted some 25,000 international attendees.

5. As before in 2005, Reed Exhibitions used the following means to communicate the new legislation to all exhibiting companies and visitors:

- An explanation of how the legislation may affect individuals and companies was written into a pdf file with links to the relevant sections on the DBERR website. The same information was shown on the DSEi website.
- Each company exhibiting at DSEi 07 was required to sign a statement of compliance with UK law and UK's international undertakings, EU/UN law and EU/UN international undertakings. An additional paragraph was added to the 2007 exhibitor contract, referring specifically to the UK Export Control Act 2002.
- An explanation of the new legislation and its impact on exhibiting companies was included in the exhibitor brochure.

6. During DSEi 07 two potential breaches of the law came to Reed's attention. These involved one British company and one Chinese. Neither had prohibited material on display but both had promotional material on their stands which included Restricted Goods. The appropriate authorities were informed and the two offending exhibitors' stands were closed down. It should be recorded that, in monitoring and ensuring compliance, cooperation on site with members of HMRC and the Metropolitan Police, with external advice from the ECO, was extremely good.

SUMMARY OF IMPACT

7. The main impact of the Act on Reed, as an organiser of defence exhibitions, has been the time and effort required to understand the new legislation, to interpret, translate and then communicate it to exhibitors and visitors, and to handle the associated enquiries, particularly from overseas companies.

8. The most significant problem in implementing compliance measures has been at events organised by Reed overseas where local regulations differ. This is best explained by an example. At IDEX, held in Abu Dhabi in February 2007, it proved extremely difficult to explain to a local company why they could not display Tasers on their stand. Tasers are not illegal in the UAE and are issued to their security forces. It was also noted by the owner, a prominent Sheikh, that they are in use by British police forces. Such anomalies are not easily comprehended by international exhibitors and may tend to discourage them from attending overseas events organised or promoted by British companies.

December 2007

Memorandum from Saferworld

KEY RECOMMENDATIONS

DESO

- The Government should reconsider the way in which the functions of DESO are being transferred into the Defence and Security Group within the UKTI and take the opportunity to re-examine more broadly the financial support it provides for defence exports.
- Exports by the defence sector should be treated on a par with exports from other sectors of the economy.
- Clarity should be given over what substantive changes will occur as a consequence of the transformation of DESO into the UKTI Defence and Security Group and what impact this will have on all DESO's current functions.
- The new Defence and Security Group within the UKTI should ensure that it maintains operational independence from the MoD, with a clear separation of the awarding of licences from the promotion of exports.

- The Government should confirm what discussions have been had with industry and other interested stakeholders since the decision to close DESO.
- The Government should now look to end all other direct and indirect defence subsidies, including the massive export credit subsidies provided to the defence sector through the ECGD.

Corruption

- SFO investigations into the Al Yamamah deal should be re-opened as a priority in order to demonstrate the Government's commitment to tackling bribery and corruption.
- The Government should clarify what steps they have made to implement the recommendations and requirements set out by the OECD in their recent review of the UK's implementation of the OECD anti-bribery convention in connection with the Al Yamamah deal.
- Full cooperation should also be provided by the Government with the US DoJ investigations into corruption allegations.
- Government should strengthen public commitment and extend full support to SFO investigations into corruption within the arms industry and pursue unreservedly prosecutions where evidence emerges of corrupt practices.
- Confirmation should be given by the Government that the closure of DESO will not be used as grounds for refusing to investigate DESO's role in any investigations by the SFO.

UK-US Defence Trade Cooperation Treaty

- The UK should resist entering into any binding bilateral agreements that limit the national prerogative to control all transfers of strategic items, regardless of the recipient state, for example by binding the UK into always using open and general licences for transfers to the US.
- For transfers subject to the provisions of the Treaty, safeguards must be put in place to ensure that UK arms transfer control principles and objectives are not subordinated to those of the US.
- Procedures should be put in place to provide Parliament with the opportunity to review and scrutinise the Implementing Arrangements of the Treaty before final approval.
- All open and general licences issued under this Treaty should contain specific re-export clauses to prevent the export of UK goods transferred to the US being re-transferred to countries of concern.
- The UK Government should reassess the value of the Treaty in light of its potential to erode the UK's commitment to a strict case-by-case licensing process, and in light of its broader implications for efforts to improve arms transfer controls globally.

DESO

1. The Defence Services Export Organisation (DESO), part of the Ministry of Defence (MoD), was established over 40 years ago and was originally tasked with selling surplus UK military stock. Over the years its role has changed into one of promoting UK arms around the world. It identifies potential opportunities for arms sales, works with industry and other elements of the Government to negotiate deals, and provides ongoing contract support. DESO is funded by the taxpayer to the tune of approximately £15 million per year, an amount that industry claims is extremely good value for money. This is part of the controversial UK Government subsidy in support of arms exports worth between £483—£936 million per annum.⁶⁹

2. The value of DESO is not just monetary. It gives, in effect, an official stamp of approval to prospective arms sales. With a head typically seconded from the arms industry (the previous director, Alan Garwood, came from and is reported to be returning to, BAE Systems),⁷⁰ it relentlessly promotes the industry's interests within the government. It employs nearly 500 civil servants who work to identify possible opportunities and then, in partnership with companies and other areas of government, promote defence sales around the world. Over 200 of DESO's employees are involved in supporting government-to-government arms sales, the largest of which is the *Al Yamamah deal*.⁷¹ DESO also supplies military personnel and equipment to UK defence companies for sales exhibitions. In addition, through the F-680 process, it gives preliminary advice to industry as to whether an export is likely to receive eventual official authorisation. Although F-680 clearance does not guarantee licence approval it can lead to the signing of contracts and enable financing to be put in place.

⁶⁹ *Escaping the Subsidy Trap: why arms exports are bad for Britain*, BASIC, Oxford Research Group and Saferworld, September 2004, p 23.

⁷⁰ David Leigh and Rob Evans, Alan Garwood, *The Guardian*, 8 June 2007, <http://www.guardian.co.uk/baefiles/story/0,,2090613,00.html>

⁷¹ The *Al Yamamah* deal is the largest government-to-government sale by the UK Government worth tens of billions of pounds.

3. The overall level of subsidy for arms exports, of which the service provided by DESO is part, is out of step with modern economic thinking which largely rejects the concept of subsidy. Such an approach has been discredited in other sectors of the UK economy. Saferworld therefore welcomed the July 2007 announcement by the Prime Minister, Gordon Brown, of the decision to close DESO and to dissolve its operations into UK Trade and Investment (UKTI),⁷² the Government agency that tasked with promoting all sectors of UK industry overseas.⁷³ Furthermore, given the apparent prominence of the Treasury in the decision, it was hoped that this might have signalled the beginning of a more general change in the way Government regarded the economics of defence exports. It was seen as a positive development both in terms of:

- the implicit acknowledgement that the defence sector should not be given favoured status over other sectors of the economy with regard to trade promotion; and
- signalling a clear separation of the conflicting functions of trade promotion and arms transfer regulation.

4. The announcement on 10 December that DESO's functions will be transferred directly into a new Defence and Security Group within the UKTI maintains this distinction between promotional and regulatory functions. However, the fact that there will in effect be no reduction in resources or staff working in this area undermines any notion of bringing the promotion of defence transfers into line with promotion of other exports. This decision was taken following intense defence industry lobbying⁷⁴ and signals that the Government still regards the defence sector as privileged and more deserving of official support than other sectors of the economy. Indeed in Parliament on 12 December, the Prime Minister was at pains to point out that the improved access provided by UKTI's extensive network of overseas offices (in approximately 100 countries as opposed to current DESO representation in 19 countries) was grounds for confidence that Government marketing support for UK defence exports will be even more effective in future.⁷⁵

5. Defence exports from the UK constitute up to 20% of total world defence exports. These sales clearly bring a commercial benefit to the companies concerned, however the benefit this brings to the economy as a whole should not be overestimated. UK defence exports make up less than 2% of total UK exports. The "patriotic" commitment of defence companies to the UK, for example in terms of protecting UK employment, is also far from clear: the defence industry is becoming more and more globalised, with frequent collaboration on joint overseas ventures, such as under the Joint Strike Fighter and Eurofighter deals. Decisions to establish or use production facilities offshore are frequently based on hard-headed commercial logic. BAE Systems is a striking example of the trend—only a third of BAE's workforce are employed in the UK compared to almost a half in the US, while sales in the two countries are approximately equal.⁷⁶ There is less commitment to the UK economy, and economic benefits are passed onto international shareholders.

6. There is also the question of the damage that could be caused to the Government's reputation by the continuation of such active support for defence export sales to countries with severe developmental shortcomings and/or human rights concerns (such as China, India, Indonesia, Libya, Pakistan and Saudi Arabia). If the UK Government wants to be seen as a "force for good" and a world leader in promoting strict arms transfer controls, it should, as a priority, distance itself from the promotion and lobbying of UK defence sales to questionable countries and regimes.

7. Saferworld recommends that the Government reconsiders the way in which the functions of DESO are being transferred and takes the opportunity to re-examine more broadly the financial support it provides for defence exports. With particular regard to the reorganisation of DESO's functions, the Government should:

- Treat exports by the defence sector on a par with exports by other sectors of the economy.
- Develop the necessary expertise within UKTI to deal with the peculiarities of the defence sector (this may well involve special engagement with experts from within the MoD, but UKTI should maintain operational and decision-making independence from the MoD).
- Wherever possible charge industry for any special promotional support for possible arms exports, eg for the use of MoD personnel at arms fairs (given the value-for-money argument made by industry for this type of activity, it seems reasonable to assume that this is a cost industry should be happy to pay).
- Publish detailed information regarding discussions had on this subject with industry, as well as other interested stakeholders, since the decision to close DESO was announced.

8. In addition, the UK Government should look to end all other direct and indirect defence export subsidies. This includes subsidised export credit support provided by the Export Credit Guarantee Department (ECGD). While not the case when the ECGD was first set up, international capital markets are

⁷² Written Ministerial Statement on Machinery of Government: Defence Trade Promotion, 25 July 2007, <http://www.pm.gov.uk/output/Page12683.asp>

⁷³ UKTI brings together the work of the Foreign & Commonwealth Office (FCO) and the Department for Business, Enterprise and Regulatory Reform (DBERR).

⁷⁴ Russell Hotten, *MoD victory for DESO role in arms promotion*, *The Daily Telegraph*, 12 December, 2007.

⁷⁵ Prime Ministers Questions, 12 December 2007: Column 293.

⁷⁶ Defence Committee Third Report of Session 2007–08, Memorandum from BAE Systems UK, 14 November 2007, Evidence 25.

now capable of covering the risks involved in major defence deals. Risk-management costs for arms exports should be borne by those who would profit from them, ie the defence companies, not the taxpayer. Therefore industry should either pay the ECGD market rates for the services provided or go elsewhere.

Corruption

9. The announcement of the closure of DESO came at a time when BAE Systems, the UK's biggest defence company, was mired in allegations of bribery and corruption and DESO itself was under investigation by the US Department of Justice (DoJ) for claims that under the *Al Yamamah* deal payments from BAE Systems to Prince Bandar—a Saudi diplomat who helped set up the original deals—went via the US banking system.

10. This intimate relationship between Government and the defence industry has damaged the UK's anti-corruption credentials. The UK Government has repeatedly confirmed its commitment to fighting corruption both at home and abroad. For example, in 2006, the Prime Minister announced new measures to tackle international corruption. This included the appointment of the then International Development Secretary Hilary Benn as the International Anti-Corruption "Tzar" and the establishment of a dedicated team investigating international corruption including bribery by UK businesses overseas.⁷⁷ Transparency International notes that the "official arms trade is the most corrupt of all legal international trades", where "bribery is commonplace."⁷⁸ The continuing allegations surrounding the UK's *Al Yamamah* contracts with Saudi Arabia is a salutary lesson in what this can mean for the reputation of a government.

11. The *Al Yamamah* deals, dating back to the mid-1980s, comprise a series of agreements for transfers of and follow-up support for, among other things, 72 Tornado aircrafts and 30 Hawk jets from the UK to Saudi Arabia. Although UK defence company BAE Systems is in effect the prime contractor for these deals, Saudi preference for arranging such transfers government-to-government has meant that the UK Government functions as principal to the agreements and "sub-contracts" the manufacturing and much of the support to BAE Systems. The deals have to date been worth tens of billions of pounds, with the UK and Saudi Governments currently in the process of agreeing another contract for the sale of 72 Eurofighter jets, valued at a further £20 billion.⁷⁹

12. In 2003, the UK Serious Fraud Office (SFO) began looking into allegations that BAE Systems used a £60 million "slush fund" to buy favours from key Saudi officials involved in the deals. However, reportedly due to pressure from the then Attorney General and Prime Minister, Tony Blair, the investigation was halted. This generated huge controversy in the UK, with the Government having to defend its decision in court.

13. The SFO enquiry also piqued the interest of the US Department of Justice (DoJ). BAE Systems has substantial interests in the US; once the SFO closed down its enquiry, the DoJ began an investigation into allegations that DESO approved payments under the *Al Yamamah* deal from BAE Systems to Prince Bandar—a Saudi diplomat who helped set up the original deals—and took a commission. If such transactions did indeed take place and if they involved the US banking system, they may have broken US anti-corruption laws. The DoJ formally requested information and files held by the SFO relating to the alleged corrupt commission payments. However, six months on, the Home Office has yet to respond to the DoJ's request.⁸⁰ The direct involvement of the UK Government in these allegations and their apparent lack of cooperation with the US investigation has serious implications for the UK's image abroad and calls into question the UK's commitment to stamping out corruption.

14. The Government has also been heavily criticised by the Organisation for Economic Cooperation and Development (OECD) in connection with *Al Yamamah* for failing to properly tackle bribery and corruption. In a recent review of the UK's implementation of the OECD anti-bribery convention, the OECD found the UK had not implemented key requirements. Mark Pieth, Chair of the OECD working group on bribery, also wrote to the Government asking for the precise reason they halted the SFO investigation into *Al Yamamah*, as Article 5 of the convention stipulates an investigation into bribery of foreign officials can only be halted in extreme cases. Pieth was quoted as saying: "Britain is one of the key members of this Convention and we are concerned because it seems as if there's been a breach of Article 5 by Britain."⁸¹

15. The UK Government has clearly been embarrassed by the attention its decision to close the SFO investigation has received, and its failure to fully cooperate with US investigations. There is a sense that more must be done to demonstrate the UK stands apart from and condemns corrupt practices. Saferworld recommends that the Government clarify what steps the MoD have made to ensure that the OECD's requirements will be implemented, as well as to confirm that they will cooperate fully with the US DoJ investigations. Furthermore, safeguards should be put in place to ensure that the closure of DESO will not be used as grounds for refusing to investigate DESO's role in any investigations by the SFO.

⁷⁷ Prime Minister announces crackdown on international corruption, as part of Gleneagles implementation plan, DFID, 22 June 2006, www.dfid.gov.uk/news/files/pressreleases/anticorruption-champion.asp

⁷⁸ Joe Roeber, *Parallel Markets: Corruption in the International Arms Trade*, 2005 Campaign Against the Arms Trade lecture.

⁷⁹ David Robertson, BAE poised to clinch £20 billion Saudi Eurofighter deal, *The Times*, 7 September 2007.

⁸⁰ House of Lords, 6 December 2007: Column 1812.

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/71206-0002.htm#07120641000011>

⁸¹ David Gow, Anti-bribery watchdog calls for explanation of BAE decision, *The Guardian*, 5 January 2007.

16. Furthermore, the *Al Yamamah* case appears to be far from isolated, with several other allegations of corruption against BAE systems being investigated by the SFO. These include deals in Chile, Tanzania, South Africa, Romania, Qatar and the Czech Republic.⁸² Ensuring the integrity of these investigations is vital, and Saferworld recommends that the Government affirms their commitment to fighting corruption by pursuing these investigations with vigour and tenacity.

THE UK-US DEFENCE TRADE COOPERATION TREATY

17. On 15 November 2007, Saferworld, in conjunction with the British-American Security Information Council (BASIC), submitted a memorandum to the Defence Committee as part of its investigation into the proposed *UK-US Defence Trade Cooperation Treaty*. The Defence Committee has subsequently produced a report on the issue. The following section summarises and, in light of the Defence Committee report, updates our original submission, a copy of which has also been made available to the Quad Committee.⁸³

18. The UK-US Defence Trade Cooperation Treaty is the latest attempt by the UK and US administrations and defence industries to bypass some US licensing requirements. 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*. Moreover, parliamentarians have had no sight of the Implementing Arrangements that will contain the details of how the Treaty will be operationalised. Nevertheless, in the UK the last date of the period allocated to Parliament for comment (under “the Ponsonby Rule”) was 12 December 2007.

19. This deadline is unnecessary in its haste. A decision on ratification by the US Senate is most probably some time away and certainly will not be forthcoming before the Senate has had chance to examine the Implementing Arrangements. It is therefore unclear why the UK Government should require Parliament to give its verdict now and without having seen these Arrangements. On this basis, it would seem sensible for the Treaty to be returned to Parliament for final approval once the Implementing Arrangements have been drafted and disseminated.

20. Saferworld is concerned that this bilateral treaty could undermine the UK’s ability to maintain an effective and independent system of national arms transfer control. The Treaty codifies the current *status quo* which sees the UK use open or general licences for the export of many strategic goods to the US. However, the UK Government currently has discretion over when and how these licences are to be used and can at any time redraft them as it sees fit. Saferworld is concerned that this Treaty would bind the UK into always using open and general licences for transfers to the US, thereby limiting the UK’s freedom of action. The UK should resist entering into any binding bilateral agreements that limit the national prerogative to control all transfers of strategic items, regardless of the recipient state.

21. This element of the Treaty is made worse by its asymmetrical nature, ie the way it prioritises US interests over those of the UK. Under the Treaty, the US would have discretion over which items are covered by the Treaty and the right of veto over which parties within the UK are to be covered by the Treaty. The US would also be permitted to monitor the end-use of weapons developed under the Treaty, but the UK would not. In addition, while the UK would need US permission for third-country exports that result as a consequence of the Treaty, the US would have no reciprocal obligation. Codifying these differences in the Treaty as currently drafted would institutionalise them and, for those cases where the Treaty is relevant, make the UK’s interests and decision-making on arms transfers subordinate to those of the US.

22. The Treaty ignores the substantive differences that exist between US and UK arms transfer control policy, both in terms of general principles and of policy on transfers to specific destinations. Through the Consolidated EU and National Arms Export Licensing Criteria (Consolidated Criteria), the UK is committed to applying a set of universal standards to all its licensing decisions.⁸⁴ 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”,⁸⁵ 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.”⁸⁶ Furthermore, there is also explicit reference to the priority of the criteria over considerations 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.”⁸⁷

⁸² BAE in several corruption probes, BBC, 9 February 2007, <http://news.bbc.co.uk/1/hi/business/6339625.stm>

⁸³ Submission to the UK Parliamentary Defence Committee Inquiry into: the UK-US Defence Trade Cooperation Treaty, BASIC and Saferworld, 15 November 2007.

⁸⁴ For the full text of the Consolidated Criteria see UK Strategic Export Controls: Annual Report 2006, pp 72–74, <http://www.fco.gov.uk/Files/kfile/ANNUAL%20REPORT%20POLICY%20TEXT.pdf>

⁸⁵ Criterion 5, the Consolidated Criteria.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* Other Factors.

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

24. 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 on 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 are now viewed differently. A prominent example of this is Pakistan, which was prohibited from receiving most US security assistance prior to the 9/11 attacks but is one of the largest recipients of US military aid, including arms transfers.

25. In addition to this philosophical difference between 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. The defence Committee report suggests that “the practical effect of the Treaty will be to bring US and UK exporting arrangements closer together.”⁸⁸ In light of the above, this should be acknowledged as an undesirable outcome.

26. Saferworld welcomes the recommendation by the Defence Committee that the UK Government should restrict any open or general licences it issues under 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.⁸⁹ The Government should clarify that all open and general licences issued under this Treaty will contain specific re-export clauses to prevent the export of UK goods transferred to the US being re-transferred to countries of concern. Furthermore, the Government should reserve the right to change open and general licences as appropriate to maintain the integrity of the overall arms transfer control system.

27. Further analysis of the impact that this Treaty would have on transfer controls is unfortunately made more difficult due to the aforementioned absence of any information to date regarding the Implementing Arrangements, which would be critical to its operation. If this Treaty were to permit the removal to some of the national barriers to UK-US trade in strategic items, then the Implementing Arrangements to the Treaty must be sufficiently robust to ensure it does not compromise the UK Government’s commitment to its existing system of transfer controls.

28. Finally, Saferworld has serious concerns regarding the international message that this Treaty sends to other arms exporting states. The UK is widely regarded as being among the leaders in terms of promoting strong national arms export controls, and is currently attempting to persuade governments around the world of the merits of a global Treaty requiring all arms transfers to be subject to tight case-by-case licensing control by national authorities. It is therefore most unfortunate that, for its defence trade with the US, the UK is seeking to remove restrictions to bilateral trade. This sets a precedent that the UK might not appreciate other states, for example India and Burma, following. Furthermore, when considered alongside the UK’s participation in the Framework Agreement⁹⁰ and the current European Commission proposals to liberalise intra-community trade in defence items and, as part of a recast of the dual-use regulation, intra-community trade in dual-use goods,⁹¹ the Treaty calls into broader question the principle of universal national case-by-case licensing.

29. The UK Government should ensure that all possible steps are taken to prevent the erosion of the commitment to a strict case-by-case licensing process based on universally-applied restrictive criteria, and to promote the merits of a global Arms Trade Treaty requiring all arms transfers to be subject to tight case-by-case licensing control by national authorities. While Saferworld is sympathetic to the plight of UK armed forces and industry not being granted timely access to routine and clearly unproblematic strategic items from the US, we are not convinced that this Treaty is the best way to address the issue.

December 2007

⁸⁸ Paragraph, Defence Committee, UK/US Defence Trade Cooperation Treaty, Third Report of Session 2007–08, 4 December 2007.

⁸⁹ Paragraph 49, *Ibid.*

⁹⁰ The Framework Agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defense Industry was approved in July 2000, under which the Defence Ministers of six EU States (France, Germany, Italy, Spain, Sweden and the UK) committed to applying simplified export procedures for the transfer of military-related equipment among the participating states for work on collaborative projects.

⁹¹ Details regarding the proposals are available at http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm and http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/conf260107_en.htm respectively (Saferworld has produced submissions as part of the consultations on both proposals; these are available at <http://www.saferworld.org.uk/publications.php?id=201> and <http://www.saferworld.org.uk/publications.php?id=285> respectively). It should be noted that the UK has expressed concern over the relaxation of licensing requirements for Member States under both of these proposals, in marked contrast to their decision to favour the US with more relaxed licensing controls. However, at this time it is still unsure what the outcome of these proposals will be.

Memorandum from Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.
2. CAAT would like to draw the Committee's attention to issues with regard to the closure of the Defence Exports Services Organisation; bribery and the Government's arms sales unit; and the recommendations on corruption contained in your last report.

DEFENCE EXPORT SERVICES ORGANISATION CLOSURE

3. On 25 July 2007 the Prime Minister announced that the Defence Export Services Organisation (DESO) was to close (*Hansard*, col 23WS), with its responsibility for the promotion of military exports moving to UK Trade and Investment (UKTI). Further details were announced on 11 December 2007 (*Hansard*, col 16/17WS), by the Secretary of State for Business, Enterprise and Regulatory Reform, John Hutton, who said the change would take place on 1 April 2008.

4. CAAT recognises that, unfortunately, the Government does not see the closure of DESO as a move towards the end of the arms industry. Indeed, Ministers have stressed the UK's success in selling arms and their wish maintain this. For example, in a UKTI press release dated 11th December 2007, John Hutton said: "The UK has a world class defence sector, generating exports of around £5 billion a year and amounting to some 20% of the world market. I am determined to ensure this success continues."

5. Nonetheless, CAAT welcomes DESO's closure and the move of military export promotion to UKTI, as it will put the Government's relationship with military industry on a more normal footing, comparable to that it has with other industries. This means that the arms industry may no longer be a special case with a unique and privileged place in Government.

6. In this regard, CAAT is pleased that what is initially to be called the UKTI Defence and Security Group, will, like all the other industry sector groups, be operating to UKTI strategic objectives, be answerable to the UKTI Board and have a head who will report to the UKTI Chief Executive.

7. The UKTI Defence and Security Group will initially have 240 staff. However, since military equipment accounts for less than 2% of the UK's visible exports and UK Defence Statistics show that 65,000 jobs (just 0.2% of the national labour force) are sustained by military exports, CAAT thinks staff numbers, including those on secondment from the Ministry of Defence, should be reduced so that the military equipment sector's exports are given no greater share of UKTI resources than is proportional to the size of the sector's contribution to the economy. Unless this happens, the arms industry will continue to be an undeserved special case.

8. Export licensing implications CAAT is pleased with emphasis put in the 11 December announcements on the separation between the export licensing functions of Government and trade promotion and support. However, at the time of writing, CAAT has not seen any discussion of the implications of the change for the F680 process and feels this is an area your Committee might usefully probe.

9. Business conduct CAAT also welcomes the commitment made in the announcements, especially that by UKTI, to the promotion of good business practice as well as to transparency. Our comments, below, show just how vital this is.

CORRUPTION AND THE MINISTRY OF DEFENCE

10. CAAT wrote to your Committee in February 2006, arguing that "your Committee was seriously misled by the Ministry of Defence (MoD) in its memorandum to you of July 2003 (Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny, 18 May 2004, HC390, Ev34)". In its letter, reproduced at Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny, 19 July 2006, HC873, Ev158, CAAT stated that the MoD memorandum "was designed to leave the reader with the impression that DESO had never condoned bribery in arms sales, and in fact had procedures in place designed to 'ensure legality and propriety in the handling of Government-to-Government contracts'".

11. Your Committee's latest report, "Strategic Export Controls: 2007 Review" (HC117), states, in paragraph 341, that the Committee "attached weight" to the MoD's responses when asked about this. In particular, you rely on a statement made in July 2003 by Geoff Hoon, then Secretary of State for Defence. However, as Nicholas Gilby, who undertakes research for CAAT, said in a letter to your Chair on 17th September 2007, evidence placed in the National Archives by the MoD contradicts that statement. A summary of this evidence follows.

12. Mr Hoon had quoted guidelines issued in 1976 by Sir Frank Cooper, then Permanent Secretary at the MoD, which said that "public money should not be used for illegal or improper purposes" and "officials should not engage in, or encourage, illegal or improper actions whether in their relations with UK or overseas firms". These guidelines were used by the MoD to claim that allegations by The Guardian that "the government's own arms sales department [DESO] is directly implicated in bribery abroad", substantiated

by documents detailing that “special commissions . . . are even written by civil servants into the secret contracts on government-to-government arms deals”, were “irresponsible” and “totally without foundation”.

13. The Cooper guidelines were issued to Lester Suffield, then Head of Defence Sales, on 9 June 1976. Two weeks later Sir Frank approved the “agency fees” Mr Suffield had requested on two Government-to-Government contracts with Saudi Arabia, one for the Royal Saudi Air Force and one for the Saudi Arabian National Guard.

14. A draft of the note Mr Suffield wrote to Sir Frank was placed in the National Archives on 25 July 2007 (file DEFE 68/319). This shows that the guidelines, contrary to what the MoD has been telling your Committee, were not “to ensure legality and propriety in the handling of Government-to-Government contracts”. Paragraph 8 of this draft says that the “agency fees”, “although described as ‘technical consultancy’, amount in practice to the exertion of influence to sway decisions in favour of the client”.

15. In paragraph 10 it explains that senior Saudis “would certainly not officially approve the payment of fees, although they undoubtedly expect appropriately discreet arrangements to be made. Statements to this effect are made by senior Saudis to visiting major businessmen in somewhat elliptical language whenever a suitable opportunity occurs, for example by HRH Crown Prince Fahd ibn Abdul Aziz during a recent audience granted to Mr Greenwood, Chairman of BAC, in the presence of D Sales 1 [a DESO official] and our Defence Attaché”. Paragraph 4 refers to contractors needing to “conceal agency fees” in the overall price quoted.

16. It would seem that, at the very least, these payments, made via the MoD accounts under a Government-to-Government deal, were improper. They were in direct breach of the Cooper guidelines, which the MoD relied on to defend itself to your Committee against the allegations made by *The Guardian*.

17. This is, of course, just one instance of the growing body of evidence of official condoning of bribes made to attain arms sales to Saudi Arabia. There are also numerous allegations, not least of “commissions” paid to Prince Bandar bin Sultan, via the MoD, as part of the Al Yamamah arms contract. CAAT believes proper parliamentary scrutiny of the evidence is essential. Although some of this is historical, other payments are said to continue. In any event, a clear understanding and acknowledgement of the past is a prerequisite for better future practice.

18. Since this would go beyond the scrutiny of export licensing part of the arms sales process, CAAT suggests it may be appropriate for your Committee to formally ask the Public Accounts Committee to commission the National Audit Office to investigate the whole Saudi Armed Forces Project, in particular, the extremely disturbing allegations around Prince Bandar made in June 2007, and how the issue of “consultancy” payments is currently dealt with in the context of Government-to-Government arms contracts. Any such inquiry should take evidence from officials who have served with DESO, and its predecessor the Defence Sales Organisation. Finally, it is essential that the report of any investigation carried out be made public.

CORRUPTION AND YOUR COMMITTEE’S LAST REPORT

19. Your Committee’s last report, “Strategic Export Controls: 2007 Review” (HC117), recommended that the Department for International Development, when considering licence applications under Criterion 8, include an assessment to test whether the contract behind an application for an export licence is free from bribery and corruption.

20. However, corruption is not confined to those countries which qualify for consideration under Criterion 8. The Serious Fraud Office (SFO) is currently investigating allegations of corruption with regards to BAE Systems’ deals with Chile, Czech Republic, Qatar, Romania, South Africa and Tanzania—countries with widely differing economic circumstances and political backgrounds. In addition, CAAT, together with The Corner House, has been granted permission for a Judicial Review of the Government’s December 2006 decision to end the SFO’s inquiry into BAE’s Al Yamamah deal with Saudi Arabia. The hearing is scheduled to take place on 14th and 15th February 2008.

21. Against this background, CAAT is disappointed that your report did not recommend that all export licence applications be subject to an anti-corruption assessment. It is also strange, to say the least, that the section of your report which deals with Saudi Arabia makes no recommendations. These omissions, surely, only serve to reinforce the idea that the UK’s anti-corruption efforts are selective and not being applied consistently.

Memorandum from Nicholas Gilby

I am writing to you with evidence that the MoD has been misleading you over the question of corruption in arms sales to Saudi Arabia.

You may remember that Campaign Against Arms Trade (CAAT) wrote to you in February 2006⁹² arguing that “your Committee was seriously misled by the MoD in its memorandum to you of July 2003 (*Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny*, 18 May 2004, HC390, Ev34)”. In the letter CAAT stated that the MoD memorandum “was designed to leave the reader with the impression that DESO had never condoned bribery in arms sales, and in fact had procedures in place designed to ‘ensure legality and propriety in the handling of Government-to-Government contracts’”.

Your recent report states in paragraph 341 that the Committee “attached weight” to the MoD’s responses. In particular, you rely on the MoD statement of July 2003. The Defence Secretary has subsequently told you that, in response to allegations made since then, he has nothing further to add to his previous statement.

Evidence (which I enclose) placed in the National Archives by the MoD on 25 July this year directly contradicts the statement made by Geoff Hoon in July 2003. In that statement Mr Hoon quoted 1976 guidelines issued by Sir Frank Cooper, then Permanent Secretary at the MoD, which stated that “public money should not be used for illegal or improper purposes” and “officials should not engage in, or encourage, illegal or improper actions whether in their relations with UK or overseas firms”. These guidelines were used by the MoD to claim the Guardian’s allegations that “the government’s own arms sales department [DESO] is directly implicated in bribery abroad”, substantiated by documents detailing that “special commissions . . . are even written by civil servants into the secret contracts on government-to-government arms deals” were “irresponsible” and “totally without foundation”.

The Cooper guidelines (see appendix A) [not published] were issued to Lester Suffield, the Head of Defence Sales, on 9 June 1976. Two weeks later Sir Frank Cooper approved (appendix B) [not published] the “agency fees” Lester Suffield had requested (appendix C) [not published] on two Government-to-Government contracts with Saudi Arabia, one (SADAP) for the Royal Saudi Air Force and one (SANGLOG) for the Saudi Arabian National Guard.

A draft of the note Suffield wrote to Cooper (appendix D), [not published] placed in the National Archives only a few weeks ago,⁹³ shows that the guidelines, contrary to what the MoD have been telling you, were not “to ensure legality and propriety in the handling of Government-to-Government contracts”.

Paragraph 8 of the draft says that the “agency fees”, “although described as ‘technical consultancy’, amounts in practice to the exertion of influence to sway decisions in favour of the client”. In paragraph 10 it explains that senior Saudis “would certainly not officially approve the payment of fees, although they undoubtedly expect appropriately discreet arrangements to be made. Statements to this effect are made by senior Saudis to visiting major businessmen in somewhat elliptical language whenever a suitable opportunity occurs, for example by HRH Crown Prince Fahd ibn Abdul Aziz during a recent audience granted to Mr. Greenwood, Chairman of BAC, in the presence of D.Sales 1 [a DESO official] and our Defence Attache”. Paragraph 4 refers to contractors needing to “conceal agency fees” in the overall price quoted.

At the very least, these payments, made via the MoD accounts under a Government-to-Government deal, were improper. They were in direct breach of the guidelines laid down, with which the MoD relies on to defend itself against the Guardian’s allegations against it.

Of course there is insufficient evidence here to say whether or not under the corruption laws prevailing at the time, the payments were illegal. But they do appear to fit the UK Government’s own definition of bribery: “the receiving or offering/giving of any benefit (in cash or in kind) by or to any public servant or office holder or to a director or employee of a private company in order to induce that person to give improper assistance in breach of their duty to the government”.⁹⁴

The discovery of this document raises grave concerns. It appears, that on the most charitable explanation, the MoD has been using bland, unsubstantiated assertion to refute allegations made against it by a national newspaper. Regardless of the unwarranted slur on the reputation of the journalists concerned by the use of words such as “irresponsible”, this is a shameful way to treat a Parliamentary Committee.

As you may know, there is a mounting body of evidence of official condoning of bribes made to attain arms sales to Saudi Arabia, not least in the comments of Lord Gilmour on BBC Newsnight in June 2006, and in the reporting in June this year of alleged “commissions” paid to Prince Bandar bin Sultan as part of the Al Yamamh arms contract. In the light of these sustained allegations it is imperative that there is proper

⁹² *Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny*, 19 July 2006, HC873, Ev 158.

⁹³ In file DEFE 68/319.

⁹⁴ See the joint leaflet “UK Bribery and Corruption Law” produced by the FCO, DTI and UKTI, available at <http://www.fco.gov.uk/Files/kfile/briberyleaflet.pdf>

Parliamentary scrutiny of the UK's arms deals with Saudi Arabia in addition to just the licensing part of the process your Committee carries out. It does not appear to me to be good enough for Des Browne merely to assert he has "nothing further to add".

In particular you will be aware that no current member of the House of Commons has read the 1992 National Audit Office report into the Al Yamamah arms contract. It is the only NAO report commissioned by Parliament never to have been published. We would suggest that your Committee formally ask the Public Accounts Committee to commission the NAO to take a fresh look at the Saudi Armed Forces Project, in particular beginning a formal investigation into the extremely disturbing allegations around Prince Bandar made this June, and how the issue of "consultancy" payments is currently dealt with in the context of Government-to-Government arms contracts. Any inquiry ought to take evidence from serving DESO officials. We would also urge that the report of any investigation carried out be made public.

September 2007

Further memorandum from the Foreign and Commonwealth Office

GOVERNMENT RESPONSE TO THE QUADRIPARTITE COMMITTEE

The following provides a fuller response to those questions posed by the Quadripartite Committee in its Annual Report of 7 August 2007.

Recommendation 9

The absence of successful challenges in the courts is not conclusive proof that the legislation is working satisfactorily but we conclude that it provides an indication that the legislation is accepted by exporters and interested parties. Once the case that is currently before the courts is concluded, we recommend that the Government supply us with a note describing the case and the lessons, if any, that it has for the operation of legalisation. (Paragraph 44)

The case in question was the application for Judicial Review brought by R Hasan against the Secretary of State for Trade and Industry. The case was heard on 10 and 11 October 2007 in the High Court, Queens Bench Division. A full transcript of the decision is now available at:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2007/2630.html&query=hasan&method=boolean>

The claim, as originally lodged, sought to challenge the decisions to issue 27 Standard Individual Licences for Military items exported to Israel during the quarter April to June 2006. However, the claimant subsequently accepted that there was no proper basis upon which the grant of these 27 licences could be challenged and lodged amended grounds, alleging that the Government was obliged, in making its quarterly report, to give reasons to show that there had been compliance with the criteria in the case of each export licence granted. So the case was ultimately about the publishing of reasons for licensing decisions, not about the licensing decisions themselves.

The claim was rejected by the High Court, but the appeal process may not have yet been exhausted. The Government therefore believes that it is advisable not to comment further until the case has been finally resolved, at which point it will provide the Committee with an updated statement.

Recommendation 22

From the information we obtained during the inquiry we conclude that the system for assessing applications against Criterion 8 appears sound and that it is underpinned by a robust methodology. We recommend that the Government publish the methodology in the Annual Report on Strategic Export Controls along with a list of the countries on the IDA list, as supplemented. (Paragraph 119)

The Government is still considering the new methodology for assessing applications against Criterion 8.

Recommendation 52

We recommend that the Government in responding to this Report explain how the existing WMD end-use controls work and why no prosecutions have been initiated. (Paragraph 258)

Since 1989 a WMD end use control has been in force in the UK, allowing the government to impose an export licensing requirement on goods, software or technology which are not normally controlled, if the exporter knows, suspects or has been informed that they are or might be intended for any relevant use in connection with WMD. This WMD control was primarily intended to cover the physical export of goods or technology from the UK.

The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 enhanced the existing controls on the transfer of technology for WMD, by making it unlawful (for anyone in the UK or any UK person or legal entity anywhere in the world) to provide, or facilitate the provision of, technical assistance related to a relevant use (defined under the Order, as “in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons”) in WMD, to a destination outside the EC, without first obtaining a licence. These controls apply where the supplier of the technical assistance or technology is aware, or has been informed by the Government, that it is intended for any relevant use in connection with WMD (in contrast with the pre-existing end use control relating to the export of goods and technology for WMD purposes. Under these new controls there is no requirement to apply on the basis of “suspicion” of WMD use, although we do advise that all reasonable enquiries are made should there be any suspicions). Technology transfers within the EC, and even within the UK, are now controlled where the supplier knows at the time of transfer that the technology will be transferred outside the EC for a relevant use.

There have been two successful prosecutions under the WMD end-use control in recent years. In 2000–01 Abu Bakr Siddiqui was given a 12 month suspended sentence for exporting equipment to Pakistan, including a five-ton crane and a quantity of aluminium. And in 2003–04, David Lee Nicklin was fined £1000 for exporting aluminium to Pakistan.

As set out in the earlier response to Recommendation 24, all decisions to prosecute are made in accordance with the Code for Crown Prosecutors, ie that there is a realistic prospect of conviction and that it is in the public interest that the case should be prosecuted. Cases involving end-use controls are no different. Given the general seriousness of this type of case, where there is evidential sufficiency a prosecution will usually be in the public interest. It should be noted, however, that cases of end-use control can be particularly difficult to prosecute because it can be hard to demonstrate that the exporter had the knowledge or suspicion at the time the export was made that the goods were going either to a WMD programme or a country of concern. All licence applications involving the WMD end use control are rigorously assessed by BERR prior to issue, and this includes an assessment of the risk of diversion and specific checks on all entities known to be involved in the transaction, both within the UK and after export. However, if diversion is subsequently found to have occurred, proving the exporters knowledge at the time of the export may be difficult due to transit and trading practices. Goods at sea are frequently traded numerous times before they end up at their final destination, and what is shown as the destination on the paperwork at the point of export may be thousands of miles from the place where they end up.

Recommendation 55

We recommend that the Government consider whether the development of e-mail to allow it to be used as a means to transfer entire software packages or detailed technical manuals between groups comes within export control and, if it does not, whether it should be brought within control. Given the pace of technological change and globalisation of industry we recommend that the Government carry out a further review of the legislation in five years. In the meantime we recommend that the Government set up an ongoing internal review which responds to technological and global developments and examines best practice and innovative ideas that enhance the effectiveness of export controls in other countries. (Paragraph 272)

The Government remains committed to the principle of a bi-annual review of technological developments, but considers that it would not be appropriate to instigate the first review at the present time, when a wide-reaching review of export controls is in midstream. Later in 2008, all decisions of principle arising from the 2007 review will have been addressed and the extent and nature of any changes will be evident. At that stage the Government will start to address implementation and timing issues and can conduct the first review in parallel with that process.

Recommendation 67

We recommend that the Government improve the arrangements for monitoring and controlling large volumes of weapons that enter the UK for destruction or re-export.

In addition, we recommend that the Government provide a full account of the 200,000 assault rifles that were imported into the UK from the former Yugoslavia between 2003 and 2005, explaining how many were made unusable and how many were re-exported. (Paragraph 310)

The Home Office will provide information about internal monitoring and control of firearms separately.

Recommendation 86

We recommend that section 1 (Policy Issues Relating to Strategic Export Controls) of future Annual Reports be widened to include a detailed report on UK export control policy as a whole along the lines of that provided in the Swedish Annual Report. We welcome the Government's offer of a "Restricted" report on outreach and recommend that the Government provide such a report at the same time that it publishes its Annual Reports on Strategic Export Controls. (Paragraph 376)

The FCO will provide a "restricted" summary of HMG outreach activities in 2007 once the details have been finalised.

Recommendation 88

We recommend that the Government make the following changes to its Quarterly Reports:

- Divide up information on financial values and descriptions between Military List items and "Other".
- Combine the information on financial values, number of licences issued and descriptions to give a better indication of the volume of each type of goods licensed for export.
- Provide more systematic information on the type of end-user.
- Provide information on the final destination of goods covered by "incorporation licences".
- Provide separate information on each license denial with a description of the goods covered the reasons for the denial. (Paragraph 382)

The Government confirms our commitment to make the changes to quarterly reports in 2008 as agreed in our previous response, and that the changes will be carried over to the searchable database when it is up and running. The Government would be grateful for the Committee's comments on our suggestion of the possibility of replacing the "rating" with the case summary description (as used for issued licences) in the refusals table.

January 2008

Further memorandum from HM Revenue and Customs

Our position on the outstanding issues is as follows:

COMPOUND PENALTIES

To recap, our policy is to publicise compound penalties where possible, but you will be aware that section 18 of the Commissioners for Revenue and Customs Act 2005 does not allow us to release information that may identify an individual taxpayer, unless that disclosure is made under one or more of the exemptions contained in section 18(h).

We will continue to publicise anonymised details of compound cases—where such publicity conforms with the 2005 Act—on BERR's website. We are committed to examining greater options for publicity and we will promote this issue in any future review of compound penalties within the Department. However, no such review is currently being contemplated.

PUBLICITY ON INFRINGEMENT

As of HMRC's 2007 Autumn Performance Report (available at <http://www.hmrc.gov.uk/about/autumn-report-2007.pdf>, page 22) the Department now publishes the number of warning letters issued in response to irregularities involving strategic exports. As with compound penalties we will continue to examine options for further publicity, subject to the disclosure constraints contained within the Commissioners for Revenue and Customs Act.

HMRC'S OGEL EXERCISE

HMRC does not normally publish the outcome of compliance and risk-testing exercises. However, we will provide the Committee with a confidential update on the outcome of our special exercise in respect of Open General Export Licences. We intend to review this at the end of the financial year, but will include an update on the exercise in our briefing when the Committee visits HMRC. Indications so far are that levels of compliance are high, but we will continue to monitor this position.

 CIVIL/ADMINISTRATIVE PENALTIES

BERR and HMRC continue to work closely together on these issues. Our aim is to reach a conclusion on the issue of principle—ie whether civil and administrative penalties are an idea that we wish to pursue in respect of export controls—and publicise this alongside the Government’s final response on the 2007 Review of Export Controls, which we hope to issue in May 2008.

Please feel free to contact me should you require additional clarification or information.

January 2008

Further memoranda from the Campaign Against Arms Trade

1. Further to our previous submission, we would like to draw your attention to recently discovered additional evidence in support of the statements at paragraphs 10-12. The evidence is enclosed.

2. In summary, the evidence shows that Defence Sales Organisation (DSO) employees attempted to bribe a Kuwaiti Colonel and his colleagues in an effort to secure a sale of Chieftain tanks. Although eventually the Ministry of Defence (MoD) decided not to go ahead with this particular arrangement, the agent that the MoD did eventually use, Abdullah Ali Reza, was suspected by some involved in the transaction of using corrupt practices.

3. In the first document (A), a briefing for the Prime Minister from the then Defence Secretary contains enclosures which reveal that, in 1974, Frank Nurdin, the Sales Director of Racal-BCC, had, with Bill Jones of DSO, promised 5% of the contract price to a Lieutenant Colonel Fahad al Haggan and his colleagues on the Kuwaiti Army Equipment Committee as a reward for choosing the Chieftain tank. Two years elapsed before the MoD decided, in the end, not to make such a pay-off. The briefing paper clearly shows that, had the payments been made, they would have been corrupt.

4. In the second document (B), the Treasury Solicitor reports on a conversation with Bill Jones and his boss, Ian McDonald. The account shows that Fahad told Bill Jones that he wanted 1% of the contract price for himself, and 1% for each of his four colleagues on the Army Equipment Committee. Sir Lester Suffield, then Head of Defence Sales, “took the decision to pay commission to Fahad”. Fahad was verbally promised the “commission” and that payment would be made via Millbank Technical Services (MTS), a subsidiary of the Crown Agents, which, at the time, was frequently used by the DSO to sell arms on its behalf.

5. As the first document showed, although the payment to Fahad was never made, arrangements were made to pay a different agent, Abdullah Ali Reza. MTS held a document “which appears to indicate that some of the proposed commission to Ali Reza was for corrupt purposes”. The document notes that this contention was disputed. As the document states, Ali Reza was paid a commission.

6. The third document (C), from Foreign and Commonwealth Office (FCO) files, shows that MTS paid a bribe in Iran (to a friend of Hoveyda, Prime Minister of Iran in the 1970s).

7. The documents referred to here and in our previous submission do not suggest the MoD was habitually associated with corruption in arms deals. But they do show that, on occasion, MoD employees had, at the least, not carried out their duties to the highest ethical standards. In addition the evidence that some DSO employees appear to have believed that payments made on Government-to-Government deals with Saudi Arabia were of a questionable nature, throws some doubt on the MoD’s repeated insistence of the probity of its past conduct. In summary, the MoD has failed to present the Committee with a balanced and fair account of its past conduct in this controversial area.

January 2008

Further memorandum from the Foreign and Commonwealth Office
SECTION A: QUESTIONS RELATING TO SEVERAL LICENSING DECISIONS (QUARTER 3 (2007))

1. *26 OIELS were issues in the quarter. Why has the number dropped? Is it still the case that OIELs are generally valid for two or three years?*

The most important factor in the number of OIELs issued is the number applied for, and this is determined by industry needs. The Government then reacts to applications as they are lodged. Each application is then assessed on an individual basis against the Consolidated Criteria, and if an exporter cannot demonstrate a good track record and a clear business case for an OIEL, then it will be rejected and the exporter advised to apply for SIELs.

OIELs are now generally valid for a period of 5 years, although this does depend on business need, and does not apply to Dealer to Dealer OIELs (which remain limited to three years). The move to five-year OIELs may have caused a temporary dip in applications for renewals. This is because, for example, three-year OIELs which were issued in 2004 would previously have been subject to application for renewal in 2007, but many will now not be due for renewal until 2009. This could account for some of the reduction but it will only be a temporary effect and we might expect a corresponding increase in the number of licences processed in future.

2. *It would assist the Committee to have a note explaining the difference between items which are recorded as SIELs for components, for example, for aircraft radars to France and SIELS (incorporation) components for aircraft radars to France*

Applications are categorised as incorporation where the exporter has indicated that the items will be incorporated into an item which will then be re-exported to a 3rd country.

Items are categorised as components when they are to remain in the country to which they are exported.

SECTION B: SPECIFIC LICENSING DECISIONS (QUARTER 3 (2007))

3. *The Committees would be grateful for more information on the following licences issues during the second quarter (July to September) of 2007:*

- (a) *Angola: OIEL no 1. Was this OIEL subject to an assessment against criterion 8 by DFID? What is the estimated value of the goods that may be exported under this licence?*

DFID did see this application, but did not carry out a Criterion 8 assessment as the supply of the items on this OIEL would not have been to the Angolan Government, and so the question of prejudicing Angola's sustainable development did not arise.

As OIELs usually permit the export of a range of goods without specifying quantity or value, the Government does not ask the exporter to provide a value when applying for an OIEL.

* * *

t. *Solomon Islands: Were the SIELs subject to an assessment against criterion 8 by DFID? If it was could the Committee see the assessment?*

This SIEL was not subject to a DFID assessment as the items were not being purchased by the Government.

* * *

SECTION D: QUESTIONS RELATING TO THE GOVERNMENT'S RESPONSE TO THE QUADRIPARTITE COMMITTEE'S LAST REPORT AND LETTER OF 15 JANUARY 2008

5. **Recommendation 22:** *When will the Government's consideration of the new methodology be completed?*

We have reviewed the Criterion 8 methodology and made some amendments to it. The new methodology is now in use.

6. **Recommendation 38:** *What is the timetable for the preparation of the plan?*

Subsequent to a meeting with representatives of the academic sector in November 2007, the FCO prepared an awareness plan, a copy of which is included (for the Committee's use only). The principal activity to date has been to identify an opportunity of working with the FCO to use the recently introduced compulsory Academic Technology Approval Scheme (ATAS) to make academic institutions aware of the potential need for an export licence for WMD related technology transfer. ATAS requires non-EU/EEA nationals planning to undertake postgraduate study in the UK in certain science, engineering or technology disciplines to obtain clearance from the FCO before applying for a Visa, Entry Clearance or Extension of Stay. However, the need for an export licence is not covered by the ATAS process. So we propose to include an export control awareness paragraph in the information sent out to institutions listing the individuals who have been granted certificates.

7. **Recommendation 51:** *When will the questionnaire be returned and the results available*

The Government has received a number of responses from other EU Member States, and is in the process of compiling the responses. Once this has been completed, a consolidated response will be sent to COARM for passing on to member states. At the same time we will pass a copy to the Committee

8. **Recommendation 67:** *Can the FCO please press the Home Office for the information sought?*

The FCO will press the Home Office for a response to this recommendation and get back to the Committee shortly.

9. **Recommendation 71:** *When will the Presidency's proposals emerge?*

Discussion on the Commission's proposals for a revision of the Council Regulation on the control of exports of dual-use items takes place at official level in the Presidency-chaired Dual-Use Working Party. The UK has contributed positively to these discussions and seeks to disseminate UK best practice and experience where this is appropriate. Member states have yet to agree formally on any of the proposals, and discussions continue.

10. **Recommendation 86:** *Will the Government's commitment include the provision of figures in the 2007 Annual Report?*

Information on resourcing will be included in the 2007 report. However, this will be in terms of overall resourcing and not monetary value.

11. **Recommendation 88:** *The Committee welcomes the Government's suggested change in its letter of 15 January 2008.*

Noted

SECTION E: REVIEW OF THE EXPORT CONTROL LEGISLATION (2007): GOVERNMENT'S INITIAL RESPONSE TO THE PUBLIC CONSULTATION (FEBRUARY 2008)

12. *What evidence emerged from the consultation exercise about the reasons for the small number of applications for trade control licences from British Citizens overseas?*

13. *What evidence emerged from the consultation exercise to show whether the extra-territorial provisions in the legislation have places British citizens overseas in unacceptable positions?*

12 & 13: The Government published on the ECO website all the responses that it received and they can be viewed at: <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/exportcontrol-act-2002/review/page42883.html>

14. *Has the government made a final decision on the registration of brokers?*

No. The initial response in the ECA Review covers this area at paragraph 8.1.

15. *Has the Government considered the Committee's recommendation that a standard requirement of licensing be to include a requirement that export contracts for goods on the Military list contain a clause preventing re-export to a destination subject to UN or EU embargo?*

This is still being considered, and will be covered in a further response.

16. **Recommendation 69:** *The Committees wish to know whether the Government has completed its consideration of the implications for the review of EU Council Regulation 1334/2000 and whether there are implications for domestic legislation?*

The Government has concluded that there are no implications for domestic legislation arising from the review of the implementation of the EU Regulation. Examination of the Commission's proposals for amending Council Regulation 1334/2000 is on-going in Council Working Groups. It is hoped that this process will be complete by the end of 2008.

17. *Will the 2006 Annual Report include monetary values in the information about resources on enforcement and outreach?*

Please see the answer to Q10.

SECTION F: OTHER QUESTIONS

18. *The Committee notes the written answer given on 22 January 2008 that “particular attention” was being taken “when issuing licences where there was a risk that equipment might be diverted to Burma from third countries” (HC Deb 22 January 2008 col 1850W). Has the Government refused any applications for export licences for this reason? If so please supply details.*

The Government has not refused any export licence applications on the grounds of possible diversion of the goods to Burma.

19. *Has the UK/US Defence Trade Co-operation Treaty been ratified by the US Senate? What are the prospects for ratification?*

The Defence Trade Cooperation Treaty will simplify and make more effective the controls on transfers of defence material between the US and the UK. Negotiations on the Treaty Implementing Arrangements are now complete and we are confident that the US Senate will ratify the Treaty in the near future. Clearly there is still a chance ratification will not take place and in this instance the Treaty would not come into force. UK export controls will not be affected by the Treaty.

20. *What is the UK Government's view of the proposal that the emerging international treaty, currently being discussed within the Oslo process, should only prohibit cluster munitions that do not have self-destruct mechanisms or that do not meet a fixed maximum percentage of failure, such as 1 %. Does the Government support such a proposal?*

The aim of the Oslo Process, as expressed in the February 2007 Oslo Declaration, is to conclude a legally binding international instrument that will prohibit cluster munitions that cause unacceptable harm to civilians. One of the key tasks at the final Oslo Process meeting in Dublin (19-30 May) will be to define what types of cluster munitions might be prohibited by the Convention. It is the harm to civilians caused by unexploded ordnance from cluster munitions that we are all seeking to address.

Extensive discussions have taken place in previous Oslo Process meetings, including on the impact and reliability of self-destruct mechanisms, but no consensus has yet been reached. The UK has tabled its own proposal for what types of cluster munition might be prohibited or excluded by the Convention. We believe that self-destruct mechanisms can minimize the post-conflict risk posed by cluster munitions to civilians. We have therefore suggested that we need to consider the elements and characteristics that should exempt a sub-munition from a prohibition within specified reliability and accuracy benchmarks, including munitions which incorporate a failsafe mechanism.

21. *According to “M85: An analysis of reliability” (Norwegian People's Aid 2007) the M85 is currently considered as the ‘benchmark’ among bomblets equipped with self-destruct mechanisms and that the M85 is the only self-destruct bomblet ever documented to have been used in combat: in 2003 by the UK, and in 2006 by Israel in Lebanon. What assessment has the UK Government made of the use of the M85 and of the failure rate of its self-destruct mechanism.*

As with all reports received on munitions, we welcome the opportunity for our experts to read and evaluate this report. The evidence in the report on UK use of L20A1 M85 in Iraq in 2003 is anecdotal and inconclusive. Assertions that the M85 has a higher failure rate in combat than in testing are not borne out by UK operational experience in Iraq. The sub-munition was deemed highly effective by UK Commanders. Moreover, rigorous UK trials, testing and in-service surveillance since 1996 have indicated that the M85 has a 2% failure rate.

However, we accept that sub-munitions may perform differently when used by different nations in different operational conditions. Munition age, condition of storage, temperature, handling and transportation can affect the reliability of all munitions, including cluster munitions. UK munitions authorities are well aware of these factors and conduct a series of in-service trials and tests to mitigate against them. The various sub-components of the munition are broken down into their constituent parts, and are subject to a rigorous and thorough physical, chemical and visual examination. Routine trial-firings are also carried out at a range of temperatures to simulate environmental variances.

As the overall aim of those seeking a treaty on cluster munitions is to reduce the risk of unintended harm from explosive remnants of war, then fail-safe fuses should be seen as making a positive contribution towards that aim. We do accept that certain older mechanical self-destruct fuses may be less reliable than more modern versions, but there is nothing to suggest that future designs could not be significantly more reliable. New technology, including electrical fusing, will increase the reliability of the munitions further and reduce the incidence of explosive remnants of war.

22. *What proposals has the EC brought forward to reduce the scope of Article 296 of the Treaty of Amsterdam, at what stage are the proposals and what is the attitude of the UK Government?*

On 5 December 2007 the Commission published a Defence package which included 2 draft legislative measures—one on Defence and Security Procurement Rules and one on Intra-Community Transfer of Defence Goods and Services. The package is intended to improve the efficiency and competitiveness of the European defence industry by addressing the conduct of business and the effectiveness of the market.

The objective for the Defence and Security Procurement Directive, where MoD lead, is to establish new, more flexible public procurement rules specifically adapted to the defence sector. This will not only ease the conduct of business in this area but, it is hoped, will encourage some Member States away from invoking Article 296 of the Treaty to exempt their procurements from the public procurement rules due to the inadequacies of the current rules. The Government supports the Commission's aims of improving competitiveness, transparency and efficiency in the European defence equipment market although the proposed measure clearly needs to be carefully balanced with the need to ensure adequate protection of legitimate national security concerns.

Separately, the Intra-Community Transfers Directive aims to simplify national export licensing procedures, so as to facilitate cross-border trade within the EU and thereby improve competitiveness and security of supply. The Directive generally proposes to use as its basis the simplified licensing arrangements that are in operation within the UK.

Neither of the draft Directives would, per se, reduce the scope of Article 296 or extend the Community's competence, including that in relation to trade in military goods. However, they might encourage the Commission to challenge Member States' use of Article 296 to, for example, justify bilateral treaties in this area. Given the impact this could have on our ongoing efforts to ease the conduct of defence trade with non-EU nations, the Government will pay special attention to this aspect during the Council Working Groups (the first of which is currently scheduled for 14 April). Where there are essential security interests at stake, Member States will remain able to invoke Art 296. If a Member State can properly do so now, the Directives will not affect the position at all. The issue is not that the Directives will change the legal position on external competence but rather that they will make the Commission more likely to challenge inappropriate use of Art 296 or that they will contribute to changing the Commission's view of what constitutes inappropriate use. We will be pressing for inclusion of text making specific reference to Art 296, but if the Directive is adopted this will be of symbolic rather than legal significance.

23. *It has been reported that in response to a July 2007 Government Accountability Office report critical of the Department of Defence's record keeping, the US Congress has passed legislation mandating new tracking requirements for defence articles provided to Iraq. The legislation requires the establishment of a registration and monitoring system on defence articles provided to the Iraqi government or any group, organisation, citizen or resident of the country (<http://www.armscontrol.org/act01-02/mandates.asp?print>). The system would require registration of all small arms, a program of end-use monitoring of all lethal defence articles, and detailed origin, shipping and distribution records of defence articles for security forces or security assistance programs. Has the UK Government considered introducing a similar system?*

The Government had not previously seen this information and thanks the committee. It is unlikely that the Government will consider introducing such a system as it already receives a significant amount of information in relation to export licence applications, including supporting documentation such as end-user undertakings. As regards end-use monitoring, the Government is not in a position to carry out systematic post-export monitoring checks which, in any event, we do not believe to be a reliable method of control. A full end-use risk assessment is carried out when the application for an export licence is being processed.

In the case of Iraq, where not explicitly exempt, UNSCR 1546 additionally requires certification from the Iraqi Government or the Multi-National Force assisting it, that the goods are necessary for the purposes of giving effect to UNSCR 1546 and are therefore exempt from the embargo on Iraq.

24. *In paragraph 9 of the annex to the FCO's letter of 11 October 2007 the Government refuses to further details because "The information is commercially confidential". Given that the Government regularly supplies the committee with material that is "Restricted Commercial" and which classification the Committee has always respected, the Committee asks why the information being sought is withheld and that the Government reconsiders the Committee's request? The Committee is also conscious of the Government's undertaking in its response to the Committees' later report that it "would be willing to share with the Committee on a confidential basis more details of individual assessments, where requested".*

The Government makes every effort to ensure that classification of material provided to the committee is consistent and appropriate. The data that is provided on the discs is classified as "Restricted-Commercial" and is shared with the committee in confidence. The committee's respect for this is noted. Correspondence between officials and Ministers is often classified as "Confidential" or higher for valid security reasons, and we are not able to share this information with the committee. The Government's offer to brief the Quad regarding confidential material remains in place.

25. *What is the Government's target date for the publication of the 2007 Annual Report on Strategic Export Controls?*

The Government hopes to publish the Annual Report on Strategic Export Controls in May 2008.

April 2008

Further memorandum from the Foreign and Commonwealth Office

QUESTIONS AND ANSWERS

QUESTION 1

The Prime Minister has called for an arms embargo on Zimbabwe. What steps has the Government taken to secure an embargo, and what are the prospects for success? (The Committees have raised with the Export Control Organisation reports that a British company, Avient Aviation, may have assisted the transfer of arms to Zimbabwe)

ANSWER

The Prime Minister said on 26 April that the UK would support a moratorium on arms transfers to Zimbabwe until a democratic government is in place. Since that time, we have:

- sought and achieved a briefing on Zimbabwe in the UN Security Council 29 April 2008, the first since March 2007, at which a number of UNSC members including the UK, advocated a voluntary moratorium on arms exports by UN Member States; and
- played a role in shaping the conclusions of the 29 April EU General Affairs and External Relations Council, which read, in part:

“The EU recalls that it does not supply or sell arms, related materials or equipment which could be used for internal repression in Zimbabwe. It encourages others to exercise similar restraint at this time by introducing a de facto moratorium on all such sales and welcomes actions which have already been taken in this respect”.

Going forward, we intend to maintain dialogue with the Southern Africa Development Community (SADC) countries regarding the importance of continuing to prevent arms transfers destabilising Zimbabwe, and explore further how the international community can support these efforts. We continue to press for a moratorium internationally. We have been reassured by the Chinese authorities directly that the original arms shipment that was destined for Zimbabwe in April 2008 is now en route back to China and has not been offloaded or rerouted to Zimbabwe by other means.

As Malcolm Wicks, MP Minister of State for Energy at BERR, stated in his letter of 22 May to Dr Roger Berry, Chairman of the Committees on Arms Export Controls, HMRC ‘the UK enforcement body for export controls’ is aware of the alleged involvement of a UK company in a shipment of arms to Zimbabwe. He will provide a further update to the Committees as soon as possible.

QUESTION 2

Given that the value of standard individual exports licences issued for exports to China increased from £85 million in 2006 to £227 million in 2007 does the embargo on arms exports to China have any economic or commercial effect?

ANSWER

The EU arms embargo on China is implemented in line with the EU Code of Conduct, which clearly sets out what can and cannot be exported in line with specific criteria. The EU embargo on China was imposed after the Chinese suppression of the Tiananmen square pro-democracy demonstrations in 1989 and its scope covers lethal weapons that could be used for internal repression. It is important to note that it is not a “full scope” embargo. The export of some controlled goods to China was always envisaged and thus, increases in the volume of exports for controlled goods that are not covered by the terms of the embargo should not be seen as a barometer of the effectiveness of the embargo. It is also difficult to assess the economic and commercial impact of the embargo based on one year's figures, and this needs to be assessed against a longer period.

The table below shows the value and number of standard individual export licences (SIELS) from 2004 to 2007.

 SIELS TO CHINA 2004 TO 2007

<i>Year</i>	<i>Number of SIELS</i>	<i>Value of SIELS</i>
2004	180	£100 million
2005	238	£61 million
2006	284	£85 million
2007	310	£227 million

(This data in table is taken from Annual and Quarterly Reports that can be found on the FCO Website at: <http://www.fco.gov.uk/en/about-the-fco/publications/publications/annual-reports/export-controls>)

The table shows that since 2004 there has been a steady rise in the number of SIELS approved, although the value has fluctuated.

In 2007 three unusually high value UK exports to China took place. One was for enriched uranium (£124 million) to be used by the Yibin Nuclear Element Plant for the fabrication of commercial nuclear fuel in support of the Chinese civil nuclear power programme. Another was for cryptography software (£23.8 million) that would enable the provision of Voice Over Internet Protocol Services to be used by UT Starcom Telecom Ltd in China. The final high value export was for nickel powder (£10 million) to be used by Jinco Nonferrous Metals Co Ltd. for use in the process of making nickel sulphate and chloride. These three high value exports have distorted the overall figures for 2007 compared to previous years. All three export licence applications were assessed against the Consolidated EU and National Arms Export Licensing Criteria and were approved following consultations with the appropriate government departments and agencies. None were submitted to FCO Ministers.

QUESTION 3

Does the behaviour of the Chinese authorities in Tibet justify a strengthening of the arms embargo?

ANSWER

We continue to have serious concerns about human rights in China. We cover human rights issues in depth with the Chinese during our regular biannual UK-China Human Rights Dialogue, (the last round of which took place in Beijing in January 2008). The December 2004 European Council conclusions sent a strong political signal of the continued importance of human rights in assessing EU arms exports to China. The Code of Conduct, which is the primary means of controlling arms exports, has set criteria regarding human rights. In line with Criterion 2, HMG would not permit the export of goods if there was a clear risk the export might be used for internal repression.

On Tibet in particular, we continue to urge substantive dialogue between the Chinese authorities and the Dalai Lama to resolve the underlying human rights issues there. We believe that engagement with China, not isolation, is the best way to encourage this. Strengthening the arms embargo would do nothing to encourage dialogue, and would risk isolating the Chinese Government in a way which would make it significantly more difficult for us to raise human rights concerns.

QUESTION 4

The Government's approach has been to engage in dialogue with China. What has the UK to show for its efforts at dialogue with China?

ANSWER

By engaging with China on arms and export issues, we are able to share our best practice knowledge on export licensing controls. We have been involved in an EU pilot project with the Chinese, which has resulted in the production of guidance for Chinese industry on internal compliance procedures. Continued dialogue was also influential in allowing us to lend our voice to that of African civil society when lobbying the Chinese on the arms shipment to Zimbabwe throughout April this year. Overall, we judge that the human rights situation has improved significantly in China since 1989. The US has now dropped China from its list of "countries of concern" in its annual human rights report. By entering into dialogue with the Chinese we can encourage greater transparency and foster the modernising of arms export regulations and communicate our concerns openly; something we could not do if we were not willing to engage with the Chinese on arms issues. However, this willingness to enter into dialogue does not influence our policy on arms exports to China. In line with Code of Conduct criteria for arms exports, the UK does not approve export of goods to the region if they would adversely affect regional stability in any significant way. This includes the potential for equipment to enhance significantly the effectiveness of existing capabilities or to improve force projection.

QUESTION 5

There are reports that China is the main supplier of the Sudanese armed forces—for example, Human Rights First (a New York based human rights organisation) reported on 13 March 2008 that China sold over \$55 million worth of small arms to Sudan as the violence escalated in Darfur. What is the Government's assessment of the extent to which China is supplying arms to Sudan? What can be done to stop these supplies?

ANSWER

The People's Republic of China does not publish details of its arms exports, and last submitted data to the UN Register on Conventional Arms covering its exports in 1996. It is therefore not possible to provide accurate figures on either the total number or value of Chinese arms exports to Sudan, and Africa in general. On the specific issue of Sudan, we are building practical co-operation with China as it seeks to improve its export controls. Within this dialogue we encourage China to increase the transparency of its arms exports. However, we believe the UN should extend its arms embargo on Darfur to all of Sudan, as asked for in the UN Sanctions Committee of 6 November 2007. The Foreign Secretary raised the issue of Chinese arms exports to Africa, and Sudan in particular, during his visit to Beijing in February 2008 and we continue to engage in dialogue with the Chinese on this subject on a regular basis.

QUESTION 6

The Government supports a legally binding instrument to prohibit those cluster munitions that cause unacceptable harm to civilians. How does the Government define unacceptable harm to civilians?

ANSWER

“Unacceptable harm” was a phrase conceived for the purposes of the Oslo Declaration. The key task for those engaged in the Oslo Process, and the wider international community, was to find a balanced solution whereby those cluster munitions which caused unacceptable harm were clearly defined and prohibited. The humanitarian issue to address is minimising the potential exposure of civilians to the post-conflict hazard of unexploded sub-munitions. We are delighted that the text of the Convention on cluster munitions adopted at Dublin achieves that objective. In fact it does not seek to define unacceptable harm—instead it defines and prohibits all cluster munitions. Article 2 of the Convention makes clear that other munitions which have sub-munitions, but which meet a set of cumulative criteria designed to avoid indiscriminate area effects and the risks posed by unexploded sub-munitions, are not cluster munitions.

QUESTION 7

Dr Howells has stated that “we cannot exclude the use of the cluster munitions that we retained in certain circumstances” (HC Deb, 29 February 2008, cols 2020–21W). Can the Government explain what these circumstances might be?

ANSWER

The Prime Minister announced on 28 May the immediate withdrawal of all the UK's remaining cluster munitions. Therefore the circumstances under which their use might previously have been contemplated no longer apply.

QUESTION 8

If a so-called “smart” cluster had a failure rate of more than one percent, should it be banned?

ANSWER

In the event, negotiations in Dublin led to agreement on a set of definitions which did not specify a percentage failure rate as a criterion for banning or excluding any particular weapons system. All States present agreed instead that weight and number of sub-munitions, their ability to detect and engage single target objects, and the presence of self-destruction mechanisms and self-deactivation features were more important criteria for determining whether or not a particular weapons system should be prohibited.

The UK is committed to improving reliability of all munitions, with the aim of achieving lower failure rates and leaving less unexploded ordnance. This is the humanitarian problem that all those involved want to address.

QUESTION 9

The Committees understand that the OECD investigation in respect of corruption is a “Phase Two” examination—a procedure that, so far, only three countries, Ireland, Luxembourg and Japan, have been subjected to. Does the Government consider that the investigation is far from routine and brings into question the UK’s laws and enforcement arrangements for combating corruption?

ANSWER

The OECD recognises that our law is in accordance with the minimum requirements of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, and that the UK has fully or partially implemented 17 of the 20 recommendations by the OECD Working Group set out in their Phase 2 report published March 2005.

In light of concerns raised by the OECD in their Phase 1 evaluation of the UK, the Government legislated in the Anti-terrorism, Crime and Security Act 2001 amending the existing law. Following this, the OECD Working Group on Bribery concluded that “the UK law now addresses the requirements set forth in the Convention”.

However, we recognise that the existing legal framework is fragmented and in need of modernisation. We have been striving to bring forward a new bribery law for some time. This has not proved an easy task, but it is vital we get it right. We look forward to receiving the Law Commission report and draft Bill this autumn and our intention is to introduce a draft Bill for pre-legislative scrutiny in the fourth session, as noted in the draft Legislative Programme. This is the best and most effective means to work up proposals for a new law.

With respect to enforcement, the UK has strengthened its systems to combat foreign bribery by establishing the Overseas Anti-Corruption Unit in the City of London Police in November 2006. Working closely with the Serious Fraud Office, they have successfully increased the number of enquiries and investigations. There are now 20 foreign bribery enquiries ongoing, and 46 allegations under preliminary investigation. BERR has recently provided further resources to increase the number of officers in the unit to 12.

QUESTION 10

Back in 2003 the Committees raised a number of concerns and questions about the sale of air traffic control equipment to Tanzania. According to press reports, investigators have now found more than £500,000 in a Tanzanian minister’s offshore accounts in Jersey—see *The Guardian* report on 22 April. Are there any lessons from the Tanzanian case for the British Government?

ANSWER

Andrew Chenge, Minister for Infrastructure resigned last month following the ongoing BAE radar investigation by the Serious Fraud Office, which had uncovered an overseas account of his worth \$1 million. The investigation is still on going, so we are unable to comment on it at this time. The SFO has received good co-operation from the Tanzanian authorities, the Prevention and Combating of Corruption Bureau (PCCB).

The Government is committed to promote responsible business conduct through transparency initiatives and effective self-regulation. We welcome the defence industry’s own commitment to this agenda, shown by the Common Industry Standards (CIS). This is an excellent start which we strongly support, and the newly formed Defence & Security Organisation (UKTI DSO) within UK Trade and Investment will be working in partnership with industry to achieve the widest possible industry buy in and business commitment to the CIS.

QUESTION 11

Transparency International (UK) has proposed that the British and Saudi Governments jointly set up a body to monitor the al-Salam contract signed in 2007. Transparency International (UK) state in evidence to the Committees that: “There will be a body of opinion in Saudi Arabia that will welcome higher confidence in the integrity of this contract, given the damage and embarrassment caused by ‘Al Yamamah’.” Do you agree with Transparency International (UK)’s assessment?

ANSWER

Our experience is that the Saudi Government would not agree to any arrangement that would result in the release of sensitive information relating to their defence capability, which they would consider to be against their national interest.

QUESTION 12

The Committees raised the export of armoured personnel carriers and water cannons to Libya in 2007 and whether they could be used for internal repression. The FCO replied that the level of risk that the goods would be used contrary to Criterion 2 had been mitigated to an acceptable level by the training and evaluation. How does the Government respond to Human Rights Watch which states that serious rights abuses persist: there is no free press, independent organizations are banned, detainees are tortured, and political prisoners are locked up and some of them have “disappeared”? What assessment has the Government made of human rights in Libya?

ANSWER

We remain concerned with many aspects of Libya’s human rights record, including some of the areas mentioned by HRW in its report. We continue to monitor the human rights situation in Libya closely. Each export licence request is judged on its individual merits against the consolidated export licensing criteria. Criterion 2 states that “the government will not issue an export licence if there is a clear risk that the proposed export might be used for internal repression”. In the case that the committees refer to, the following assessment took place:

- (a) A detailed analysis of the situation in Libya following the Benghazi riots.
 - A recognition by the Libyans that the situation needed to change—the Secretary for Public Security was sacked and a new senior Libyan police structure was put in place to ensure that it never happened again.
- (b) The Libyan Police’s successful completion of public order and riot control training.
 - This training had been assessed by two serving UK police officers against the standards of current UK police forces training.
 - They placed particular focus on the “golden threads” of human rights, conflict management, and risk and threat management and command structures.
 - An assessment, against the Consolidated Criteria, was completed following this training to ensure that Criterion 2 concerns were met.
 - The package surrounding these exports trained the Libyan police in appropriate, human rights compliant, behaviour and gave them the equipment to respond to threats in an appropriate, non-lethal manner.

QUESTION 13

The UK plays a significant part in the Proliferation Security Initiative which aims to stop illegitimate trade in weapons of mass destruction and WMD technology. Does the UK Government have the necessary powers to interdict ships and their cargoes on the high seas?

ANSWER

At present the UK has no powers to seize goods subject to export controls on the high seas, or to interdict ships on the grounds that they are carrying such goods.

The 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol) will strengthen the international legal basis to impede and prosecute the trafficking of WMD, their delivery systems and related materials on the high seas in commercial ships by requiring state parties to criminalize such transport. The Protocol also establishes a mechanism to facilitate the boarding in international waters of vessels suspected of engaging in these activities.

In broad terms, once the SUA Protocol comes into force and the UK has ratified, UK enforcement officers will be able to board a ship on the high seas and seize goods, where there is reasonable grounds to suspect the ship is transporting WMD, or equipment that could be used for WMD. Consistent with existing international law and practice, SUA boardings can only be conducted with the express consent of the flag state of the vessel to be boarded.

The SUA Protocol will only come into force after ratification by 12 countries. Currently only three countries (Spain, Cook Islands and St Kitts and Nevis) have ratified. The UK has signed the Protocol but has not yet ratified.

PSI is a practical, highly effective mechanism for addressing the very real threat of illicit trafficking in WMD and related materials. The UK continues to participate actively in PSI. We recently hosted a meeting of the PSI Operational Experts Group in London (February 2008), and sent a strong cross-departmental team to the PSI 5th Anniversary events in Washington (May 2008). The initiative that led to the creation of the SUA Protocol was driven by PSI nations, and at the recent Washington meetings PSI participants adopted a declaration which encouraged all signatories to the Protocol to work towards ratifying it.

QUESTION 14

Does the Government require legislation to give legal effect to the Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation? When will the legislation come forward?

ANSWER

Legislation is required to enable the UK to ratify the SUA Protocol. The necessary legislation is contained in the Transport Security Bill, which has a place in the Draft Legislative Programme for the fourth session of Parliament. The Department for Transport has led preparation of the Bill.

QUESTION 15

What part does China play in the Proliferation Security Initiative?

ANSWER

China does not currently participate in PSI. However, existing PSI participants and China would both benefit from working together through PSI to build global capacity to combat trafficking of WMD and related materials. China recently attended the outreach session of the PSI 5th anniversary events in Washington.

QUESTION 16

What is the Government's assessment of the supply of arms to Burma? Is the Burmese Junta actively seeking arms and who is supplying them?

ANSWER

In October 2007 the Government undertook an internal review into which states were supplying arms to the Burmese authorities. The review made clear that there was no evidence to support allegations that military equipment from either the UK or other EU member states was reaching Burma in breach of the EU Embargo, including via India. However, the report did highlight that the main arms suppliers to Burma were in fact China and the Democratic People's Republic of Korea.

QUESTION 17

There have been reports that North Korea has been selling rocket launchers to Burma via a trading company in Singapore and that Burma has also bought arms from China, India, Russia and Ukraine—for example, Kyodo World Service, 3 April 2008. Assuming these reports to be accurate, what can the British Government do to prevent Burma obtaining arms supplies?

ANSWER

As there is currently no UN embargo in place against Burma, we are limited in what we can do to prevent sales of military equipment to the Burmese authorities from other states. However, the UK through both our contacts bilaterally and within international organisations, regularly raises our concerns with other states about their arms export policies. For example, but not specifically in relation to Burma, we regularly discuss with China its policy on the export of military equipment, particularly in the context of how these exports can have a destabilizing effect on fragile states.

QUESTION 18

The recent gyrocompasses cases concerning Mr Salashoor showed that dual use goods are not notified when they are moved between EU countries, unlike items on the Military List. The export was only picked up when the gyrocompasses were about to leave the EU from Malta. Is this a weakness in the export control system that needs to be plugged?

ANSWER

No. The important point is that a fellow Member State prevented the export of concern leaving their territory. If that says anything about the system, it is proof of its success, not its failure.

A good deal of work takes place within the EU to spread best practice and bring newer states up to the standards of those with longer standing export control systems. In recent times, there has been an extensive Peer Review programme on a range of export control issues, and a Commission-chaired Committee oversees the practical implementation of the Dual Use Regulation.

QUESTION 19

The Committees have been pressing for the EU Code of Conduct on Arms Exports to be adopted as a Common Position since 2005. What are the prospects for making progress on adopting the Code as a Common Position?

ANSWER

We are in discussions at official level with all EU member states to see how to overcome the reservations some had previously expressed about the Common Position. These discussions are moving forward and we hope they will lead to consensus being reached in the course of the next six months. As a matter of principle, we believe the adoption of the Common Position will greatly strengthen the export control system across the European Union, changing the status of controls from politically to legally-binding. Once consensus is reached, the Government will move quickly to implement, having already subjected the Common Position to parliamentary scrutiny. The last formal EU ministerial discussion of the issue took place at the General Affairs Council of December 2007.

QUESTION 20

Recent press reports indicate that the Slovak Republic has licensed the export of 10,000 military missiles to the Sri Lankan Government (Sme, Bratislava, reported on 7 April 2008 (according to BBC Monitoring)). Where an EU country grants a licence which appears to be breach the EU Code of Conduct on Arms Exports—in this case Criterion 3 on prolonging internal conflict—what can the UK Government do about it?

ANSWER

When these reports came to light, the FCO immediately sought to establish the facts. Staff at our Embassy in Bratislava discussed the reports with officials from the Slovakian Ministry of Foreign Affairs. They confirmed that the export of 10,000 rockets had taken place, but a licence to ship a further 30,000 rockets had been revoked.

The original Slovakian export is not in itself technically a breach of the Code of Conduct, but clearly would be considered undesirable when considered against Criterion 3. And under similar circumstances the UK would have refused the export of this type of military equipment to Sri Lanka at this sensitive time. We are now liaising with the Slovenian Presidency and other EU partners within COARM to consider how best to ensure that the Code of Conduct is applied in a uniform manner across the all Member States, thereby avoiding this type of anomaly in future.

June 2008

Memorandum from the National Archives

There is no written guidance specifically for draft minutes. However, when a paper file is selected for permanent preservation, the *whole* file is selected. The National Archives doesn't recommend that departments weed files and it is quite normal for such files to contain document drafts. Drafts can be historically significant in themselves. Section 7.1 (c) of TNAs' Guidelines for the Selection of Records (available on our website) states that:

principal policy papers, for example those leading to primary or subordinate legislation in which the department took the lead, submissions to Ministers, and papers created in the course of preparing material for the Cabinet or a Cabinet Committee, including all drafts

<http://www.nationalarchives.gov.uk/documents/general-guidelines.pdf>

June 2008

Further memorandum from HM Revenue and Customs

In response to the issue of incompatibility in the way the HMRC customs database and the declaration processing system reports and the way ECO registers use of open licences, (which was raised during the oral evidence given by Mr David Hayes, Chairman of EGAD, Mr Brinley Salzmann, Secretary of EGAD, Ms Bernadette Peers, Strategic Shipping Company and Mr Barry Fletcher, Fletcher International Export Consultancy. (Q123, HC (2007–08) 254)).

We would advise that customs export declaration information submitted electronically to the customs processing system Customs Handling of Import and Export Freight (CHIEF) is captured and can be interrogated through a management reporting system.

The use of open licences is generally for low risk goods exported to low risk destinations, as such there is a significant number of this form of licence used averaging approximately 25,000 per year.

Information provided on an export declaration where an open export licence has been declared will be processed through the customs computer CHIEF and appropriate validation checks will be performed as part of this process, these validation rules are based on the information provided which includes the notification that use of an open licence has been declared.

To ensure that our processing and validation rules applied to the declaration data are targeted to identify risk, HMRC undertake a percentage of manual interventions requesting all supporting documentation associated with the declaration to be presented to our National Clearance Hub (NCH) for verification.

The information for application to register for an export licence and the provision of information to make a customs declaration at export will be different, though there will be a degree of overlap and HMRC and ECO can legally exchange information where necessary through the appropriate gateway.

HMRC has received a request to provide statistics on the usage of open licences under the Freedom of Information Act (FOI). Upon interrogation of our management system in combination with the scope and detail of the request. It was identified that additional information would be required from the supporting documentation, to enable a full and accurate response to be created.

A decision was reached that the application of reasonable resources to request, collate and review supporting documents together with our electronic management data, would take the time and costs beyond those set out within the limits within the provisions of the FOI Act, which was communicated to the requester.

In addition, the committee requested a note on the monitoring of the internet. As advised during the committee's visit to Southampton HMRC were involved in the initial discussions and would have undertaken appropriate enforcement action were any breaches discovered. The internet monitoring project and pilot study was undertaken by the ECO which started on the 1 February 2007 and was scheduled to run for a period of four months.

Subsequent to this pilot project that employed an automated web crawler there was no evidence produced to suggest that there is any trade in items defined within the project parameters from the UK or through UK based websites, ECO have concluded that the resourcing required to continue monitoring the automated work is manageable within their own resourcing constraints, which is reviewed every 3 months to ensure that it is staying within current resources.

June 2008

Further memorandum from the Foreign and Commonwealth Office

I have pleasure in enclosing responses to the questions set out in your letter of 6 May on the Quarterly Report for October to December 2007 and follow-up to earlier correspondence.

This is a consolidated response from the FCO and BERR.

* * *

SECTION C: QUESTIONS FOLLOWING UP THE LETTER OF 14 APRIL 2008

5. *Application no 82090 (Jordan). How many guns were licensed for export?*

1,600.

6. *Application no 82787 (Oman). How many guns were licensed for export?*

450.

SECTION D: OTHER MATTERS

7. *Will the Government publish the new Criterion 8 methodology (para 5 of the FCO's letter of 14 April 2008)*

The new Criterion 8 methodology will be published in the 2007 Annual Report on Strategic Export Controls.

8. *In recent evidence to the Committees (Q 53, 20 March 2008) EGAD criticised the operation of the SPIRE as there was no help line and no named officers to contact where an application for a licence was made, despite an assurance that details of a named officer would be provided. The Committees would be grateful for the Export Control Organisations' comments on EGAD's representations*

A notice to exporters was issued on 16 May 2008 ('New arrangements for contacting ECO'), explaining how to find the Case Officer for each licence application on SPIRE. The notice includes a list of Case Officers, their contact numbers and individual email addresses, and is also on SPIRE. However, all information that has been requested by the ECO should still be submitted via SPIRE and not sent to individual Case Officers as this may lead to a delay in processing applications.

The ECO did introduce a helpline to assist exporters with enquiries relating specifically to SPIRE in mid 2007, and also re-introduced the general ECO Helpline in late 2007. The introduction of the SPIRE helpline was well publicised so that exporters would have a point of contact to help them through the SPIRE registration process before going live in September.

The same notice referred to above also explained that, to provide a more efficient service to exporters, these helplines are in the process of being merged, and exporters now have one point of contact for all enquiries. The telephone number of the helpline is 020 7215 4594, fax 020 7215 2635, or enquirers can continue to email using eco.help@berr.gsi.gov.uk.

9. *How long does the Export Control Organisation keep records of applications and licences?*

This is currently under review, and we will write to the Committee once we have an agreed and updated policy in place.

10. *In light of the Knight case, can convicted criminals be barred from using open licences?*

We would refer to the evidence given by Mr Wicks to the Committee on 19 May 2008. Convicted Criminals who are serving a custodial service are not, under HM Prison Service rules, permitted to run a business from prison. Endeavour Resources, Mr Knight's company, has had its OGEL registration suspended, for a period of 4 years from the date of his conviction.

July 2008
