



House of Commons
Defence, Foreign Affairs,
International Development and
Trade and Industry Committees

Strategic Export Controls

**HMG's Annual Report for 2003,
Licensing Policy and
Parliamentary Scrutiny**

First Joint Report of Session 2004–05

Fifth Report from the Defence Committee of Session 2004–05

Fifth Report from the Foreign Affairs Committee of Session 2004–05

Fourth Report from the International Development Committee of Session 2004–05

Eleventh Report from the Trade and Industry Committee of Session 2004–05

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

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The Committees on Strategic Export Controls (Quadripartite Committee)

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

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* Member who participated in the inquiry leading to this Report
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The Reports and evidence of the Committees are published by The Stationery Office by Order of the House. All publications of the Committees (including press notices) are on the Internet at www.parliament.uk and can be found by going to the webpage of any of the four participating Committees. A list of joint Reports of the Committees in the present Parliament is at the back of this volume.

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Summary

The Defence, Foreign Affairs, International Development and Trade and Industry Committees have worked together since 1999 to examine the Government's policy on strategic export controls. This arrangement, which has become known as the Quadripartite Committee, has been successful but we discuss a number of refinements that should be made to enable us to carry out our job—scrutiny of Government policy—more effectively. We are disappointed that on three occasions the Government has missed deadlines when supplying us with information, which has been obstructive to our work as a Committee in ensuring effective scrutiny.

We examine in detail the changes made to reporting of export licences since our last Annual Report, and welcome several Government initiatives, in particular the publication of quarterly data. We reiterate the need to produce more public information on the end use of equipment in order to avoid misunderstandings.

We note that, on the whole, the new system introduced by the Export Control Act 2002 seems to be working well, although there is ongoing debate with industry on the effect of certain provisions. We express concern that cuts in the budget and to the staffing of the Export Control Organisation may jeopardise this success. We also repeat our calls for an extension of the Act's extra-territorial controls.

In the international arena, this is a time of change, risk and opportunity: change, as the review of the EU Code of Conduct, elaboration of Criterion 8 and agreement of a Regulation to control equipment used in torture and capital punishment come to a conclusion; risk—in our view—as the EU considers lifting its arms embargo on China, and the US Congress continues to block the ITAR waiver for the UK; and opportunity, as support for an International Arms Trade Treaty gathers pace. We recommend that the Government should oppose the lifting of the arms embargo on China unless all EU member states give an absolute assurance that it will not lead to a qualitative or quantitative increase in their exports.

We conclude that the UK Government, as President of the G8 and EU during 2005, is in a position to make a real difference to arms control worldwide before the end of the year.

1 Introduction

1. The Defence, Foreign Affairs, International Development and Trade and Industry Committees began regular examinations of the Government's strategic export control system in 1999. Through this arrangement, which has become known as the 'Quadripartite Committee', we have conducted ongoing scrutiny of this complex and controversial area of government policy.

2. This is the fifth and, we anticipate, our last Report in this Parliament. Our previous Reports are listed on page 64. We have seen, in particular, the development of new legislation governing strategic export controls—the Export Control Act 2002 and associated secondary legislation, which came into force in May 2004. The introduction of those measures has taken much of our attention.

3. There is more change to come. At the time that this Report was being written, the European Union was in the final stages of a review of its Code of Conduct on Arms Exports, and a separate elaboration of Criterion 8 of that Code, which relates to sustainable development. The impasse which had been reached on the development of an international Arms Trade Treaty had seemingly been overcome by the United Kingdom's vigorous and vocal advocacy. Much work was also underway in the area of WMD controls at EU level. The UK Government is uniquely placed at the centre of these developments as Chair of the G8 throughout 2005 and President of the EU for six months from July 2005.

4. In the course of the preparation of this Report, we held two evidence sessions; firstly, with the UK Working Group on Arms¹ and the Export Group on Aerospace and Defence²; and, secondly, with the Foreign and Commonwealth Secretary and officials. We also received written evidence from the Campaign Against Arms Trade and various submissions from the Government. We are grateful to all those who gave oral and written evidence, and to our advisers—Dr Sibylle Bauer, Dr Wyn Bowen and Dr Paul Cornish—who helped us evaluate that evidence.

5. As well as the process of taking oral and written evidence on policy, we have continued to explore issues raised by particular licences; assessing, for example, whether there has been any inconsistency between the Government's treatment of incorporation licence applications and those for finished goods, end-use information and assurances on certain exports, for example handcuffs, and other licence approvals or refusals for which the rationale is not obvious. This process is detailed and, necessarily, confidential. We have drawn on the information received to make points on policy issues, and will keep the specific cases under review.

6. Much has been achieved in the area of strategic export control, but there is a great deal more to do. We believe that our sustained scrutiny has resulted in a focus on this area which has enabled real progress to be made, in the context of a high level of constructive debate among policy makers, NGOs, industry and legislators. We

1 NGOs, including Amnesty International UK, British American Security Information Council, Christian Aid, International Alert, Oxfam GB and Saferworld.

2 Representatives of the defence industries, formerly the Defence Manufacturers' Export Licensing Group.

recommend that the Defence, Foreign Affairs, International Development and Trade and Industry Committees should continue the Quadripartite Committee arrangement in the new Parliament.

2 The work of the Committees

Relations between the Committees and the Government

7. We and our predecessor Committees have looked at high-level policy issues but also taken the lower-level scrutiny function seriously, and examined the detail of the licences issued (and denied) by Government. We believe that this is an essential component of the task that we have been set. Indeed, the Foreign Secretary commented that “there is no more assiduous select committee”³ and the Modernisation Committee of the House of Commons referred to our predecessor Committees’ work on export controls in Session 2000–01 as one of four “notable contributions to parliamentary and public debates” since the departmental select committee system was established in 1979.⁴

8. There is no doubt, however, that this approach generates extra work not just for our staff and advisers, but also for the Government, and the Foreign Secretary spoke stridently on the matter when he appeared before us. He said:

this is an administrative operation and it is quite a complicated one. It aims to be very efficient and it aims to deal with the scores and scores of very, very detailed questions which we have received from your Committee as efficiently and as effectively as possible which, I have to say, does add to the burden, but it is maybe a necessary part of all this.⁵

He added later:

The necessary duties of this Committee do themselves add significantly to the overall cost of running the operation. In those countries where they do not have parliamentary scrutiny, the system is very much more straightforward. It is self-evident that there would be much less systematic record-keeping, much less concern about consistency and so on. I happen to believe in this system, but there has to be a limit and there is a balance to be struck.⁶

9. We do not accept the implication by the Foreign Secretary that we have overburdened the Government with an unnecessary volume of detailed questions. The Committees have made these inquiries to elucidate points of policy and test complex and controversial licensing decisions. Furthermore, these written questions have been an alternative to holding oral evidence sessions more frequently, which would have created even more work for his officials.

10. We have a unique scrutiny function. Our work includes looking at high-level policies and the issues arising from them. But the end product of the system is thousands of individual licensing decisions, each of which is crucially important. We test only a very small fraction of those decisions, and digging into this detail is an essential part of our job; if we did not do this, we would be unable to test how the

3 Q 100

4 Modernisation Committee, First Report of Session 2001–02, *Select Committees*, HC 224, para 3

5 Q 88

6 Q 96

Government is carrying out its policies in practice. We appreciate that our work adds to that of the Government, but effective scrutiny cannot be cost-neutral. We conclude that this dual-track approach to scrutiny of strategic export licensing should continue.

11. There is another factor that should be considered: it is in the interests of Government that its policy is scrutinised as that gives it extra assurance that its own objectives are being met. Our interests and those of the Government therefore coincide in ensuring that the scrutiny that takes place is efficient—*maximises the use of available resources*—and effective—*holds this part of Government to account*.

12. A key issue will be the design of future software, which could enable the information we require to be generated automatically. A renewal project is currently underway, which we discuss in more detail later in this Report.⁷ **We recommend that those devising new Government information systems for strategic export controls should be given an objective of ensuring that data can be supplied much more simply and quickly to the Committees on, for example, end use, open licences (OIELs) involving incorporation, refusals and appeals.**

The future of the Committees: key issues

Evidence submitted by the Government

Written evidence

13. Responsibility for licensing decisions in the area of strategic export control spans four government departments, hence the need for our unique working arrangements. This presents the Government with logistical challenges in terms of agreeing positions and finalising documents. While this, in turn, means that our work is sometimes delayed and frustrated, on the whole we accept it as a necessary complication. However, the Government's performance over recent months has been particularly poor:

- *The response to a request of 24 March 2004 to declassify parts of the Government's evidence to the Committees:* Staff made clear the deadline for inclusion of the material in the Report, but this was nonetheless missed by the Government, and a response was not received until 12 May 2004.
- *The Government's response to the Committees' 2004 Report:* Government departments had agreed to make replies within two months of publication of a report. In this case, a longer delay was agreed, on the basis that four government departments were involved. A reply was promised during the September sitting of Parliament. In the event, a reply was not received until October, too late to be analysed for the Committees' meeting.

14. The Chairman wrote to the Foreign Secretary about these problems. He replied that "agreeing a response to any enquiry directed to four departments is considerably more time-consuming than, for example, replying to the Foreign Affairs Committee alone,"⁸ accepting that the first delay was "unfortunate" and that the second was a matter of

7 Q 102 (Dr Landsman, FCO). See also paras 36–37 and 43.

8 Ev 43

“regret”. We hoped that lessons would be learned for the future. Sadly, they have not. The supplementary information from the Foreign Office necessary for this Report (including follow-ups from the evidence session on 12 January) did not arrive to the agreed deadline (the end of February). There was no indication that there would be a delay until the day of the deadline. This is particularly unfortunate, as the Committees’ staff had stressed to FCO officials that they were working to a particularly tight timetable and had reduced the number of questions accordingly.

15. We are disappointed that, yet again, the Government has missed an agreed deadline for the provision of information to the Committees. The fact that these questions are directed to multiple departments is no excuse for agreeing to provide information by a certain date and then failing to do so. This second-class service has been obstructive to effective scrutiny of Government policy.

Oral evidence

16. We had understood that during oral evidence sessions witnesses appearing from the Government would be in a position to answer questions on the range of policy involved, rather than matters pertaining solely to ‘their’ department. We were therefore disappointed that when the Foreign Secretary and his officials appeared before us on 12 January they were unable to give details of proposed efficiency savings at the Export Control Organisation (part of the Department of Trade and Industry), despite having been given advanced notice of our interest. The Foreign Secretary explained to us that “responsibility for this is split” and suggested that we should approach the Secretary of State for Trade and Industry for further information.⁹

17. This important issue was one of the key matters we wished to explore during the evidence session. We hold hearings infrequently, and it is important to ensure that when we do we get the necessary points on record. We note that the latest draft Guidance on Departmental Evidence and Response to Select Committees submitted to the Liaison Committee by the Leader of the House states that “Government Departments should, wherever possible, co-operate fully with inquiries on joined-up policies”.¹⁰

18. The inability of the Foreign Secretary and his officials to answer our questions about the Export Control Organisation is a disappointing sign of the limitations of ‘joined-up government’. We are surprised that the Foreign Secretary was not accompanied by government officials able to respond to our lines of inquiry on a key topic. It would be a poor use of time—both ours and the Government’s—if the Committees in future were to have to hold multiple evidence sessions with government representatives on a single policy area because the subjects under discussion fell under the responsibility of different Departments.

9 Q 89

10 Memorandum by the Leader of the House of Commons to the Liaison Committee, para 61, published with the oral evidence given by the Leader of the House to the Liaison Committee on 19 October 2004, HC 1180-i.

Future frequency of evidence sessions

19. The Committees will also need to respond to the welcome development of Government quarterly reporting on arms exports, as noted by the UK Working Group on Arms and which we discuss in further detail later in this Report.¹¹ **While any decision on working patterns will be a matter for our successor Committees in the next Parliament, we would suggest that in future the Committees hold oral evidence sessions at least every six months, as well as submitting written questions to the Government on a quarterly basis.**

Availability of information about the Committees

20. Our unique composition has meant that the Committees' profile on Parliament's website¹² has been very low, with our reports and press notices only being available through the sites of our constituent committees. We know of at least one instance when this has meant that potential witnesses have not seen relevant press notices. **We will ensure that a website dedicated to our joint work on strategic export controls goes live on the Parliament site as soon as possible, with an entry for the Committee in the main alphabetical Committee List. The site will include the text of our previous reports, press notices, future programme and transcripts of oral evidence sessions, as well as those of our predecessor Committees in the last Parliament.**

Prior scrutiny

21. We have commented on a number of occasions (most recently in our First Report of Session 2003-04¹³) that there should be a system of prior parliamentary scrutiny for the most sensitive export licence applications. The Government has repeatedly rejected this recommendation, and stated in a letter to the Chairman on 27 June 2004 that:¹⁴

Having, as we committed to do, considered this issue very carefully, the Government remains of the firm view that prior scrutiny of export licence applications raises unacceptable constitutional, legal and practical difficulties and does not intend to take this issue further.

We queried the finality of this response with the Secretary of State for Trade and Industry, who replied:¹⁵

In summary the Government considers it would be unacceptable to blur the line between scrutiny by Parliament of the Government's actions on the one hand, and participation by the Committee in the decision-making process itself on the other; and furthermore, any meaningful involvement by the Committee in the decision-making process would inevitably give rise to delay and call for additional resources.

11 Q 2. See also Q 97 and paras 26 and 27.

12 www.parliament.uk

13 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2003-04, *Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny*, HC 390, paras 49-52 (henceforth "*Committees' 2004 Report*").

14 Ev 33

15 Ev 44

22. The Government's argument for separation between us and the decision-making process is not consistent with the modern realities of scrutiny. Committees do not simply engage in historical studies of Government policy: there is increasingly a real-time engagement with decision-making. However, the confidential nature of arms export licensing, and the fact that it is justiciable do make this situation unusual. Other countries have overcome these difficulties, though, with Sweden, the Netherlands and the USA having some form of advance information provision for, and consultation of, Parliament.¹⁶

23. We believe that a prior scrutiny model for certain sensitive arms export decisions could be developed, which would allay the Government's fears of delay and the need for additional resources. We are disappointed with the Government's resolute opposition to any form of prior parliamentary scrutiny, and believe that the reasoning for its position is flawed. We intend to press vigorously for this change to be made in the next Parliament.

16 See Ev 71,74 and 78.

3 Strategic Export Controls Annual Report 2003 and the quarterly 2004 Reports

Improvements in reporting

24. We have tracked steady improvements by Government in the reporting of arms exports, and the Government Report for 2003 marked further positive change. The Report¹⁷ gives specific information on SIEL incorporation licences¹⁸ for the first time, which is particularly commendable as data for the first quarter of the year had to be collected manually.¹⁹ A list of gifts of military equipment made by the Government also appears in the Report, as recommended by the Committees in 2003.²⁰ Saferworld described this as “a welcome move.”²¹ **We are pleased to note that information on incorporation SIELs and gifts of military equipment is now available in the Government's Annual Report, and commend the effort made by the Government to produce SIEL incorporation data for the whole of 2003.**

25. We noted in our last Report that information about Global Project Licences would appear in the 2003 Report for the first time, commenting:

The first Global Project Licence for a project with British involvement was issued on 24 January 2003, for the export of missiles and missile components to the French Government. The Government has raised with partner countries our suggestion that information should be published in future Annual Reports showing that a country is a permitted destination under a Global Project Licence as soon as the Government is aware that agreement has been reached with an end user in that country for supply of equipment produced under such a licence, but no consensus has yet been reached on this proposal among the Framework Agreement states.²²

The Government's 2003 Report refers to this development, and the issue of a licence to France, but gives no further details.²³ **We recommend that the Government sets out in its response to this Report the progress that has been made on publication of information about Global Project Licences across the Framework Agreement States.**

26. Perhaps the most significant development, however, has been the introduction of quarterly reporting on arms exports. Reports have been produced on-line for January-

17 Ministry of Defence, Foreign and Commonwealth Office, Department for International Development, Department of Trade and Industry, *United Kingdom Strategic Export Controls: Annual Report 2003*, Cm 6173, June 2004 (henceforth “HMG 2003 Annual Report”).

18 Those applications where the goods are to be incorporated into other goods in the end user country. See also Defence, Foreign Affairs, International Development and Trade and Industry Committees, Second Joint Report of Session 2002–03, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474, para 142 (henceforth “Committees' 2003 Report”).

19 *HMG 2003 Annual Report*, page 12

20 *Committees' 2003 Report*, para 104. See also Government Response to the Second Joint Report from the Committees, Session 2002–03, Cm 5943, page 10.

21 *An independent audit of the UK Government Reports on Strategic Export Controls for 2003 and the first half of 2004* (henceforth referred to as “Saferworld Report”), page 29.

22 *Committees' 2004 Report*, para 22

23 *HMG 2003 Annual Report*, page 14

March, April-June and July-September 2004.²⁴ We were told by Andy McLean, Deputy Director of Saferworld, that:

I think that is something which the Committee has urged in the past and we have as well, so I think that is a very welcome development. I think it probably shows a challenge for us all, as well, though—the Committee and the NGOs and also the media—in terms of ensuring that this actually does lead to a greater level of scrutiny and accountability for export licensing decisions.²⁵

27. This initiative means that information in the public domain is much more up-to-date. Until now, for example, the details of licences issued in February would not have been available until the June or July of the following year. The latest quarterly reports that have been produced (for the second and third quarter of 2004) include information on Standard and Open Individual Trade Control Licences (SITCLs and OITCLs), which we discuss in detail later in this Report.²⁶

28. The Foreign Secretary was justly proud of this record when he gave evidence to us, recalling that he had shown the Annual Report to colleague Foreign Ministers to be greeted with astonishment “about the amount of detail that we are providing”,²⁷ adding that “we now have one of the most, if not the most, transparent systems in the world.”²⁸ The work done for us by Dr Sibylle Bauer, one of our Advisers, shows that the UK has indeed set precedents in important areas, although her paper also notes that there are areas in which the UK could learn lessons from elsewhere, which we discuss later in this Report.²⁹

29. Taking these developments in reporting as a package, we give praise where praise is due. The UK is now one of the most timely publishers of information on arms exports in the EU. Furthermore, its work on incorporation licences and the publication of country of origin and destination for ‘trafficking and brokering licences’ is precedent-setting. We congratulate the Government on this work.

What more needs to be done

30. While there is much work of which the Government can be proud, there is still more to do. We noted the “virtuous circle” of accountability and transparency in 2002:³⁰

As ever, greater accountability leads to demands for more. That is a positive development, indicating that the Government’s work is not wasted—people do care, and care deeply, that the UK should operate its system of export controls fairly and in accordance with the highest ethical standards.

24 Available at www.fco.gov.uk

25 Q 2. See also Campaign against Arms Trade (Ev 55).

26 See paras 38–41.

27 Q 97

28 Q 106

29 Ev 67. See also para 92.

30 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2001–02, *Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny*, HC 718, para 173 (henceforth “Committees’ 2002 Report”).

It is important that the Government does not fall back from its own level of best practice, but seeks to improve the quality of information that it makes available. Producing information that is clear and more difficult to misinterpret is in everyone's interests, particularly the Government's.

End-use information

31. We have repeatedly commented on the lack of information about the end use of equipment in the Government's Annual Reports, for example in our 2004 Report. We stated that "End use information is the key to real transparency and scrutiny,"³¹ concluding that "it would be in the Government's interest to publish more information on end use."³² Classification of licensing decisions by the nationality of destination, rather than by the nationality of recipient, continues to cause problems.³³

32. The reasons why information on end use has become increasingly important were set out in a recent paper by the Stockholm International Peace Research Institute (SIPRI):

Data on export licences and actual exports that only specify the geographic location of the end user cannot reflect the possibility that the items are not for the armed forces of that country, but rather for another state's armed forces or forces under the command of an international organisation which are based in that country. Specifying the type of end user would reflect the changed rationale for export controls since the end of the cold war, which has shifted from a territorial focus to a stronger end user focus.³⁴

33. The Government has taken steps towards making this information available, as it noted in its response to our last Report.³⁵ Entries that could appear inconsistent with the Criteria and Government Policy (for example where Military List items have been licensed to an embargoed destination) appear with a footnote.³⁶ This development has been welcomed by Saferworld.³⁷ In addition to this, the Government told us that "following questions about licences granted for toxic chemical precursors, whose end use was entirely innocuous, the Report now provides the stated end use".³⁸

34. However, there is still a risk of confusion among readers of the Annual and Quarterly Reports. We used a hypothetical example last year to illustrate the problem:

31 *Committees' 2004 Report*, para 27

32 *Committees' 2004 Report*, para 43

33 Q 2 (Mr McLean, UKWG)

34 SIPRI Policy Paper No. 8, *The European Code of Conduct on Arms Exports: Improving the Annual Report*, Sibylle Bauer and Mark Bromley, November 2004, page 14.

35 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 5

36 See, for example, *HMG 2003 Annual Report*, page 28: details of an OIEL licence to Afghanistan; the footnote reads "This licence was for the use of the UK Government in Afghanistan".

37 *Saferworld Report*, page 25

38 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 5. See, for example, *HMG 2003 Annual Report*, page 234: details of an SIEL licence to North Korea, the footnote reads "This product (sodium sulphide GPR) was for use in water analysis by a public health body".

The Annual Report will show that the Government has licensed the export of 1,000 submachine guns to country X—but it will not show whether these weapons are for the use of the country's police force, for sale on the high street or for the use of the army of another country entirely, which happens to have a base in country X.³⁹

We also gave examples of real-life misunderstandings.⁴⁰

35. In its response to our Report, the Government stated that it “has looked at whether it could provide information on categories of end users (e.g. government/non-government), but concluded that it is not cost-effective within the limitations of its current licensing databases to extract the relevant information [...] In order to achieve such a breakdown, application forms would have to be amended and the databases restructured. Neither is feasible at the moment, but, this issue is being considered in the longer term in the context of gradual improvements to databases.”⁴¹

36. We were pleased to be told by the Foreign Office that relevant IT projects were underway. Dr Landsman, the Head of the FCO's Counter-Proliferation Department, said:

Work is progressing on the next generation of software. Dates for implementation of the project will depend in part on decisions which are taken about the future restructuring of the Export Control Organisation in DTI.⁴²

When asked if he could give us an assurance that the new software would be able to generate more information automatically, he replied:

Officials will certainly take into account all of these aspects and obviously Ministers will need to decide what is done.⁴³

Dr Landsman undertook to keep us informed about the development of the project.⁴⁴ The Government's latest submission to the Committees reiterated that the issue “was being considered”, but added a note of caution: “there are also policy considerations that need to be resolved, concerning the level of information about end users that can be released.”⁴⁵

37. We recommend that the Government expedite work on resolving the practical and policy barriers to publishing information on categories of end user. We hope that the practical problems can be overcome during the next software upgrade. We look forward to learning of the progress of this project; we recommend that the Government considers inviting the Committees in the next Parliament to assist with reviewing or commenting on the specifications for new information systems.

39 *Committees' 2004 Report*, para 19

40 *Committees' 2004 Report*, paras 29–32

41 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 5

42 Q 102

43 Q 103

44 Q 104

45 Ev 85

Trade Licences

38. Controls on the trade in military equipment between overseas countries (including 'trafficking' and 'brokering') came into force in May 2004. For the first time, licences are required to authorise aspects of this trade, which are known as Standard or Open Individual Trade Control Licences (SITCLs and OITCLs).

39. The Government's Report on Strategic Export Licences for April-June 2004 included a separate section listing source and destination countries with numbers of SITCLs and OITCLs issued, refused and revoked.⁴⁶ The level of detail has been criticised, particularly by Saferworld, which commented in its Annual Report that the information was "so limited as to be virtually meaningless."⁴⁷

40. In its response to our last Report, the Government stated that it would:

report annually on licences authorising trade (trafficking and brokering), technical assistance and electronic/intangible transfers in the same way as we do currently for Open Individual Export Licences (OIELs), reporting each licence and the goods summaries covered, individually. The information on trade licences will include the country of origin as well as the country/ies of destination. We shall publish quarterly, by destination, the number of licences issued under the new controls.⁴⁸

41. We infer from the Government's response to our last Report that fuller information on SITCLs and OITCLs will be provided in the 2004 Annual Report than in Quarterly Reports. The Committees look to the Government to confirm that this is still its intention and invite it to indicate whether it would consider providing this greater level of detail on a quarterly basis.

Incorporation

42. As we have already noted, the Government indicates in its Annual and Quarterly Reports when equipment is being exported under a SIEL to be incorporated in another product. It does not make the eventual destination of that product public. This policy has been criticised by NGOs, including Saferworld⁴⁹ and the Campaign against Arms Trade.⁵⁰

43. Some of the information has, however, been made available to us on a confidential basis. We have been able to examine whether there are any inconsistencies between those licences granted for incorporation and those for finished goods. However, no information is available at all on goods exported under an OIEL which are to be used for incorporation. The Government told us that "There is currently no way to identify incorporation cases from our IT system without manually screening all the applications at the time of writing the Report. In addition, the nature of OIELs is such that they do not necessarily specify end

46 Available at www.fco.gov.uk

47 *Saferworld Report* page 25. See also Q 2 (Mr McLean).

48 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 3

49 *Saferworld Report* page 27. See also Q 2 (Mr McLean).

50 Ev 55

users in the permitted destinations.”⁵¹ **The lack of information about incorporation OIELs is worrying, as it means we only have a partial picture of how British components and technology are being used abroad. We hope that the software upgrade currently underway can be configured so that this information can be made available to us on a confidential basis.**

Actual exports

44. We noted in our last Report that more should be done to collect information on actual exports, as “the very basic information provided on the value of exports is not directly comparable with the categories of goods which the Government controls.”⁵² This issue was discussed at a recent meeting held on a SIPRI Policy Paper on improving the annual reporting on the EU Code of Conduct on Arms Exports.⁵³ A study conducted prior to the meeting had shown that it was considered impossible to produce reliable figures on actual exports using customs data, and concluded that “EU member states should move towards the use of industry data, which would be more accurate and more comparable, through a COARM decision to collect industry data across the EU.”⁵⁴

45. We therefore asked the Government whether it had given thought to requiring industry to gather data on actual exports. It replied that it did “not believe it would be justified in asking industry to take on an additional record-keeping burden for this purpose, particularly given the extra work required of industry by the new export controls”.⁵⁵ **We recommend that the Government should keep open the possibility of asking industry to gather data on actual exports. While this would impose an extra burden on companies it would enable further and more accurate information to be made available.**

Overall performance of the new export control system

46. This is our first Report since the full range of controls came into effect in May 2004. However, much of the published material we are examining predates that change. In assessing the performance of the new controls, we are therefore relying on the early impressions of Government, industry and NGOs. We hope that our successor Committees will be in a position to monitor the impact of these changes on the basis of fuller data.

General performance

47. We were pleased to receive positive feedback from industry on the current working of the licensing system. We were told by witnesses from the Export Group on Aerospace and Defence (EGAD) that:

51 Ev 43

52 *Committees' 2004 Report*, paras 47–48

53 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 24

54 SIPRI Policy Paper No. 8, *The European Code of Conduct on Arms Exports: Improving the Annual Report*, Sibylle Bauer and Mark Bromley, November 2004, page 32.

55 Ev 87

At the moment the feedback from member companies is that the licensing system appears to be working more expeditiously and more efficiently than at any time in living memory. It appears to be working extremely well.⁵⁶

These observations were borne out by the written evidence we received from the Government, which stated that overall licensing performance had improved year-on-year.⁵⁷ Whereas in 2002 59% of all SIEL applications that were circulated to other Government Departments were processed within 20 working days,⁵⁸ the equivalent figure for 2003 was 76%.⁵⁹ Given that this was a period of change for the Export Control Organisation (ECO), which was adjusting to the new licensing regime, this is commendable.

48. Performance on appeals is, however, still poor; the Government stated in its 2003 Report that “The Department for Trade and Industry is working with other Government Departments on adjustments to the appeals procedure and appeals processing times to improve performance against this target.”⁶⁰

Trade Control Licences: low number of applications

49. We commented in 2003 that “the efficient administration of the new controls will be crucial to their success.”⁶¹ The written evidence we received from the Government showed that the processing times of trade control licences was reasonable, although the figure for SITCLs (64% of applications completed within 20 or 60 working day target as relevant) was disappointing. The Government explained this as follows: “This represents a decrease in performance caused by events unrelated to the introduction of the new controls and out of HMG’s control, that is, the UNSCR on Iraq and the need to delay processing until its finalisation.”⁶²

50. The Government also supplied us with detailed information on the number of applications for the new types of licence between 1 November 2003 and the end of August 2004. There were notable differences between these and the revised Regulatory Impact Assessment; in particular, the number of SITCL applications was much lower than expected (81 compared to a prediction of 900-1500).⁶³ The Government’s memorandum noted that the RIA had been revised after public consultation and that this figure was

56 Q 37 (Mr Salzmann)

57 Ev 38

58 Ministry of Defence, Foreign and Commonwealth Office, Department for International Development, Department of Trade and Industry, *United Kingdom Strategic Export Controls: Annual Report 2002*, Cm 5819, July 2003 (henceforth “*HMG 2002 Annual Report*”), section 2.4

59 *HMG 2003 Annual Report*, section 2.4

60 *HMG 2003 Annual Report*, section 2.4

61 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2002–03, *The Government’s proposals for secondary legislation under the Export Control Act*, HC 620, para 106 (henceforth “*Committees’ Secondary Legislation Report*”).

62 Ev 38

63 Ev 38

“more in line with pre-consultation estimates.”⁶⁴ Indeed, the Government had commented in an earlier report that it expected 100–250 SITCL applications a year.⁶⁵

51. We were, however, keen to explore the reasons why take-up of licences had been lower than expected. It could mean that people do not know about the new controls, or are evading them, which would be a matter of concern. It is also possible that it relates to a greater than expected use of open licensing.

Lack of knowledge?

52. EGAD was complimentary about the outreach work done by the Government so far, commenting that “staff at the Export Control Organisation are to be commended for the highly constructive way in which they have sought to implement and enforce the new regulations.”⁶⁶ The Government described its various activities in written evidence to us, including awareness visits to individual companies, regional awareness seminars and liaison with the organisers of and exhibitors at the Farnborough Air Show.⁶⁷ However, EGAD emphasised that the job was by no means complete:

Certainly the road shows and the awareness activities undertaken to try to promote awareness within the United Kingdom industry of the new regulations helped to galvanise awareness of the existing regulations where some companies have slipped through the cracks. There are companies that suddenly became aware of the fact that they had been doing things for 20 or 30 years without licences and now they have found they need them. It has helped to a major extent but the feedback we are getting from a number of people, including the export control consultants who operate in this country—and there are less than half a dozen of them—is that more is needed because, as one of them said at a seminar last month, the industry is divided between three types of people, the good, the bad and the ignorant, and there is still an awful lot of ignorance out there on the part of some people so certainly we warmly commend the DTI's efforts at promoting awareness but more needs to be done.⁶⁸

Deliberate evasion?

53. Concerns have been expressed by NGOs that companies have located their operations abroad in order to avoid the new controls. Robert Parker of Amnesty International noted “how hard it is to track these people down”⁶⁹ and Oliver Sprague of Oxfam commented on a case which predated introduction of the controls but illustrated the nature of that part of the arms trade:

I can think of one specific example that I know of involving a UK broker. This was done through a press investigation but I have seen some of the documents, and this

64 Ev 38

65 *Committees' Secondary Legislation Report*, para 72

66 Ev 48

67 Ev 39

68 Q 74 (Mr Salzmann)

69 Q 26

was basically a UK broker who was operating and regularly does operate out of Bulgaria ... Although he did not end up supplying, because the operation was a sort of sting operation with a journalist who was doing it, he was openly prepared from Bulgaria to negotiate the supply of small arms to Syria ... Now this is clearly somebody negotiating a deal from outside of the UK.⁷⁰

The UK Working Group on Arms concluded that this was a powerful argument to introduce full extra-territorial controls on arms broker and traffickers,⁷¹ something which the Committees have argued for before, and which we discuss later in this Report.⁷²

54. We asked the Government whether it was aware of any firms relocating in this way. It replied that it was “not aware of any cases where businesses have relocated their operations to avoid UK controls”.⁷³

55. The fact that the number of SITCL licences issued is much lower than predicted in the revised RIA is not necessarily a matter of concern, and it is too early to tell what the reasons for it might be. However, the evidence we have received shows the importance of the ECO's outreach work, and the need to remain vigilant for arms dealers relocating abroad to avoid the new controls.

Greater use of open licences?

56. The Export Group on Aerospace and Defence (EGAD) commented that an increase in the scope of open licensing could account for, among other things, the lower than expected number of SITCLs issued. Its memorandum stated that:

Whilst the numbers of actual licence applications under the new regulations does not appear to be as great as many in Industry had feared would be the case, we believe that this is because:—the portfolio and scope of the OGEL system has been noticeably increased; and for some activities it is now stated by DTI that companies need 680s rather than export licences.⁷⁴

57. This is consistent with the information supplied by the Government, which noted that the number of OGEL applications between 1 November 2003 and the end of August 2004 was much higher than that predicted in the RIA, particularly in the area of military technology (371 compared to a prediction of between 20 and 40).⁷⁵

58. We asked the Government for an explanation of these figures. It replied that it was “still too early to draw any conclusions about the level of licence applications under the new controls” but added “We believe the discrepancy between the actual numbers of applications and the RIA can be explained by industry now having a better grasp of the

70 Q 26. See also *Undermining Global Security: the European Union's Arms Exports*, Amnesty International, 2004, pages 28 and 29 (henceforth “*Amnesty International Report*”).

71 Q 26 (Mr Sprague)

72 See paras 149–156.

73 Ev 85

74 Ev 48. The MoD Form 680 process allows industry to obtain an indication from the Government about the likely success of an export licence application (see Defence Export Services Organisation website: www.deso.mod.uk).

75 Ev 38

activities that are licensable and more importantly, what activities are covered by the Open General Trade Control Licence (OGTCL), and Open Individual Trade Control Licences (OITCLs). The OGTCL gives licence coverage for many of the routine transactions which exporters feared would require an individual licence.”⁷⁶

59. The Government added that increased use of the Miltech OGEL was “due to the success of our awareness campaign on the new controls. Companies have a better understanding now not only of what activities are controlled, but also of what the Miltech OGEL covers, and are therefore registering to use it, where previously, some were unnecessarily applying for Standard Individual Export Licences (SIELs)”.⁷⁷

60. A reply by the DTI to questions about the future of the Export Control Organisation, however, included the comment that ECO staff were now “encouraging exporters to use open licences whenever these are available.”⁷⁸

61. The Committees noted in 2003 that:

Our predecessor Committees examined suspicions that the Government was using open licensing (OIELs) in an increasing range of circumstances as an alternative to single licences (SIELs)—which are inherently more transparent and a stricter form of regulation. The Government denied that any policy shift had occurred, and the Committees concluded that the statistics did not suggest any evidence of such a change. In its reply, the Government stated that it “welcomes the Committee's assessment that there is no evidence of a change in policy on the use of OIELs and reiterates its repudiation of such allegations”.⁷⁹

We concluded:

it is curious that industry recognises that there has been an increase in the scope of open licensing, given that the Government has consistently denied that this is the case.⁸⁰

62. The UK Working Group on Arms stated that “If there are to be cuts [at the ECO] [...] I think there is a great risk that could lead to a greater proportion of equipment going on open licences, which will of course lead to less transparency.”⁸¹ **On the basis of the evidence we have received from the Department for Trade and Industry, and the statistics from the Government, it appears that there is now an active drive for open licensing. We are dismayed that this is happening in the context of resource cuts at the Export Control Organisation, and uncertainty about its future, which we discuss later in this Report. As we have noted in the past, single licences are inherently more transparent and a stricter form of regulation. We recommend that the Government**

76 Ev 85

77 Ev 85

78 Ev 84

79 *Committees' 2003 Report*, para 126

80 *Committees' 2003 Report*, para 128

81 Q 5 (Mr McLean). See also Ev 83–84.

should conduct an immediate review of the scope of open licensing, and that our successor Committees should examine the results of this as soon as possible.

WMD provisions: industry concerns

63. We noted in our last Report that the bureaucratic burden of complying with the new controls should be “reasonable, predictable and well understood.”⁸² While this appears generally to have been the case with Trade Control Licences, a number of concerns were expressed by industry. The Government had assured us that the problems had been dealt with:

The main industry requests for clarification have related to the WMD end-use controls and HMG has been working with those affected to explain in detail the practical effect of the new legislation, to iron out any uncertainties. The main residual concern raised by industry since the new controls completed their coming into force in May, was regarding the application of the WMD end-use control to those providing technical support to the UK MOD and troops on deployment. This has been addressed by the introduction of two new OGELs; the Military Goods: UK Forces deployed in non-embargoed destinations OGEL and the Military Goods: UK Forces deployed in Embargoed Destinations OGEL. The DTI guidance is being updated.⁸³

64. However, the memorandum by EGAD stated that:

there are still some glaring uncertainties in a number of the more wide-ranging aspects of the new regulations (eg on WMD for the transfer of technology and technical assistance, and restricted goods/embargoed destinations under the trade controls), and discussions between industry and the ECO are continuing constructively.⁸⁴

65. In particular, EGAD expressed concern about the following:

- the OGEL (Exports or Transfers in Support of UK Government Defence Contracts) (sometimes known as the Mod Cons OGEL) covers only technical assistance and technology transfers in relation to programmes under contract to the MOD. It excludes pre-contract technical discussions.
- Blue light emergency services are excluded, although there are emergency deployments outside the UK which brings them within the scope of the controls.
- The narrowing of the scope of “relevant use” does not apply to equipment incorporating detection papers or other NBC detection kit, as most protective suits do. Industry therefore consider there to be an inconsistent approach between the treatment of suits and the treatment of platforms, such as ships or vehicles, which are not treated as for “relevant use” if they carry detection/identification equipment.

82 *Committees' 2004 Report*, para 231

83 Ev 39

84 Ev 48

- Support for HM ships, whose precise location in relation to territorial waters of countries covered by the OGEL may be unknown.⁸⁵

66. We asked the Government for its comments on these points. It provided us with a detailed reply in each case.⁸⁶ At the time of writing this Report, discussions were continuing between industry and Government. NBC UK (the marketing group of UK Nuclear, Chemical and Biological Defence Capability) had submitted another detailed memorandum to the FCO seeking resolution of a number of points.

67. This is, of course, an area in which we would expect the Government to take stringent control measures. At the same time, the Government and blue-light emergency services need the highest possible capability in NBC protection and detection, and should be fostering a successful domestic industry which can provide this.

68. The fact that there are so many uncertainties about the WMD export control provisions is a matter of concern and we urge industry and the Government to resolve these issues as soon as possible.

Conclusion

69. The Government concluded in response to written questions that “It is too soon to draw any firm conclusions but so far the new controls appear to be working as intended and at the same time do not appear to have caused any major difficulties for either industry or government”. On the basis of the evidence we have received this seems to be a reasonable, although slightly rose-tinted, assessment. We note that much has been done by the ECO to ensure that the new controls are operating well, and recommend that our successor Committees conduct a full assessment of the new export control system once more information is available.

85 Ev 54–59

86 Ev 88–89

4 Future of the Export Control Organisation

The JEWEL and Gershon reviews

70. The JEWEL project (Joined-up and more Efficient Working in Export Licensing), a review of ways to improve co-operation between the various government departments involved in the licensing process, was completed in 2003. We welcomed the results of the project in our last Report.⁸⁷ Changes to be introduced as the result of the review included:

- establishment of improvements in the decision making process to speed up decisions on less complex cases (Smart Front End);
- common staff induction and training programmes, development of a joint mission statement; new performance targets;
- measures to improve the relationships with exporters, for example production of a DVD/CD Rom on export control, and changes to the website; and
- new IT developments.⁸⁸

The positive impact of the review has been borne out by the comments noted previously in this Report about the improved performance of the licensing operation.⁸⁹

71. We were therefore concerned to hear that the ECO will be dramatically affected by the efficiency savings in the civil service announced by the Chancellor of the Exchequer in the 2004 budget. The Organisation had on average 166 staff during 2003-04; this will fall to 136 by 31 March 2005 and 109 by 31 March 2006. Staff reductions have been made in all areas except the compliance team, ie: export control policy (which includes UK legislation and input into EU and international export control regimes, bilateral relations, Parliamentary work), export licensing units, IT and data support and the continuous improvements projects team.

72. NGOs and industry were united in their opposition to the proposals. The UK Working Group on Arms stated:

That such a large cut in staff at the ECO will inevitably lead to less scrutiny of export licences as well as less transparency and urges the Government to reverse this decision.⁹⁰

EGAD also expressed its concern:

We would not want to see any retrograde steps taken as a result of Treasury-inspired arbitrary cuts in personnel and resources allocated to export control. As we have said

⁸⁷ *Committees' 2004 Report*, paras 204–209

⁸⁸ *Committees' 2004 Report*, Ev 50

⁸⁹ See para 47.

⁹⁰ Ev 80

in our submission, at this time when there is increased recognition of the importance of export controls, if the staff really are surplus to requirements for the licence processing then surely they can be reallocated to what we call missionary-type work, going out there trying to be more proactive, trying to identify companies who currently are operating outside of the system, either deliberately or inadvertently.⁹¹

73. The Foreign Secretary assured us that “the Trade and Industry Secretary, Patricia Hewitt, and I understand our statutory parliamentary responsibilities about ensuring that this system works efficiently and we are determined to ensure that that happens.”⁹²

74. We were told by the Secretary of State for Trade and Industry that levels of service would be maintained. She noted that performance figures for 2004—after the first cuts had been made—showed an improvement in SIEL application processing times. She linked the cuts already made to the JEWEL review and further changes in processes, for example, streamlining processes, increasing exporter awareness to improve the quality of applications and improving the competences of staff. She told us that “measures are in place to help maintain the levels of service to exporters.”⁹³ The Secretary of State also commented that ECO staff were now “encouraging exporters to use open licences whenever these are available”,⁹⁴ something about which we expressed our concerns earlier in this Report.⁹⁵

75. She admitted to us that the “reduction in staff is however a steep one, over a relatively short period of time “ and added:

I am therefore considering whether there may be further steps we can take. I want to consider the scope for involving private sector partners, for example in processing licence applications, in delivering the IT investment which the Jewel project identified as important to future delivery, and in carrying out awareness and compliance activities. I am not in a position at this stage to reach conclusions about future options but will keep you closely informed.⁹⁶

76. This statement causes us considerable concern. The UK Working Group on Arms had commented that:

Under no circumstances should the Government consider privatising any part of the export licensing process. Any such moves would have huge implications for the accountability of the system, would be highly likely to give rise to conflicts of interest, and would send exactly the wrong signal to other states in the process of improving their own export control regimes, especially in Europe, where the UK is regarded as playing a leading role on this issue.

91 Q 37 (Mr Salzmann)

92 Q 87

93 Ev 84

94 Ev 84

95 See para 62.

96 Ev 84

We share these worries. We were also surprised to hear about this step relatively late in the day, and are disappointed that the Foreign Secretary did not alert us on 12 January to the fact that these options were being considered.

77. It is unfortunate that the export control system, which has only just been subject to a major efficiency exercise, and has important additional responsibilities arising from the Export Control Act 2002, is suffering cutbacks. We are concerned that ECO work that is seen as more peripheral, such as seminars for industry, outreach to other countries to improve their export control systems and, dare we say it, provision of information to us, may suffer. This would be very short-sighted. It seems to us that there is also a possibility that the current encouragement for open licensing is resource-driven. There is a very fine line between optimal efficiency and needless risk and the Government must not cross it.

78. We welcome the Secretary of State's undertaking to keep us closely informed about plans to involve the private sector in parts of the Export Control Organisation's work. We trust that no changes will occur until our successor Committees in the next Parliament have had an opportunity to take evidence on the proposals.

Charging for licences: an alternative to job cuts?

79. One alternative to job cuts would be the introduction of charges for licences. The UK Working Group on Arms stated in a memorandum to us that “if financial savings have to be made a far better approach would be to charge for the licensing services provided by the ECO.”⁹⁷ Brinley Salzmänn of EGAD commented:

We do have naturally, as you would expect, some concerns about that but we do also recognise that there is charging, for instance [...] the United States and I believe Germany.⁹⁸

His colleague Michael Bell expressed particular concerns about the possible impact on compliance.⁹⁹

80. The Foreign Secretary had an open mind on the issue:

You could argue that there are charges for licences in many other areas, for example, there are charges which are imposed, and quite substantial charges these days, in respect of planning applications, so I am not saying that it is a black-and-white issue, but we have to think it through very carefully¹⁰⁰.

However, he confirmed that there were “no present plans” to introduce charges.¹⁰¹

81. The FCO confirmed in a supplementary memorandum to us that France and the Netherlands do not charge for licences, that Germany charges for ancillary services (which

97 Ev 80. See also *Saferworld Report* pages 8 and 18–19.

98 Q 38

99 Q 38

100 Q 92

101 Q 91

provide guidance and assistance) and Italy charges 11 euros per application, plus an annual registration fee of 258 euros. It added that “Following this initial survey, we will now be conducting a wider study within the EU. We will provide the Committee with a copy of our findings.”¹⁰² We welcome this initiative.

82. Charging is a complex matter, and would have a dramatic impact on the licensing system. The structure of charges would have to be carefully thought through so that it did not have an unintended impact on demands for particular licences, and did not adversely affect the competitiveness of British companies. But if the pressure of cost-savings at the ECO becomes too great, it could represent the lesser of two evils.

5 The EU Code of Conduct

83. The European Code of Conduct on Arms Exports forms the basis of the UK's decision-making process for licence applications; the Government publishes consolidated EU and national criteria which explain how it interprets the terms of the Code.

Review of the Code of Conduct: licensed production overseas, brokering, trafficking and intangible technology transfers

84. As we stated in our Report last year, the Code has been subject to a fundamental review, which was drawing to a close as this Report was being written. We noted that the Government's stated priorities for the review were:

- *licensed production overseas*: "the inclusion of text on licensed production to the effect that member states should carefully consider what might happen to the finished products in licensed production agreements in which their exports or technology or components are the raw materials"
- *arms brokering licence denial notifications*: "where a licence to broker strategically controlled goods is denied, [...] we want those to be subject to the same process as the export of export equipment currently is, so for example if someone is refused a licence to broker in the United Kingdom and then applies for a similar licence elsewhere, the other country would need to consult us before issuing it";
- *intangible technology transfers*: "the export of military information and designs [...] should also be reflected in the common criteria"; and
- *transparency standards*: "We want to raise transparency standards by including in the Code a provision which obliges member states to publish a publicly available report containing information about equipment exported and not just a breakdown of how many licences they issued for each destination".

We commented that these priorities were "sound, if cautious", and noted that only the last was likely to be in any way controversial.¹⁰³

85. When we took evidence from the Foreign Secretary he was confident that the UK's first three objectives would be met. He told us that:

there has been an increase in the scope of the Code so that its criteria cover all applications for brokering, trans-shipment and intangible technology transfer licences, as well as physical exports, as at the moment.¹⁰⁴

And added:

An obligation on member states to refuse export licences if they consider that there is a clear risk that the items covered by the licence will be used to commit serious

¹⁰³ *Committees' 2004 Report*, para 110

¹⁰⁴ Q 137

violations of international humanitarian law is a proposal that has been suggested by the International Committee of the Red Cross. I think it is a good idea. There is an obligation on member states to take particular account of the final use of any products which they know are being exported for the purposes of licence production in third countries and an obligation on member states to produce a national annual report. I think those are all good moves.¹⁰⁵

86. We await publication of the revised European Union Code of Conduct on Arms Exports, and welcome the Foreign Secretary's comments that provisions relating to licensed production overseas, arms brokering and intangible technology transfers will be included. We wait to see what impact the revision of the Code will have in practice on strategic export controls across the EU.

Review of the Code of Conduct: transparency and convergence

Transparency as a tool for convergence

87. Transparency across the EU was raised by the Foreign Secretary as a major issue yet to be resolved. He noted its importance in the context of the implementation of the Code, firstly, in terms of sharing of information between member states:

having the Common Criteria in plain text is one thing, but having common enforcement of those criteria is a separate thing [...] The advice I have received is that on the whole other countries are assiduous in their application of the Criteria, but there is a difference which is about transparency [...] we share information where one or other of us is refusing a licence [...] and I think I am right in saying that if one has notice of denial by another country, which sometimes happens, and I then decide nonetheless to agree an export, we pool that information as well, I think. That circumstance is the only one in which at the moment there is effective pooling of information.¹⁰⁶

88. Secondly, about the level of information that member states make publicly available:

One of the elements of the new revised Code is an obligation on member states to produce an annual report and we want to get more transparency and then we will learn much more about the patterns of licensing and decision-making in other member states. At the moment the only consistent information we have is about their denials.¹⁰⁷

89. We note that an updated version of the Users' Guide to the EU Code was published in December 2004, which further defines and interprets the terms and procedures outlined in

105 Q 137

106 Q 108

107 Q 145

the Code. It includes sections on transparency and denial notifications, and best practice guidance.¹⁰⁸

90. We wait to see how the new version of the Users' Guide, and the final revisions to the Code of Conduct, will affect transparency and the exchange of information between EU member states. We agree with the Foreign Secretary that sharing information in this way is a key tool to develop a convergent approach across the EU.

Transparency and competitive advantage

91. Transparency was also raised with us in the context of competitive advantage. Good practice can be catching, as noted in a recent SIPRI policy paper:

Transparency becomes acceptable 'if everybody does it', as is demonstrated by the EU Code of Conduct Annual Reports and the UNROCA, since this reduces the potential for competitive disadvantage. This reconfirms that commercial confidentiality and business interests are key and arguably the most important motivations for secrecy. Pioneering efforts make it easier for other governments to follow and may even put pressure on them to do so. This so-called beauty contest has led to a transparency dynamic in the EU, where all countries now submit national data in the framework of the EU Code of Conduct, and most countries also publish national reports, albeit of varying degrees of usefulness.¹⁰⁹

EGAD agreed that it was time to share UK good practice across the EU, commenting "We would love to see other EU member states producing the same quality of work and reporting that the British Government does."¹¹⁰

92. We have already noted the ways in which the UK has developed its reporting of arms exports.¹¹¹ There are elements of good practice in other EU countries that could be adopted, as detailed in an Appendix to this Report, for example identifying the type of recipient within the country (as in Denmark and Belgium), and type of equipment and end-use information on refused applications (the Netherlands). Since November 2004 the Netherlands has published detailed monthly online statistics, setting a new standard for timeliness in the EU.¹¹² **We hope that the final stages of the negotiation of the Code of Conduct will include provisions to increase the quality of reporting on arms exports across all member states.**

¹⁰⁸ Council of the European Union, 'Users' Guide to the European Union Code of Conduct on Exports of Military Equipment', Council of the European Union document 16133/1/04, rev.1, Brussels, 23 December 2004. Available at <http://ue.eu.int/uedocs/cmsUpload/st16133-re01en04.pdf>

¹⁰⁹ SIPRI Policy Paper No. 8, *The European Code of Conduct on Arms Exports: Improving the Annual Report*, Sibylle Bauer and Mark Bromley, November 2004, page 20

¹¹⁰ Q 70 (Mr Salzmann)

¹¹¹ See paras 24–29.

¹¹² Ev 67. See also *Committees' 2003 Report*, para 166.

Undercuts

93. We described the EU's denial notification and undercut procedure in detail in our last Report.¹¹³ EU member states circulate through diplomatic channels denials of licences refused in accordance with the Code of Conduct, together with an explanation of why the licence has been refused. Before another member state grants a similar licence, they must consult the denying member state, and give an 'undercut notice', with a detailed explanation of their reasoning, if they decide to go ahead. We were provided with information by the Government on a confidential basis about the five occasions when the UK undercut other EU member states during 2003, and concluded that all were "grey area" cases of the type about which we might expect member states to disagree."¹¹⁴

94. The UK Working Group on Arms expressed considerable concern about this practice:

The Foreign Secretary stated that the UK Government "consulted other member states 20 times last year and we undercut them five times" (Q23, February 2004). Based on these figures, 25 percent of consultations undertaken by the UK in 2003 resulted in an undercut. It was also estimated that across the whole EU there were about 15 undercuts in 2003 (Q22, February 2004), while the EU Consolidated Report stated there were 100 consultations across the EU during the same period. If the estimate presented during last year's evidence is correct, then on average 15 per cent of all consultations across the EU resulted in an undercut, compared to the UK's rate of 25 percent. This would tend to indicate that, contrary to industry concerns, UK defence companies are more likely to benefit from current arrangements than to suffer.¹¹⁵

95. The future level of undercuts and denial notifications will be an important indicator of how the revisions to the EU Code of Conduct improve consistency of the Code's application across member states. We recommend that our successor Committees return to this issue as soon as possible.

Other issues

Legal status of the Code

96. We noted in our Report last year that a body of opinion, including EU member state governments, believed that the Code should be a legal instrument, rather than a non-binding political statement. The UK Government disagreed with that view, because it did not wish to see the Code becoming subject to Qualified Majority Voting and enforceable by the European Court of Justice. We recommended "a compromise", giving the Code the status of a Common Position. That would mean the Code would become a legal instrument, but would be subject to unanimity and non-justiciable. The effect of this decision would be to raise the profile of the Code.¹¹⁶

113 *Committees' 2004 Report*, paras 119–128

114 *Committees' 2004 Report*, para 125

115 Ev 83

116 *Committees' 2004 Report*, para 112

97. The Government confirmed in a supplementary memorandum to us that “The status of the Code has not been discussed in detail by officials for a number of months, but it is expected that the issue will be revisited in Brussels in the near future.”¹¹⁷ **We note that the legal status of the EU Code of Conduct on Arms Exports is to be reviewed shortly. We look forward to learning the outcome of this review.**

Differing interpretation by member states

98. We noted in our last Report some concerns by industry about differences in the interpretation of the Code of Conduct across EU member states, which the Government refuted in detail in its response.¹¹⁸ We have since received further comments from EGAD, which we have passed to the FCO. The Foreign Secretary noted when he appeared before us that he was “always happy to look at detailed evidence which the industry has got about the regulatory burden on the UK industry in comparison with other European countries.”¹¹⁹ The Government has, accordingly, thoroughly examined the points made by industry and its answers are included in an Appendix to this Report.¹²⁰ **We recommend that our successor Committees keep under review the application of the Code of Conduct across the EU, with particular reference to any differences in interpretation by member states.**

Review of the Code criteria

Criterion 8

99. We noted in our last Report that Criterion 8, which addresses Sustainable Development, was “the least adequately defined of the EU Code Criteria” and recommended that “the Government should seek to reach a mutual understanding with other member states of what the Criterion means in practice, and to refine its definition accordingly in the context of the ongoing review of the EU Code.”¹²¹ We were pleased to note the Government’s response that “The UK is currently working with EU partners with the aim of reaching a common understanding of how best to employ this Criterion in practice.” The UK Working Group on Arms Exports described this as a “welcome initiative.”¹²²

100. The Foreign Secretary told us that this work was due to be concluded before the end of June 2005.¹²³ Recent reports in *Defense News* suggest that the new guidelines will define a set of macro-economic variables, or development indicators, to assess whether the request is justified.¹²⁴ The UK Working Group on Arms stated that “We do believe that the

117 Ev 88

118 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendation 48

119 Q 159

120 Ev 92–94

121 *Committees' 2004 Report*, para 114

122 Ev 46

123 Qq 150–51

124 “EU to bolster arms export guidance”, *Defense News*, 15 November 2004

guidelines they have produced broadly reflect some of the recommendations we make¹²⁵ but noted that in the end what matters will be how any change affects licensing policy:

We would certainly hope that with these new extrapolated guidelines the number of licence refusals would increase, not just in the UK but across the EU, because it is much clearer to officials how actually this criterion should be implemented.¹²⁶

They added in a supplementary memorandum that the UK Working Group on Arms “would welcome a statement from the Government explaining the implications for the UK’s national guidelines on Criterion 8 once the EU’s elaborative guidelines have been agreed.”¹²⁷

101. We look forward to learning of the results of the review of Criterion 8 of the Code of Conduct, and recommend that our successor Committees monitor how the new guidelines for its application affect the issuing of licences across the EU, particularly in the UK.

Other criteria

102. The UK Working Group on Arms recommended in its memorandum that “the Government should now use its Presidency to set in train a process to carry out similar elaboration [to that of Criterion 8] for the other seven criteria.”¹²⁸ It repeated this call in oral evidence, particularly in relation to Criterion 2, which deals with human rights.¹²⁹ We have already noted that the current Code of Conduct review is likely to change the wording of Criterion 2, adding a more specific reference on humanitarian law.¹³⁰ We think that there is merit in Saferworld’s suggestion, particularly in the context of the possible lifting of the EU arms embargo on China, which we discuss later in this Report.

103. When asked whether he would support a review of Criterion 2, the Foreign Secretary told us that “It depends on the resources available that we have to pursue it and whether we can get a consensus to start looking at it, but I am happy to think about it.”¹³¹ **We recommend that the Government uses its Presidency of the EU to initiate a review of Criterion 2 of the EU Code of Conduct on Arms Exports, along similar lines to that conducted of Criterion 8 of the Code.**

Accession states

104. Extending the provisions of the EU Code to those countries which joined the EU on 1 May 2004, and those which are due to join in the next few years, is a considerable task. We commented in last year’s Report that “We hope that the acceding states have been able to

125 Q 24 (Mr Sprague)

126 Q 25 (Mr McLean)

127 Ev 82

128 Ev 46

129 Q 9 (Mr Sprague)

130 See para 85. See also Q 9 (Mr Sprague).

131 Q 153

rise to the challenge of effectively controlling strategic exports in accordance with the EU Code of Conduct. But it would hardly be surprising if some of them struggled to do so.”¹³²

105. We noted last year that the Foreign Secretary himself gave a cautious response when asked whether the controls of the “new ten” were adequate.¹³³ He repeated that concern when giving evidence to us this year, commenting “Am I personally satisfied? I am not sure is the answer” but added that “The process is a very, very rigorous one.”¹³⁴ He noted:

There is the issue of the candidate countries and also the new member countries, the ten, where although, by definition, the ten have to sign up to these criteria, the standard of enforcement and transparency may in practice be less than in the former 15 existing member states.¹³⁵

106. We welcome the fact that the UK has been involved in outreach work with new and prospective member states,¹³⁶ and that progress has been made with their membership of international export control regimes. Lithuania, Malta and Estonia were accepted as Participating Governments during the Nuclear Suppliers Group Plenary in May 2004; Bulgaria was admitted to the Missile Technology Control Regime in 2004¹³⁷ (applications by other new EU members are pending); and Estonian, Latvian, Lithuanian, Maltese and Slovenian applications for the Australia Group were accepted at the Plenary in June 2004.¹³⁸ The Australia Group now includes 39 participating states and the European Commission.¹³⁹

107. Slovenia was admitted to the Wassenaar Arrangement at the December 2004 Plenary (the first admission of a new member since the founding of the Arrangement).¹⁴⁰ Applications of the other newly acceded EU member states (Cyprus, Estonia, Latvia, Lithuania and Malta) and candidate country Croatia are still pending and are being considered on a case-by-case basis.

108. At the same time, we note the criticism made in a recent Saferworld report, which stated that “officials from the new members themselves have suggested that the level of support from the ‘old 15’ was disappointing.” We hope that lessons will be learned for those countries preparing to join the EU at the moment, in particular, Bulgaria and Romania, both of which, as Saferworld put it, “still have very real problems relating to the development and enforcement of effective arms export control policy and practice.”¹⁴¹ The UK Working Group on Arms added that “it is [...] essential that the EU establish a timetabled framework for ensuring that the export control performance of Candidates will

132 *Committees' 2004 Report*, para 158

133 *Committees' 2004 Report*, para 157

134 Q 111

135 Q 107

136 See Ev 37 and the Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendations 37, 38 and 39.

137 www.mtcr.info/english/partners.html

138 Ev 37

139 www.australiagroup.net/en/agpart.htm

140 www.wassenaar.org

141 *Saferworld Report*, page 20

be up to EU standards by the date of membership, and that a process is established whereby failure to comply has negative consequences.”¹⁴²

109. We urge the UK Government to use its Presidency of the EU to ensure that there is a focus on the importance of sharing best practice on enforcement of the EU Code of Conduct on Arms Exports, and export control more broadly, across all member and accession states, and potential future members. It is important that older EU member states continue to give newer states assistance to build robust systems if the integrity of EU export controls is to be maintained.

The “toolbox”

110. We were told by the Foreign Office that work is currently underway to ensure a consistent approach by EU member states to countries coming out of embargo. This has become known as the “toolbox”. Edward Oakden, Director, Defence and Strategic Threats, FCO, described the initiative as follows:

one wants to avoid a situation where you go from very tight control under an embargo to any sort of lurch, so we are negotiating in the EU a so-called “toolbox” which would essentially set in hand this series of procedures which would involve both consultation and three-monthly mutual notification about export procedures and what each country has done over the previous three months¹⁴³

111. We welcome the development of an EU-wide system to manage the transition for states coming out of arms embargo controls.

112. The UK Working Group on Arms, while welcoming the development of the “toolbox”, criticised the fact that “no provision has been made for outside interests to feed into this process (be they from parliaments, industry or NGOs).”¹⁴⁴ We hope that more will be done in future to engage wider stakeholders in this and similar projects.

China: the EU embargo

113. We described the background of the EU’s China Embargo in our last Report.¹⁴⁵ A Declaration in June 1989 imposed an “embargo on trade in arms with China”, but individual member states have interpreted this in different ways.¹⁴⁶ As at February 2004, British Government policy was “to support a review of the embargo”, but the Foreign Secretary told us that he had “not come to any final view on the merits of lifting it.”¹⁴⁷

142 Ev 81

143 Q 108

144 Ev 80

145 *Committees’ 2004 Report*, paras 129–40

146 *Committees’ 2004 Report*, para 129

147 *Committees’ 2004 Report*, para 132

Recent developments

114. The Brussels European Council meeting in December 2004 marked a change in the collective European position on the embargo. The conclusions stated:

In this context, the EU Council reaffirmed the political will to continue to work towards lifting the arms embargo. It invited the next Presidency to finalise the well-advanced work in order to allow for a decision. It underlined that the result of any decision should not be an increase of arms exports from EU member states to China, neither in quantitative nor qualitative terms. In this regard the European Council recalled the importance of the criteria of the Code of Conduct on arms exports, in particular criteria regarding human rights, stability and security in the region and the national security of friendly and allied countries.¹⁴⁸

The Foreign Secretary told us that he supported that decision¹⁴⁹ and that the embargo was likely to be lifted during the Luxembourg Presidency of the EU, which would be before the end of June 2005.¹⁵⁰

What does the embargo mean?

115. The UK is the only member state to have published its interpretation of the embargo. It covers “lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; and any equipment which is likely to be used for internal repression.”¹⁵¹

116. The fact that other EU members have not published their own policies on the embargo is a cause of deep concern. It has also led to a certain amount of confusion on the intentions of the EU collectively and of individual EU countries in enforcing and implementing the embargo, not least in the debates in the United States of America. We commented in our last Report that “current uncertainty about what the embargo means, and inconsistencies in its application across the EU appear to be having a negative effect on industry” and raised the case of a British company, Oxley Developments Company Ltd., which had been refused a licence application for the export of night vision equipment to the Chinese armed forces. They claimed that French, German and Belgian companies had exported similar equipment.¹⁵² The Government commented in its response to our Report that it did “not consider that British industry is at a disadvantage compared with companies in other member states regarding strategic exports to China.”¹⁵³

148 Brussels European Council, 16–17 December 2004, Presidency Conclusions, <http://ue.eu.int/ueDocs/cms-Data/docs/presyData/en/ec/83201.pdf>

149 Q 115

150 Q 116

151 *Committees' 2004 Report*, para 130 (HC Deb 31 March 1995 cc 842–843w)

152 *Committees' 2004 Report*, paras 139–40

153 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, October 2004, response to recommendation 32

117. Similar points to the Oxley case were raised this year by Pyser-GSI Ltd. Its application for the export of night vision equipment to China was refused. In a recent debate in the House of Commons on the issue, it was noted that a French company had entered into a licensed production agreement with a Chinese firm to make a very similar product.¹⁵⁴

118. The Foreign Secretary commented that there was a lack of consistency across the EU:

If you go back to the China arms embargo, there is quite a lot of room for interpretation about the scope. As it happens, the UK interpreted the China arms embargo in a narrower way than some other member states.¹⁵⁵

119. In a recent debate in the House of Lords, the Foreign Office Minister Baroness Symons of Vernham Dean pointed out that most refusals of arms exports to China were made not because of the embargo, but because of the Code of Conduct:¹⁵⁶

I repeat that I understand the concerns about this matter, because the use of the word "embargo" implies that there is an absolute ban at the moment and that we would move from an absolute ban to a much freer market. The refusals for the export of items on the military list are, more often than not—not always—already made under the EU code.

120. Taking all these factors into account, we observed last year that “The real problem with the embargo on China is its vagueness. It is more difficult to enforce legally than other EU arms embargoes because it is open to varied interpretation. As we discuss below, it creates uncertainty for business. And it makes the embargo difficult to justify.”¹⁵⁷

Would lifting the embargo increase the level of EU arms exports to China?

121. The Foreign Secretary drew our attention to that part of the Council conclusion which stated that “the result of any decision should not be an increase of arms exports from the EU member states to China, neither in quantitative nor qualitative terms”. We heard different views on whether this was a realistic objective.

122. The Foreign Secretary was confident that little would slip through the EU Code net that would have been caught by the embargo. He told us:

it transpires that most of the applications for arms exports to China which have been refused in recent years have been refused under the EU Code of Conduct and not under the embargo which is narrow in its scope and, moreover, most of the refusals under the embargo would have fallen to be refused under the Code of Conduct in any event. As far as the latter is concerned, I think I am right in saying that for the UK there were only two refusals under the embargo, and those were not particularly significant, which would not have been refused under the Code of Conduct.¹⁵⁸

154 HC Deb, 3 February 2005, col 1071. See also Ev 59.

155 Q 121

156 HL Deb 1 February 2005, col 99

157 *Committees' 2004 Report*, para 138

158 Q 114

He added that the lifting of the embargo should be linked to a strengthening of the EU Code.¹⁵⁹ We received details of these two cases from the Government.

123. Brinley Salzmann of EGAD took a similar view, commenting:

I do not personally think there will be much in the way of additional opportunities for the British defence industry arising from this. Certainly the practical experience of a lot of our member companies who have applied for export licences for China for equipments which are well outside the scope of the EU embargo is one where refusals are extremely common [...] I cannot possibly envisage a scenario in which equipment which would previously have been caught by the EU embargo being approved by the British Government when assessed against the EU criteria.¹⁶⁰

In EGAD's opinion the embargo was "political symbolism."¹⁶¹

124. The UK Working Group on Arms, however, was clear in its judgement that the embargo was important:

I think the EU embargo is having an impact. Out of the 22 member states who reported licences in 2003, 17 licensed nothing to China. So I think the arms embargo is having an impact there over and above what the consolidated criteria would have on their own.¹⁶²

And that its removal would increase the level of arms exports:

China is potentially a huge market and so if the embargo is lifted there will be substantial economic and industrial pressure within the EU member states to launch an export drive into China, so I think it is quite clear to me that if we do relax the embargo that will lead to a liberalisation of export policy.¹⁶³

An EU diplomat was quoted in the *Financial Times* stating that "It is difficult to say that we will lift the embargo but not increase sales."¹⁶⁴

125. However the Council's test is to be measured, assessing the 'quantity' and 'quality' level of exports to China across the EU will require an unprecedented level of transparency between member states and co-ordination at EU level. We have already discussed the "toolbox" which is to be introduced for countries coming out of embargo. This will be a major test for an untried mechanism and there will, inevitably, be a great deal of subjectivity involved.

126. It is possible that lifting the EU embargo would have disproportionate effects on the defence exports and defence industries of different EU countries. It has been suggested that whereas companies based in other member states would benefit disproportionately from

159 Q 107

160 Q 34 (Mr Salzmann)

161 Q 35 (Mr Salzmann)

162 Q 18 (Mr McLean)

163 Q 19 (Mr McLean)

164 "EU doubles arms sales approvals to China", *Financial Times*, 19 January 2005

gaining increased sales to China, UK based companies would be less likely to benefit from such sales.¹⁶⁵ Indeed, they are likely to be adversely affected by a change of policy as a result of sanctions and restrictions on their access to the far larger and more profitable US market which could result from a hostile US response.

127. The European Council has stated that if the EU arms embargo to China is lifted, this should not result in either a qualitative or quantitative increase in arms exports to China. Close attention will have to be paid to this test, which is highly complex and subjective. We therefore recommend that before the embargo is lifted the Council should spell out how the assessment will be made. We would welcome in particular clarification on whether this means that there should be no increase in arms exports to China at all or no increase as a result of the lifting of the embargo, as these are very different tests.

What message would removing the embargo send?

128. Even if it could be proved in advance that the lifting of the embargo would not increase arms sales, there are arguments against it. The UK Working Group on Arms expressed concerns about the message that would be sent to China on its human rights record:

Amnesty has seen no substantial improvement in the human rights situation in China and we would really pose the questions to the EU: What signal does this send to human rights defenders who are imprisoned for their activities in China? What leverage does the EU then maintain, if any, over China if it gives up the arms embargo in terms of human rights?¹⁶⁶

We came to a similar conclusion last year, stating that “once an embargo has been imposed, a strong case needs to be made for lifting it, because of the political message that it sends.”¹⁶⁷

What wider implications would it have?

129. Much of the press coverage about the European Council's change of heart has centred on the possible implications for relations with the United States of America. There are clearly grave concerns in Washington about the course the European Council is proposing to take. After a meeting with President Chirac on 22 February 2005, President Bush is reported to have said that “There is deep concern in our country that a transfer of weapons would be a transfer of technology to China, which would change the balance of relations between China and Taiwan.”¹⁶⁸

130. The House of Representatives expressed its view in a Resolution on 2 February 2005 adopted by 411 votes to 3:

165 See, for example, “British arms firm will spurn China if embargo ends”, *The Times*, 22 February 2005. See also Qq 34–35.

166 Q 18 (Mr Parker)

167 *Committees' 2004 Report*, para 137

168 “Worries about weapons, contd”, *Economist*, 24 February 2005

“The House of Representatives:

- reaffirms the United States arms embargo on the People's Republic of China and related findings and statements of policy set forth in title IX of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246);
- finds that policies by the United States and other countries which promote the development of democracy in the People's Republic of China, and not the development of Chinese military capabilities, will help assure a stable, peaceful, and prosperous Asia and Pacific region;
- deplores the recent increase in arms sales by member states of the European Union (EU) to the People's Republic of China and the European Council's decision to finalize work toward lifting its arms embargo on China, actions that place European security policy in direct conflict with United States security interests and with the security interests of United States friends and allies in the Asia and Pacific region;
- declares that such a development in European security policy is inherently inconsistent with the concept of mutual security interests that lies at the heart of United States laws for transatlantic defense cooperation at both the governmental and industrial levels and would necessitate limitations and constraints in these relationships that would be unwelcome on both sides of the Atlantic;
- requests the President in his forthcoming meetings with European leaders to urge that they reconsider this unwise course of action and, instead, work expeditiously to close any gaps in the European Union's arms embargo on the People's Republic of China, in the national export control systems of EU member states, and in the EU's Code of Conduct on Arms Exports in order to prevent any future sale of arms or related technology to China; and
- requests the President to inform Congress of the outcome of his discussions with European leaders on this subject and to keep Congress fully and currently informed of all developments in this regard.”

131. The Foreign Secretary observed that:

The United States have an entirely legitimate and understandable interest both in the effectiveness of the European Union's system of arms control and in issues of regional stability in that area and it needs to be borne in mind that we often think of the United States as an Atlantic power, but it is also very much a Pacific power and China and Taiwan and other countries are across a pond, albeit quite a large pond.¹⁶⁹

132. Both defence industry representatives and NGOs noted that trade relations with the US could be worsened by the EU's decision. EGAD told us that:

I do not think there will be any increase in business opportunities for British defence companies in China but there is, as was referred to by Oliver [Sprague] from Oxfam,

a certain threat of what the American reaction would be to the removal of the embargo.¹⁷⁰

The UK Working Group on Arms noted:

in terms of the industrial cooperation with the US, my analysis of the situation would be that the US would have severe concerns with the re-export of US technology to China because their position is even more robust than the EU's. Maybe there is a consistency of policy point here because one of the main strong reasons for the incorporation guideline changes of a couple of years ago was the fact that we need to maintain very strong strategic and industrial relations with the US.¹⁷¹

133. The Foreign Secretary told us that he was working to reassure the Americans:

It is the case that the level of information about the nature of the arms embargo and how it operates was lower than I had anticipated. There was genuine concern about whether a lifting of the embargo would, first of all, lead to a significant increase in arms sales by European countries to China and it is for that reason that we got unanimous agreement by the European Council at the Summit last month to those words that there should not be any "quantitative or qualitative" increase.¹⁷²

Latest press reports have referred to further work underway between the EU and US to define conditions for the lifting of the embargo,¹⁷³ and a threat by the Head of the Senate's Foreign Relations Committee to stop sales of military technology to Europe altogether if the embargo is lifted.¹⁷⁴

134. Deep concerns were expressed to Members during the visits of the Defence and Foreign Affairs Select Committees to Washington earlier this month by senior US Senators and Senior Members of the US administration about the implications of lifting the arms embargo on China. Although we found a lack of detailed knowledge of the facts of the present position and the relative ineffectiveness of the current embargo, we were made aware of the strong symbolic significance of the embargo and strongly held US views about the implications of lifting it. Specific concerns were expressed about the dangers of transferring the most sophisticated military technologies to China, the implications for the military balance in the region and the security of Taiwan. This concern over Taiwan has been further heightened by the passing of China's anti-secession law promulgated on 14 March 2005.¹⁷⁵

170 Q 34 (Mr Salzmänn)

171 Q 18 (Mr Sprague)

172 Q 120

173 "Worries about weapons, contd", *Economist*, 24 February 2005

174 "EU risks US sanctions over China arms sales", *The Guardian*, 3 March 2005

175 Article 8 of the law states that: In the event that the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful re-unification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

The State Council and the Central Military Commission shall decide on and execute the non-peaceful means and other necessary measures as provided for in the preceding paragraph and shall promptly report to the Standing Committee of the National People's Congress.

135. We comment further on current US policy and in particular the ITAR waiver issue later in this Report.¹⁷⁶

Conclusion

136. We recommended last year that “in current circumstances the Government should resist calls to lift the arms embargo on China”,¹⁷⁷ particularly in view of China’s poor human rights record. We added that “the Government should encourage its EU partners to seek a clearer joint understanding of the purpose and scope of the embargo on China: not in order to lift it, but in order to define it more rigorously and more effectively.”¹⁷⁸

137. Since we published our last Report, there have been some developments in China’s membership of key arms control organisations. It has become a Participating Government in the Nuclear Suppliers Group, and discussions are ongoing with the Missile Technology Control Regime and the Wassenaar Arrangement.¹⁷⁹

138. However, China’s human rights record is still assessed as poor. The FCO’s 2004 Human Right Report states:

The UK Government continues to have serious concerns about basic human rights in China. The picture over the last year was mixed, with progress in some areas but no improvement in others. Our ongoing concerns include: the extensive use of the death penalty; the use of torture; the continuing harassment of political dissidents, religious practitioners and adherents of the Falun Gong spiritual movement, the situation in Tibet and Xinjiang; and severe restrictions on basic freedom of speech, association and religion.¹⁸⁰

139. Although we believe that the embargo is an imperfect tool, there are risks associated with its removal. It is possible that there could be major EU-US trade repercussions from an EU arms ‘export drive’ to China, or that EU member states enhance China’s military capability in a worrying way, or that the Chinese Government uses arms exported from the EU for internal repression. The prospect of the UK securing the ITAR waiver might be severely jeopardised. Those risks must be mitigated by member states taking the Council’s ‘no qualitative or quantitative increase’ pledge extremely seriously. As we have already observed, however, this pledge is in itself imperfect. In view of the importance of this issue for future transatlantic relations we recommend that absolute assurances are given by the European Union and each member state, that there will be no qualitative or quantitative increase in arms exports to China as a result of lifting the arms embargo and that sensitive technologies will not be transferred to China as a result of this change of policy. If such assurances cannot be obtained we recommend that the Government opposes lifting the arms embargo and any other change of EU policy with regard to arms sales to China.

¹⁷⁶ See paras 162–167.

¹⁷⁷ *Committees’ 2004 Report*, para 135

¹⁷⁸ *Committees’ 2004 Report*, para 138

¹⁷⁹ Ev 36

¹⁸⁰ Foreign and Commonwealth Office, *Human Rights Annual Report 2004*, Cm 6364, page 50

140. Whether or not the embargo is lifted we expect our successor Committees to monitor the UK's arms exports to China carefully. In order to do this, they will require full information on refusals, appeals, incorporation SIELs and OIELs and type of end user for licences granted, on a quarterly basis. We also recommend that the Government puts pressure on the Chinese Government during the negotiations to pledge its support for the proposed International Arms Trade Treaty.

The EU embargo on arms sales to Libya

141. The EU embargo on arms sales to Libya was lifted at the EU General Affairs and External Relations Council (GAERC) on 11 October 2004. Some reservations had been expressed by NGOs about that decision, particularly given Libya's reputation as a hub for arms sales to other parts of Africa.¹⁸¹ EGAD noted that special attention would have to be paid to those concerns when issuing licences:

All licence applications will still have to be judged against the EU Code of Conduct and I am perfectly certain that the British Government will have concerns about particular types of equipment—weapons systems, riot control equipment, more sensitive high tech equipment—going to the Libyans.¹⁸²

We note that the “toolbox” for countries coming out of embargo was not ready for Libya last October, but we hope that it will be applied to that country in an appropriate way as soon as it is ready.

Other developments in the EU

Controlling equipment used in torture and capital punishment

142. We noted last year that the agreement of a Council Regulation on trade in equipment related to torture and capital punishment was overdue, and that a draft was being considered. At that time, we expressed concerns about the proposal that the Commission should have a decision-making role on certain export licence applications.¹⁸³ At the time that this Report was agreed, the draft had been amended and improved, and final agreement was pending. We were told by the FCO that the Regulation “should be adopted later this year.”¹⁸⁴

143. In a further submission to us, the Government stated that:¹⁸⁵

“There is, at present, some debate in the EU about the composition of the Annexes [to the proposed Regulation]. Annex II lists items whose export will be banned by the Regulation. Annex III lists items that will be licensable. The UK has been attempting to persuade other Member States to accept the same strict control on these goods that the Government applies at a national level. This is proving difficult,

181 Q 17 (Mr McLean, UKWG)

182 Q 60 (Mr Salzmann)

183 *Committees' 2004 Report*, paras 145–49

184 Q 147

185 Ev 85

as a number of Member States do not currently control the export of some of the items in Annex III (particularly handcuffs). Therefore, to enable us to keep our national ban on the export of shackles, leg irons, and gang chains, the UK has asked that Member States be able to apply stricter controls at a national level. This proposal is currently under discussion, and we have made it clear that the UK cannot accept the composition of the Annexes without the inclusion of this provision.”

144. Concern has been expressed by NGOs about evidence that material exported from EU countries is being used in inhumane ways. The most recent Amnesty International Report, for example, includes pictures of a US death row prisoner wearing leg cuffs marked ‘made in England’.¹⁸⁶

145. We commented on the licensing of over-sized handcuffs in 2003.¹⁸⁷ While we concluded that “We have no concerns about the majority of the licences granted,” we drew attention to two cases. In both instances, we were asked by the Government not to identify the destinations involved. For the first case we stated:

We conclude that it is doubtful whether the Government should have granted a licence for oversized handcuffs in one particular case, given the nature of licence applications which the Government had previously refused. We do, however, accept that in this case a judgement was reached after detailed and proper consideration. We have been asked by the Government not to identify the destination of the cuffs.

In the second case we came to the conclusion that:

oversized handcuffs should not have been licensed during 2001 for export to a particular destination (which we have been asked by the Government not to identify). Basic checks on the end user of this equipment from information easily accessible in the public domain would have revealed concerns about how the oversized cuffs might be used. We therefore conclude that basic checks were not conducted. We regard this as an administrative failure that should be investigated.

146. We strongly endorse the UK Government’s position that the controls of the proposed EU Regulation on trade in equipment related to torture and capital punishment should not be weaker than those currently applied by the UK. We still have concerns about the export of oversized handcuffs and recommend that our successor Committees return to this issue in the next Parliament.

The EU WMD Action Plan

147. The EU Council Secretariat and Commission published their *WMD Action Plan* in June 2003. We were told by the Foreign Office that “Progress in implementing the strategy and action plan has been good in a number of areas.”¹⁸⁸ In particular, the Peer Review process mentioned in our last Report¹⁸⁹ has culminated in recommendations “to further

¹⁸⁶ *Amnesty International Report*, pages 68–69

¹⁸⁷ *Committees’ 2003 Report*, paras 63–71

¹⁸⁸ Ev 40

¹⁸⁹ *Committees’ 2004 Report*, paras 151–52

improve EU export systems and thereby enhance member states' capabilities to prevent access by undesirable end users, including terrorists in third countries, to dual use items relevant for WMD purposes:"

- ensure transparency and awareness of legislation implementing the EU system
- minimise any significant divergence in practices amongst member states
- investigate the possibilities for adding controls on transit and transshipment
- provide assistance in recognition of dual-use items subject to control
- improve exchanges of information on denials, and consider the creation of a data base to exchange sensitive information
- agree best practices for the enforcement of controls
- improve transparency to facilitate harmonisation of implementation of controls on non listed items (catch-all)
- enhance interaction with exporters
- agree best practices for controlling intangible transfers of technology.¹⁹⁰

148. We welcome the publication of recommendations to improve EU export systems following the WMD Action Plan Peer review process. The Foreign Secretary noted when he gave evidence before us that this exercise would feed "into ongoing work in the EU on implementation of the Code of Conduct."¹⁹¹ A further submission by the Government stated that this programme of work would "be pursued vigorously by Member States and the Commission during 2005 and 2006".¹⁹² We hope that this is achieved as part of the final negotiations on the revised Code.

190 <http://ue.eu.int/uedocs/cmsUpload/st16069en04st.pdf>

191 Q 113

192 Ev 87

6 Outstanding issues

The extension of extra-territoriality

149. Under the Export Control Act 2002 and the accompanying secondary legislation, actions by UK persons abroad are only regulated where they relate to trade in long-range missiles and torture equipment, or trade to an embargoed destination. 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.

150. We and our predecessor Committees have recommended increasing extra-territorial controls on a number of occasions. In our last Report we concluded that “the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern—in particular those weapons most likely to be used by terrorists or in civil wars”. We expressed particular concerns about Man-Portable Air Defence Systems (MANPADS), rocket-propelled grenades and automatic light weapons¹⁹³ We had previously commented that the failure to broaden the scope of extra-territorial controls represented “a missed opportunity.”¹⁹⁴

151. The Government rejected that recommendation, referring to the controls already in place through the Export Control Act 2002 where part of the activity takes place in the UK, and through other legislation such as Section 57 of the Terrorism Act 2000. It also noted the importance of multilateral action to control the illicit trade in small arms and light weapons. The response concluded that “The Government, however, is keeping controls on MANPADS under review, along with all other provisions of the new legislation.”¹⁹⁵ The Foreign Secretary confirmed when giving evidence to us that it remained his view that “extra-territorial jurisdiction should be applied only to the most sensitive transfers.”¹⁹⁶

152. The UK Working Group on Arms told us in oral evidence that more should be done:

we fully support—and it is our view as well—the decision that we should have full extra-territorial controls on arms brokers and traffickers. The UK position is possibly now out of step with, for example, the EU common position on arms brokers and a more recent OSCE document on arms brokering which actually talks about the desirability to extend extra-territorial controls.¹⁹⁷

Saferworld pointed out in its memorandum that the United States, Belgium, Estonia and Finland operate full extra-territorial controls, with Poland, Germany, France, the Netherlands, Sweden and the UK having some such jurisdiction.¹⁹⁸

193 *Committees' 2004 Report*, para 224

194 *Committees' Secondary Legislation Report*, para 48

195 Government Response to the First Joint Report from the Committees, Session 2003–04, Cm 6357, response to recommendations 53 and 54

196 Q 154

197 Q 26 (Mr Sprague)

198 Ev 49

153. EGAD representatives took a much more cautious view. In oral evidence they noted that “one of the inherent dangers of extra-territoriality is the level of complexity and the effect of the law of unintended consequences.”¹⁹⁹ They pointed out that long-range missiles and Unmanned Aerial Vehicles (UAVs), which are included in the current controls, are typically only sold to governments.²⁰⁰

154. The arms trade has always been adaptable and international. For these reasons we remain in favour of the development of further extra-territorial controls of British citizens trafficking or brokering arms along the lines suggested in our last Report. This is particularly important for goods such as MANPADS, and we note in this context that in December 2004 the Wassenaar Arrangement plenary once again discussed measures to reduce the proliferation of “these dangerous weapons.”²⁰¹

155. A recent report by the Prime Minister's Strategy Unit stated:

At present, only a minority of governments have legally-binding regulations to control arms brokers operating in their countries and an even smaller number have legislation that governs the behaviour of their nationals operating in other countries. While this extra-territorial control is desirable in principle, it is costly to enforce effectively.

It concluded that:

The UK Government should continue and focus its work with G8 and EU partners towards securing more effective international control over arms brokering, preferably as part of a wider Arms Trade Treaty. This should include exploring cost-effective options for blocking or hindering the operations of transportation agents who facilitate unlicensed arms transfers.²⁰²

156. The Committees recommended last year that “the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern—in particular those weapons most likely to be used by terrorists or in civil wars. We recommend that trade in such weapons, including MANPADS, rocket-propelled grenades and automatic light weapons, should be subject to extra-territorial control where they are intended for end use by anyone other than a national government or its agent, and where the country from which the trade is being conducted or from which the export will take place does not itself have adequate trade or export controls consistent with the British Government's policy on arms exports.” We make the same recommendation in this Report. We also recommend that the Government should conduct a review of extra-territorial controls along the lines suggested in our last report once the Export Control Act 2002 has been fully in force for a year. Furthermore, we recommend that the conclusions of that review should be published before the end of the year.

199 Q 80 (Mr Hayes)

200 Q 80 (Mr Bell)

201 www.wassenaar.org/docs/Elements%20for%20Public%20Statement.doc

202 *Investing in Prevention: A Prime Minister's Strategy Report to the Government; An International Strategy to Manage Risks of Instability and Improve Crisis Response*, Strategy Unit, February 2005

The prospects for an International Arms Trade Treaty

157. The campaign for an International Arms Trade Treaty (IATT) was launched by Amnesty International and Oxfam in October 2003. We noted the proposals last year and concluded that they had received “disappointingly little international support.”²⁰³ By February 2004 only Brazil, Cambodia, Costa Rica, Finland, Macedonia, Mali and the Netherlands had expressed support for the Treaty in principle. The British Government was somewhat more equivocal, as the Foreign Secretary explained:

It goes without saying that if I felt an arms control treaty would deal with many of the problems which you have raised and we could get it through, I would be in favour of it. After all, we have signed up to all sorts of instruments in terms of arms control and there is no argument there, in principle, between us, it is just whether this is going to work.²⁰⁴

158. We were pleased to hear the Foreign Secretary giving evidence to us this year with a much more positive tone. He stated that he was “personally [...] very committed”²⁰⁵ to the concept of a Treaty, and added that “There will come a moment when I believe there will be a sufficient international consensus that we can move forward with formal proposals.”²⁰⁶ The proposed treaty, he continued, was important for controlling small arms,²⁰⁷ but should apply to all arms transfers,²⁰⁸ drawing on the experience of the EU Code of Conduct.²⁰⁹

159. Given that a recent FCO paper has estimated that there are 639 million small arms and light weapons in circulation, the Foreign Secretary’s emphasis is sensible.²¹⁰ We also endorse his decision to use the Commission for Africa as a forum to build support, given the blight that small arms have caused throughout that continent.²¹¹ The Foreign Secretary emphasised what such a treaty could achieve when giving oral evidence to us:

It will not mean then that there will be a bonfire of all the weapons that are around Africa for example, but establishing much, much better standards and universal standards of control over the supply of arms and ensuring, too, that as a result of that there is much more intensive focus on the unofficial criminal arms dealers who make millions and millions of dollars trading in arms across Africa, that will be very important.²¹²

160. In spite of this positive development, a note of caution was sounded by the UK Working Group on Arms:

203 *Committees’ 2004 Report*, para 176

204 *Committees’ 2004 Report*, para 177

205 Q 107

206 Q 134

207 Q 109

208 Q 132

209 Q 133

210 FCO briefing, *Small Arms and Light Weapons*, 8 October 2004, available at www.fco.gov.uk

211 Q 109

212 Q 136

The Government is basically going to face the same obstacles that the NGOs identified when trying to put forward this idea of an arms trade treaty; namely that it is not going to work unless you get the support of the major exporting nations. Also, there is a danger that if it is seen as an initiative by industrialised developed nations to limit other people's access to weapons, then it will also fail. There is a lot of work to be done on those issues.²¹³

We agree with this assessment.

161. The UK Working Group on Arms submitted a further memorandum expressing concern at “other statements from the Government, including at the UN Security Council Open Debate on Small Arms in New York on 17th February, which refer to this work occurring in the longer term.”²¹⁴ **While we cannot realistically expect an International Arms Trade Treaty to happen immediately, the UK’s language and action must keep the pressure on other nations to add their weight to this initiative. This is the start of a long road, and the UK will need to be a vital driving force if the endeavour is to be successful. We urge the UK Government to use its influence as President of the G8 in 2005 to lobby other countries, particularly fellow G8 members, to support the proposed International Arms Trade Treaty.**

The ITAR waiver

162. Terms for a United Kingdom waiver from the US International Traffic in Arms Regulations (the so-called ‘ITAR waiver’) were agreed with the US Administration in May 2003. We noted in our last Report that “such a waiver would permit the transfer without a US export licence of most unclassified defence items, technology, and services to the British Government and qualified companies in the United Kingdom. In the Government’s view a waiver ‘would make a significant contribution to transatlantic defence industry cooperation and promote Alliance interoperability. At the same time it would ensure that comparable export controls were maintained on US and UK defence items’.”²¹⁵ We hoped that “reports are accurate that agreement is imminent on a British waiver from the International Trade in Arms Regulations.”²¹⁶

163. However, as we were told by the Foreign Office, things did not go to plan: the proposed legislation to bring the waiver into force:

was proposed in the first Session of the 108th Congress, but was not enacted. The House International Relations Committee continues to have difficulties with the agreed waiver and published a report on the subject ... Enabling provisions were again deleted from the Defense Authorizations Bill in this Session. We shall discuss with the US Administration the way forward on ITAR and licensing issues in the light of the Congressional language.²¹⁷

213 Q 13 (Mr Parker)

214 Ev 81

215 *Committees’ 2003 Report*, para 155

216 *Committees’ 2003 Report*, para 157

217 Ev 40

A concession was included in the Act (section 1225) giving preferential treatment to the UK and Australia in the licensing process, but EGAD commented that “Nobody quite knows what this means, including the State Department”.²¹⁸

164. The Foreign Secretary stated that he was “greatly disappointed” by Congress’s decision “particularly given what a close and reliable ally we have been for the United States through thick and thin.”²¹⁹ He referred to the Congressional Report as “based on a number of clear misunderstandings about the nature of our system”²²⁰ and questioned the assessment of a direct link with the proposal to lift the EU arms embargo to China, commenting that:

There may be those in the US who say that the two are linked. I have to say, however, that opposition in some quarters in the US Congress to the ITAR waiver predates any suggestion of a lifting of the China arms embargo.²²¹

Notwithstanding those obstacles, the Foreign Secretary assured us that he had not “written it off”.²²²

165. EGAD noted that the current situation was very uncertain:

It is very difficult to say at the moment what the correlation of forces will be in the new set-up. The administration remains in favour of the waiver. Whether it will be able to put sufficient pressure on the opponents in the Congress is at the moment very unclear.²²³

166. In its recent report on Defence Procurement, the Defence Committee, one of our constituent Committees, concluded that :

We are dismayed that a waiver for the UK from the US International Traffic in Arms Regulations (ITAR) has still to be secured and that the introduction of protectionist measures in the US has re-emerged. In addition to the potential damage to both the UK and US defence industries, there is a real risk that the close relationship between the UK and US could be harmed. We note that the US Administration has provided support to the UK on these matters, but it is essential that that support is translated into real results. We again lend our support to ministers and the MoD in addressing these issues.²²⁴

We agree. The only way forward we can see is continued diplomacy, but there is no promise of success.

167. We conclude that it is extremely disappointing that the US Congress has for a second time deleted provisions that would enact an ITAR waiver for the UK.

218 Q 44 (Mr Bell)

219 Q 124

220 Q 117

221 Q 129

222 Q 131

223 Q 44 (Mr Bell)

224 Defence Committee, Sixth Report of Session 2003–04, *Defence Procurement*, HC 572, para 141

UK Customs

168. The responsibility for preventing the illicit export and transshipment of controlled goods falls to HM Customs. We noted in our last Report that it was surprising how few prosecutions—one—had been brought for breaches of export controls between January 2002 and October 2003. During the same period 13 new cases were adopted by specialist investigators, which we observed “would seem to indicate a large discrepancy between the number of cases investigated and those actually brought to prosecution.”²²⁵ This trend has continued,²²⁶ although we note the successful prosecution on 18 February of a man for 12 separate counts of being knowingly concerned in the exportation or attempted exportation of aircraft parts to Iran, via Singapore, in breach of an export prohibition or restriction.²²⁷

169. At the same time, HM Customs is being reorganised and the number of customs officers reduced, by as much as 15%. Saferworld expressed concern about the potential impact of this on the effectiveness of HM Customs.²²⁸ The Government assured us in a further submission that “the new HM Revenue and Customs Department will continue to place a high priority on strategic export controls and work to ensure that operational effectiveness is maintained”.²²⁹ **Effective enforcement of the export control regime is needed if all the checks and balances of the export control licensing system are to be of any purpose at all. We hope that the reorganisation of Customs and the Inland Revenue will ensure that the export control system becomes more effective.**

Licensed Production Overseas

170. Our Report on the Government's proposals for Secondary Legislation under the Export Control Act 2002 recommended that “within two years of its introduction, the Government should assess the effectiveness of the secondary legislation in regulating licensed production facilities, and that it should take steps to introduce direct controls on such facilities if these prove to be warranted in the light of this assessment.”²³⁰

171. The Government responded that “the effectiveness of the new controls is paramount, and as such [we] will review the operation of the new controls in accordance with legislative best practice as recommended by the Cabinet Office.”²³¹ **We repeat our recommendation that the secondary legislation regulating licensed production facilities should be reviewed by May 2006.**

225 *Committees' 2004 Report*, para 242

226 Ev 42

227 Ev 90

228 *Saferworld Report*, page 19

229 Ev 90

230 *Committees' Secondary Legislation Report*, para 65

231 Government Response to the First Joint Report from the Committee, Session 2002–03, Cm 5988, response to recommendation 10

7 Conclusion

172. We believe that the UK's export control system has improved substantially in this Parliament. As a result of the legislation passed in 2002, subsequent delegated legislation, changes in reporting practice and the JEWEL review, we now have generally efficient and reliable export controls. Exchanges between the Government and the Committees, while sometimes candid, are founded on a shared commitment to continuous improvements in this process.

173. We take the view that there are considerable opportunities at present both in high level world policy—as the UK holds the Presidencies of the G8 and the EU, and as support for an Arms Trade Treaty becomes widespread—and for more detailed licensing scrutiny, as information systems within Government are improved. We hope that our successor Committees in the next Parliament continue to play their part in encouraging the Government to take advantage of these opportunities.

Conclusions and recommendations

1. Much has been achieved in the area of strategic export control, but there is a great deal more to do. We believe that our sustained scrutiny has resulted in a focus on this area which has enabled real progress to be made, in the context of a high level of constructive debate among policy makers, NGOs, industry and legislators. We recommend that the Defence, Foreign Affairs, International Development and Trade and Industry Committees should continue the Quadripartite Committee arrangement in the new Parliament. (Paragraph 6)
2. We have a unique scrutiny function. Our work includes looking at high-level policies and the issues arising from them. But the end product of the system is thousands of individual licensing decisions, each of which is crucially important. We test only a very small fraction of those decisions, and digging into this detail is an essential part of our job; if we did not do this, we would be unable to test how the Government is carrying out its policies in practice. We appreciate that our work adds to that of the Government, but effective scrutiny cannot be cost-neutral. We conclude that this dual-track approach to scrutiny of strategic export licensing should continue. (Paragraph 10)
3. We recommend that those devising new Government information systems for strategic export controls should be given an objective of ensuring that data can be supplied much more simply and quickly to the Committees on, for example, end use, open licences (OIELs) involving incorporation, refusals and appeals. (Paragraph 12)
4. We are disappointed that, yet again, the Government has missed an agreed deadline for the provision of information to the Committees. The fact that these questions are directed to multiple departments is no excuse for agreeing to provide information by a certain date and then failing to do so. This second-class service has been obstructive to effective scrutiny of Government policy. (Paragraph 15)
5. The inability of the Foreign Secretary and his officials to answer our questions about the Export Control Organisation is a disappointing sign of the limitations of 'joined-up government'. We are surprised that the Foreign Secretary was not accompanied by government officials able to respond to our lines of inquiry on a key topic. It would be a poor use of time—both ours and the Government's—if the Committees in future were to have to hold multiple evidence sessions with government representatives on a single policy area because the subjects under discussion fell under the responsibility of different Departments. (Paragraph 18)
6. While any decision on working patterns will be a matter for our successor Committees in the next Parliament, we would suggest that in future the Committees hold oral evidence sessions at least every six months, as well as submitting written questions to the Government on a quarterly basis. (Paragraph 19)
7. We will ensure that a website dedicated to our joint work on strategic export controls goes live on the Parliament site as soon as possible, with an entry for the Committee in the main alphabetical Committee List. The site will include the text of our

previous reports, press notices, future programme and transcripts of oral evidence sessions, as well as those of our predecessor Committees in the last Parliament. (Paragraph 20)

8. We believe that a prior scrutiny model for certain sensitive arms export decisions could be developed, which would allay the Government's fears of delay and the need for additional resources. We are disappointed with the Government's resolute opposition to any form of prior parliamentary scrutiny, and believe that the reasoning for its position is flawed. We intend to press vigorously for this change to be made in the next Parliament. (Paragraph 23)
9. We are pleased to note that information on incorporation SIELs and gifts of military equipment is now available in the Government's Annual Report, and commend the effort made by the Government to produce SIEL incorporation data for the whole of 2003. (Paragraph 24)
10. We recommend that the Government sets out in its response to this Report the progress that has been made on publication of information about Global Project Licences across the Framework Agreement States. (Paragraph 25)
11. Taking these developments in reporting as a package, we give praise where praise is due. The UK is now one of the most timely publishers of information on arms exports in the EU. Furthermore, its work on incorporation licences and the publication of country of origin and destination for 'trafficking and brokering licences' is precedent-setting. We congratulate the Government on this work. (Paragraph 29)
12. We recommend that the Government expedite work on resolving the practical and policy barriers to publishing information on categories of end user. We hope that the practical problems can be overcome during the next software upgrade. We look forward to learning of the progress of this project; we recommend that the Government considers inviting the Committees in the next Parliament to assist with reviewing or commenting on the specifications for new information systems. (Paragraph 37)
13. We infer from the Government's response to our last Report that fuller information on SITCLs and OITCLs will be provided in the 2004 Annual Report than in Quarterly Reports. The Committees look to the Government to confirm that this is still its intention and invite it to indicate whether it would consider providing this greater level of detail on a quarterly basis. (Paragraph 41)
14. The lack of information about incorporation OIELs is worrying, as it means we only have a partial picture of how British components and technology are being used abroad. We hope that the software upgrade currently underway can be configured so that this information can be made available to us on a confidential basis. (Paragraph 43)
15. We recommend that the Government should keep open the possibility of asking industry to gather data on actual exports. While this would impose an extra burden

on companies it would enable further and more accurate information to be made available. (Paragraph 45)

16. The fact that the number of SITCL licences issued is much lower than predicted in the revised RIA is not necessarily a matter of concern, and it is too early to tell what the reasons for it might be. However, the evidence we have received shows the importance of the ECO's outreach work, and the need to remain vigilant for arms dealers relocating abroad to avoid the new controls. (Paragraph 55)
17. On the basis of the evidence we have received from the Department for Trade and Industry, and the statistics from the Government, it appears that there is now an active drive for open licensing. We are dismayed that this is happening in the context of resource cuts at the Export Control Organisation, and uncertainty about its future, which we discuss later in this Report. As we have noted in the past, single licences are inherently more transparent and a stricter form of regulation. We recommend that the Government should conduct an immediate review of the scope of open licensing, and that our successor Committees should examine the results of this as soon as possible. (Paragraph 62)
18. The fact that there are so many uncertainties about the WMD export control provisions is a matter of concern and we urge industry and the Government to resolve these issues as soon as possible. (Paragraph 68)
19. The Government concluded in response to written questions that "It is too soon to draw any firm conclusions but so far the new controls appear to be working as intended and at the same time do not appear to have caused any major difficulties for either industry or government". On the basis of the evidence we have received this seems to be a reasonable, although slightly rose-tinted, assessment. We note that much has been done by the ECO to ensure that the new controls are operating well, and recommend that our successor Committees conduct a full assessment of the new export control system once more information is available. (Paragraph 69)
20. It is unfortunate that the export control system, which has only just been subject to a major efficiency exercise, and has important additional responsibilities arising from the Export Control Act 2002, is suffering cutbacks. We are concerned that ECO work that is seen as more peripheral, such as seminars for industry, outreach to other countries to improve their export control systems and, dare we say it, provision of information to us, may suffer. This would be very short-sighted. It seems to us that there is also a possibility that the current encouragement for open licensing is resource-driven. There is a very fine line between optimal efficiency and needless risk and the Government must not cross it. (Paragraph 77)
21. We welcome the Secretary of State's undertaking to keep us closely informed about plans to involve the private sector in parts of the Export Control Organisation's work. We trust that no changes will occur until our successor Committees in the next Parliament have had an opportunity to take evidence on the proposals. (Paragraph 78)
22. We await publication of the revised European Union Code of Conduct on Arms Exports, and welcome the Foreign Secretary's comments that provisions relating to

licensed production overseas, arms brokering and intangible technology transfers will be included. We wait to see what impact the revision of the Code will have in practice on strategic export controls across the EU. (Paragraph 86)

23. We wait to see how the new version of the Users' Guide, and the final revisions to the Code of Conduct, will affect transparency and the exchange of information between EU member states. We agree with the Foreign Secretary that sharing information in this way is a key tool to develop a convergent approach across the EU (Paragraph 90)
24. We hope that the final stages of the negotiation of the Code of Conduct will include provisions to increase the quality of reporting on arms exports across all member states. (Paragraph 92)
25. The future level of undercuts and denial notifications will be an important indicator of how the revisions to the EU Code of Conduct improve consistency of the Code's application across member states. We recommend that our successor Committees return to this issue as soon as possible. (Paragraph 95)
26. We note that the legal status of the EU Code of Conduct on Arms Exports is to be reviewed shortly. We look forward to learning the outcome of this review. (Paragraph 97)
27. We recommend that our successor Committees keep under review the application of the Code of Conduct across the EU, with particular reference to any differences in interpretation by member states. (Paragraph 98)
28. We look forward to learning of the results of the review of Criterion 8 of the Code of Conduct, and recommend that our successor Committees monitor how the new guidelines for its application affect the issuing of licences across the EU, particularly in the UK. (Paragraph 101)
29. We recommend that the Government uses its Presidency of the EU to initiate a review of Criterion 2 of the EU Code of Conduct on Arms Exports, along similar lines to that conducted of Criterion 8 of the Code. (Paragraph 103)
30. We urge the UK Government to use its Presidency of the EU to ensure that there is a focus on the importance of sharing best practice on enforcement of the EU Code of Conduct on Arms Exports, and export control more broadly, across all member and accession states, and potential future members. It is important that older EU member states continue to give newer states assistance to build robust systems if the integrity of EU export controls is to be maintained. (Paragraph 109)
31. We welcome the development of an EU-wide system to manage the transition for states coming out of arms embargo controls. (Paragraph 111)
32. The European Council has stated that if the EU arms embargo to China is lifted, this should not result in either a qualitative or quantitative increase in arms exports to China. Close attention will have to be paid to this test, which is highly complex and subjective. We therefore recommend that before the embargo is lifted the Council should spell out how the assessment will be made. We would welcome in particular clarification on whether this means that there should be no increase in arms exports

to China at all or no increase as a result of the lifting of the embargo, as these are very different tests. (Paragraph 127)

33. Although we believe that the embargo is an imperfect tool, there are risks associated with its removal. It is possible that there could be major EU-US trade repercussions from an EU arms 'export drive' to China, or that EU member states enhance China's military capability in a worrying way, or that the Chinese Government uses arms exported from the EU for internal repression. The prospect of the UK securing the ITAR waiver might be severely jeopardised. Those risks must be mitigated by member states taking the Council's 'no qualitative or quantitative increase' pledge extremely seriously. As we have already observed, however, this pledge is in itself imperfect. In view of the importance of this issue for future transatlantic relations we recommend that absolute assurances are given by the European Union and each member state, that there will be no qualitative or quantitative increase in arms exports to China as a result of lifting the arms embargo and that sensitive technologies will not be transferred to China as a result of this change of policy. If such assurances cannot be obtained we recommend that the Government opposes lifting the arms embargo and any other change of EU policy with regard to arms sales to China. (Paragraph 139)
34. Whether or not the embargo is lifted we expect our successor Committees to monitor the UK's arms exports to China carefully. In order to do this, they will require full information on refusals, appeals, incorporation SIELs and OIELs and type of end user for licences granted, on a quarterly basis. We also recommend that the Government puts pressure on the Chinese Government during the negotiations to pledge its support for the proposed International Arms Trade Treaty. (Paragraph 140)
35. We strongly endorse the UK Government's position that the controls of the proposed EU Regulation on trade in equipment related to torture and capital punishment should not be weaker than those currently applied by the UK. We still have concerns about the export of oversized handcuffs and recommend that our successor Committees return to this issue in the next Parliament. (Paragraph 146)
36. The Committees recommended last year that "the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern—in particular those weapons most likely to be used by terrorists or in civil wars. We recommend that trade in such weapons, including MANPADS, rocket-propelled grenades and automatic light weapons, should be subject to extra-territorial control where they are intended for end use by anyone other than a national government or its agent, and where the country from which the trade is being conducted or from which the export will take place does not itself have adequate trade or export controls consistent with the British Government's policy on arms exports." We make the same recommendation in this Report. We also recommend that the Government should conduct a review of extra-territorial controls along the lines suggested in our last report once the Export Control Act 2002 has been fully in force for a year. Furthermore, we recommend that the conclusions of that review should be published before the end of the year. (Paragraph 156)

37. While we cannot realistically expect an International Arms Trade Treaty to happen immediately, the UK's language and action must keep the pressure on other nations to add their weight to this initiative. This is the start of a long road, and the UK will need to be a vital driving force if the endeavour is to be successful. We urge the UK Government to use its influence as President of the G8 in 2005 to lobby other countries, particularly fellow G8 members, to support the proposed International Arms Trade Treaty. (Paragraph 161)
38. We conclude that it is extremely disappointing that the US Congress has for a second time deleted provisions that would enact an ITAR waiver for the UK. (Paragraph 167)
39. Effective enforcement of the export control regime is needed if all the checks and balances of the export control licensing system are to be of any purpose at all. We hope that the reorganisation of Customs and the Inland Revenue will ensure that the export control system becomes more effective. (Paragraph 169)
40. We repeat our recommendation that the secondary legislation regulating licensed production facilities should be reviewed by May 2006. (Paragraph 171)
41. We believe that the UK's export control system has improved substantially in this Parliament. As a result of the legislation passed in 2002, subsequent delegated legislation, changes in reporting practice and the JEWEL review, we now have generally efficient and reliable export controls. Exchanges between the Government and the Committees, while sometimes candid, are founded on a shared commitment to continuous improvements in this process. (Paragraph 172)
42. We take the view that there are considerable opportunities at present both in high level world policy—as the UK holds the Presidencies of the G8 and the EU, and as support for an Arms Trade Treaty becomes widespread—and for more detailed licensing scrutiny, as information systems within Government are improved. We hope that our successor Committees in the next Parliament continue to play their part in encouraging the Government to take advantage of these opportunities. (Paragraph 173)

Formal minutes

Tuesday 15 March 2005

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

Members present:

<i>Defence Committee</i>	<i>Foreign Affairs Committee</i>	<i>International Development Committee</i>	<i>Trade and Industry Committee</i>
Mike Gapes	Mr Fabian Hamilton	Mr John Battle	Mr Roger Berry
Mr Bruce George	Mr John Maples	Mr John Bercow	Mr Nigel Evans
Rachel Squire	Mr Bill Olnier	Mr Tony Colman	Mr Martin O'Neill
Mr Peter Viggers	Mr Greg Pope		
	Sir John Stanley		

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

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

Draft Report (Strategic Export Controls: HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny), proposed by the Chairman, brought up and read.

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

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

Paragraphs 1 to 173 read and agreed to.

DEFENCE COMMITTEE

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

Mr Bruce George, in the Chair

Mr Mike Gapes
Rachel Squire

Mr Peter Viggers

Resolved, That the draft Report (Strategic Export Controls: HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fifth Report of the Committee to the House.

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

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

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

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

FOREIGN AFFAIRS COMMITTEE

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

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

Mr John Maples
Mr Bill Olnier

Mr Greg Pope

Resolved, That the draft Report (Strategic Export Controls: HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fifth Report of the Committee to the House.

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

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

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

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

INTERNATIONAL DEVELOPMENT COMMITTEE

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

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

Mr John Bercow

Mr Tony Colman

Resolved, That the draft Report (Strategic Export Controls: HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fourth Report of the Committee to the House.

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

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

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

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

TRADE AND INDUSTRY COMMITTEE

The Defence, Foreign Affairs and International Development Committees withdrew.

Mr Martin O'Neill, in the Chair

Mr Roger Berry

Mr Nigel Evans

Resolved, That the draft Report (Strategic Export Controls: HMG's Annual Report for 2003, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Eleventh Report of the Committee to the House.

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

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

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

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

Witnesses

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Mr Andy McLean, Deputy Director, Saferworld, **Mr Oliver Sprague**, Senior Policy Advisor, Oxfam, and **Mr Robert Parker**, Campaign Manager, Arms and Security, Amnesty International

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Mr David Hayes, Export Controls Compliance Manager, Rolls-Royce plc, **Mr Tim Otter**, Vice President, Business Development, Smiths Detection, **Mr Michael Bell CB**, Export Controls Consultant, BAE Systems, and **Mr Brinley Salzmann**, Exports Director, Defence Manufacturers' Association, Export Group for Aerospace and Defence

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Rt Hon Jack Straw, a Member of the House, Secretary of State for Foreign and Commonwealth Affairs, **Mr Edward Oakden CMG**, Director, Defence and Strategic Threats, and **Dr David Landsman**, Head, Counter-Proliferation Department, Foreign and Commonwealth Office

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Session 2003–04

First Joint Report Strategic Export Controls: Annual Report for 2002, HC 390 (*Cm 6357*)
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Session 2002–03

First Joint Report The Government's proposals for secondary legislation HC 620 (*Cm 5988*)
under the Export Control Act

Second Joint Report Strategic Export Controls: Annual Report for 2001, HC 474 (*Cm 5943*)
Licensing Policy and Parliamentary Scrutiny

Session 2001–02

First Joint Report Strategic Export Controls: Annual Report for 2000, HC 718 (*Cm 5629*)
Licensing Policy and Prior Parliamentary Scrutiny

Government responses to Reports from the Committees are published as Command papers. They are listed here in parentheses by Cm number, after the Report they relate to.

Oral evidence

Taken before the Defence, Foreign Affairs, International Development and Trade and Industry Committees

on Wednesday 15 December 2004

Members present:

Mr Roger Berry, in the Chair

John Barrett
Mr John Bercow
Mr Tony Colman
Mr Quentin Davies
Mr Nigel Evans
Mike Gapes

Mr Bruce George
Mr Fabian Hamilton
Mr Bill Olnier
Mr Martin O'Neill
Sir John Stanley
Mr Peter Viggers

Witnesses: Mr Andy McLean, Deputy Director, Saferworld, Mr Oliver Sprague, Senior Policy Advisor, Oxfam, and Mr Robert Parker, Campaign Manager, Arms and Security, Amnesty International, examined.

Q1 Chairman: Good morning, everyone. Andrew, would you like to introduce yourself and your colleagues.

Mr McLean: I am Andy McLean, the Deputy Director of Saferworld. This is Rob Parker, the military, security and police co-ordinator for Amnesty International, and this is Oliver Sprague.

Mr Sprague: Campaigns and policy officer.

Mr McLean: From Oxfam.

Q2 Chairman: Thank you. Thank you also for your written submission, which we have found very, very helpful indeed, as always. This year we have taken the sensible step of taking evidence from NGOs and defence manufacturers before we take evidence from the Foreign Secretary, so that we will be better equipped to pose hopefully more interesting questions when we see him in January. There have been a number of things that have happened since we last met earlier this year, including the fact that the government now publishes quarterly reports on decisions in relation to licence applications and we have now had the second quarter of the year. Could I ask you what your impression is of the new quarterly reporting system: How much of an improvement do you think it is over the previous annual reports?

Mr McLean: I think it is an improvement in the way that it obviously comes out much more quickly and much closer to the time at which the licensing decisions are made. I think that is something which the Committee has urged in the past and we have as well, so I think that is a very welcome development. I think it probably shows a challenge for us all, as well, though—the Committee and the NGOs and also the media—in terms of ensuring that this actually does lead to a greater level of scrutiny and accountability for export licensing decisions, because there is a danger that with these things coming out quarterly then in some ways the impact of an annual report can be dissipated as well in profile terms. I think there is a challenge there for us to ensure that it does lead to an increased level of scrutiny. With regard to the level of transparency within the report, I think

there are three areas to which I would like to draw the Committee's attention. Firstly, there is still a need for a greater level of detail in the descriptions of the equipment that is being licensed for export. As we all know, there is the trend now whereby the majority of equipment exported is component parts, electronics equipment, communications equipment. Of course it is much more difficult therefore to get a clear picture of what the impact of this equipment is and the potential use to which it could be put. I think that highlights the need for more detailed descriptions about these component parts, and, in particular, the type of weapons systems into which they are therefore going to be incorporated. I note that in the US annual report, for instance, they do highlight very often the weapons systems within which components will be included; say, for example, military engines for F16 jets. There is also the challenge of the fact that in the UK report there is very little information on the end users of the equipment that is exported—and that again I know is something which the Committee has highlighted in the past—and I think that is something which still needs to be improved. Also, with the changes in the new licensing system, I think there are still problems in the way the new information on incorporation and brokering is included. On incorporation technologies, it reports the country to which the equipment is being exported for incorporation but not the eventual destination, so it is very difficult of course for us to get a picture as to what the eventual impact of that equipment will be. On brokering, the licence information is given according to the source country from which the brokered transfer will take place rather than the recipient country, so, again, it is very difficult to trace the eventual impact. Although there has been some improvement in transparency and with the speed at which the reports have been released, we still need a lot more detail.

Q3 Chairman: Thank you very much for that. In your latest report, you look at each of the criteria and identify a number of end-use countries that raise

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concerns and issues. There are a number of questions and we may come back to you after this meeting to explore some of those, but, given the time that we have this morning, I would be interested in hearing your views about the licences, particularly in the most recent quarterly report, for example, that cause you the most concern. Which are the licence decisions that worry you the most?

Mr Parker: If I may say something, before we go on to specific licences, on the issue of timeliness of the reporting and how useful it is to us. In theory we will be able to track the speed with which export policy changes in relation to events on the ground, with more timely reporting. One specific example: in the Maldives, where there is an extant open licence for crowd-control ammunition, tear gas and the like, the Government expressed concerns over attacks by police on peaceful protestors in August (so just after the reporting date of the last quarterly report) and also condemned the imposition of a state of emergency in the islands. We will be watching with interest to see whether that has an impact on perhaps potential revocation of the open licence supplying the kind of equipment that the security forces are using in the Maldives.

Mr McLean: In terms of licences of concern: in the last quarter there have been a number, I think. There are a couple of countries, just to highlight. India and Pakistan, obviously—which I know the Committee have raised concerns about under criterion 4 before: still, over the last 18 months, very, very high levels of licensing to both countries and of potentially offensive equipment. Obviously the situation in Kashmir and the stand-off between the two countries has improved somewhat—and we welcome that—but of course I think there is still great potential for a recourse to a more bellicose stance there. I think the fact that in the last quarter there are still open licences going for components to combat aircraft, combat helicopters to both countries, that sort of equipment which clearly has a potentially offensive use, is of concern. To Syria, in the most recent quarter, April to June 2004, there is an open licence for armoured four-wheel drive vehicles, and that follows a previous licence for armoured vehicles in January to March 2004 and a licence for small arms ammunition in 2003, which is of concern to us. Also there is a continued high level of exports to Indonesia of potentially offensive equipment (again, components for combat aircraft, helicopters and so on) which, given the ongoing conflict, particularly in Aceh, causes a number of concerns. Another issue around licences is on incorporation. I do not know if that is something you are going to return to. I would like to highlight there that the second highest recipient of licences for incorporation is Israel, which has received 61 licences for incorporation in the last 18 months. That is second only to the US, which received 64. Israel of course has a very aggressive export policy at the moment: it is the second highest exporter to China, for instance—something which has caused the US to comment very publicly on its concern over. The fact that there is no information published

about the eventual destination of the goods into which this equipment will be incorporated is of great concern to us.

Mr Parker: From a purely Amnesty perspective: we always look out for handcuffs, because basically when handcuffs appear in this report it means oversized handcuffs and we fear there is the potential for them to be used as or turned into leg cuffs, which would be banned from export. We always note when they appear in the annual report. This time of concern would be that there is an export to Egypt and to the Philippines. I know the Committee has looked into this before and received assurances from the government that there was no risk that they would be used in such a way, for torture or something like that, but we do not have that information here in the annual report, so I would just like to flag the Egypt and Philippines cuffs' export.

Q4 Chairman: Thank you very much indeed for that. That is very helpful. Obviously in the latest quarterly report we have information under the new Export Control Act; for example, information on brokering by individuals in the UK or companies in the UK, to which you have referred briefly, Andrew. What is your impression of the information the Government is now providing under the Export Control Act and the additional information that that Act requires? Do you have any general observations on that, other than the point you made earlier about the importance of knowing the end use?

Mr Sprague: From an Oxfam point of view—well, probably from the point of view of all in the UK Working Group—the information that is provided on the brokering and trafficking type licences is probably inadequate for adequate scrutiny. I think of particular concern is the fact that the licences do not specify the ultimate destination where the brokered goods were going to end up and I think that is primarily what we are all concerned about. We want to know whether those goods are going to countries that prevent a proliferation risk or would violate the criteria contained in the EU Code of Conduct and I would like to see that improve in subsequent quarterly reports—as a matter of some urgency, I would argue.

Q5 Mr O'Neill: If I could have a look at the prospects for the Export Control Organisation. As you are aware, the Gershon-driven cost-cutting exercise may well have staffing implications for this area. Do you have any concerns about the impact on the efficiency of the ECO, which I think most people would say has improved? I remember, before this Committee was established, my colleagues and I in the DTI Select Committee had terrible trouble trying to get the system moving more quickly. It took several reports and kicks before things could happen, but now that it is happening do you have any worries about it stopping?

Mr McLean: I think these proposed cuts are bad news and I think there is a real risk that it could lead to less scrutiny and it could lead to less transparency. As you say, I think there is a sense that the

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operations of the department are improving. Obviously this is a challenging time, when, as the Chairman said, the provisions under the new Export Control Act are being implemented and so the department is now having to process these new types of licence applications which they have not had to do before. If there are to be these cuts—and I think about 25% has been mooted—then I think there is a great risk that that could lead to a greater proportion of equipment going on open licences, which will of course lead to less transparency, because they are quicker to process, and I think it could also lead to a greater resistance from the Government to increase transparency in certain areas. I note that in the Government's response to your last report there was not an "in principle" objection to providing information on end users; the objection was that this would put an onerous strain on resources—and, of course, as resources are being cut, where is that extra capacity going to come from? I would say that in the current climate, when the Government is putting so many resources internationally into trying to increase global stability, prosecute the war on terror and so on, that really increasing the resources for proliferation control is the way in which things should be heading rather than actually seeking to cut them.

Q6 Mr O'Neill: The other side of the coin is that you might get back to the old situation where it took far longer for the applications to be processed.

Mr McLean: Yes.

Q7 Mr O'Neill: And I suppose you could end up with a back-log which, in some ways, from your point of view, I would imagine, would be almost as much the unintended consequence of an ill wind.

Mr McLean: I think that is not really the key issue. These cuts in the Export Control Organisation, I would have thought, are somewhere where there is a common ground really between the defence industry and NGOs, because obviously they are seeking a quicker licensing process and we are seeking greater scrutiny and transparency.

Mr O'Neill: The other thing of course is that it might be, if savings have to be found, that they could be found perhaps by increasing the charges or imposing charges rather than doing it the other way round. How would you feel about that? The cost of the licence might be increased; there might be charges imposed on the applicants. Sometimes the sums are comparatively small in relation to the whole contract. If there was a pro rata way of calculating it: for example, there are 10,000 applications, 4,000 ratings, and if you had a two tier system and if you had percentages for each one, it might provide the kind of income which the Government could then use to fund the operations, so that we could have it but it would be slightly more expensive for the arms control manufacturers.

Chairman: It might be a question more appropriate to put to our next group of witnesses.

Q8 Mr O'Neill: I am merely asking for an opinion. It would be wrong to suggest we only had one option: staff cuts.

Mr McLean: That sounds a sensible suggestion and we would certainly favour that.

Q9 Mike Gapes: Could I take you on to what is going to happen next year. The UK has the presidency of the G8 from January of next year onwards, and then from the beginning of July the presidency of the European Union. What would you hope would come out of that?

Mr Sprague: It has been a very significant year for us for export control issues. I think it is marvellous news that the UK Government has committed itself to support the Arms Trade Treaty and obviously, as you have mentioned, 2005 is a big year with the presidencies of the G8 and the European Union. I think for the G8 we would like to see the UK working with G8 partners between now and the Summit in trying to ensure that reference to the ATT, or at least the principles of the Arms Trade Treaty, are included in the communiqué of the G8, building on from the decision in 2008, I think, in Japan, where they issued a statement on small arms and light weapons. In terms of the EU presidency, I expect we might come on to this but there has been a year long review of the EU Code of Conduct and one of the things that has come out of that review has been the need to provide greater clarity on how you implement the individual criteria. Certain criteria have been particularly problematic. There has been some great work done on the simple development criteria, which we might come on to later, but I would say a useful priority for the UK presidency would be to build on this initiative and maybe look at criterion 2. There has been a welcome development: I do not know if it has gone through yet, but it appears there has been a change to the wording of criteria 2, the human rights criteria, with a more specific reference to international humanitarian law, which of course makes the EU code more consistent with the Arms Trade Treaty, and I would think it would be extremely helpful to develop operative guidelines, a sort of instruction kit, if you will, on how to implement the States' existing responsibilities under international law. That would be, I think, a major step forward in the EU harmonising itself towards the principles of the Arms Trade Treaty and a greater building block towards achieving that treaty.

Q10 Mike Gapes: Do you and your colleagues have any hopes or expectations for next year?

Mr McLean: I think the transfer controls issue is key. We would be looking to the G8 really to take a good stance on support for an arms trade treaty. Obviously in 2006 we have the review conference of the UN Programme of Action on Small Arms Control, so we are looking to agreements in the EU and the G8 next year as providing a key stepping stone to a wider international agreement in 2006. We would also in the EU code welcome the introduction of a "presumption of denial" for exports to regions of instability. Obviously one of the key aims of the

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new code is to promote a convergence in export policies and practices of EU Member States, and yet, as we see in the EU annual report, there is still a wide divergence of the application of the criteria towards particular countries of concern. So I think the agreement of a general presumption of denial to particular countries in regions of instability would be an important point. Then I think the issue of arms brokering and transportation is key. Again, we would like to see the G8 build on its work on arms brokering and support the development of an international and legally binding instrument on arms brokering, and within the EU we would like to see the common position on arms brokering expanded to ensure that extra-territorial controls are mandated across the European Union and also the neglected issue of transportation agents addressed. There has been a lot of focus on the brokers and not much on the people actually moving the weapons, and I think possibly the idea of a code of conduct for transportation agents, with agreed international standards which they would sign up to, would be an important move there.

Q11 Mike Gapes: The EU Code of Conduct some of my colleagues will deal with later on. There is also the Arms Trade Treaty and I think that will be dealt with by somebody else. You talk about regions of conflict. We have seen recently worrying developments in Congo again. Africa is very high up in terms of regions of conflict, or parts of Africa. The Africa Commission is also due to be coming out with a report relatively shortly which links into this whole G8 process. Do you have any expectations specifically about Africa or any hopes?

Mr McLean: Yes. I think the Africa Commission is a very welcome innovation. I think it is very encouraging that in their draft programme, which they published a month or so ago, there is a recommendation to establish an international arms trade treaty and also an international legally binding instrument on arms brokering. I note that those two recommendations were also echoed in the recent report of the UN high level panel on new security threats, so support for this is building. But I think it is also important, as you say, actually to address the problem of the proliferation of weapons within Africa. I think there, providing greater support to sub-regional organisations and to countries in the development of national and regional action plans, is a very important way forward to addressing the problem on the ground as well as the international supply.

Mike Gapes: Thank you very much.

Q12 Mr Colman: Perhaps I could make a declaration of interest: since the last meeting of this Committee I have become a patron of Saferworld, and I hope that example will be followed by our next set of witnesses, all of whom have said to me individually that they support the way that Saferworld works, and perhaps we could look to other people coming forward from the arms' manufacturing industry also to be supporters of Saferworld. My question really follows on to the Arms Trade Treaty which Mr

Gapes has brought up. Obviously I am interested that Mr Sprague from Oxfam feels it is a positive situation. Could you open that out a bit further. Have you been consulted? Has the coalition putting forward the Arms Trade Treaty been consulted since the Foreign Secretary made the announcement at the Labour Party Conference in September saying that he will in fact be taking this forward in the way you have described?

Mr Sprague: I think it is true to say the Government are thinking about how they are going to take it forward, but we have had some very encouraging correspondence, which restates the commitment, and they say they specifically want to work on developing countries and building up—which I assume is through the transfer controls initiative and trying to establish the ATT principles and trying to bring in the international humanitarian law aspect—within that process. The Government are meeting us formally, I think tomorrow, to discuss our ideas and our plans, and there is a very important meeting that is going to happen in Tanzania—which has been driven by Finland, who have emerged as one of the leading champions of the Arms Trade Treaty—in mid-February. I think for the first time 20 governments or maybe even 30 governments from around the world who are warm to the idea of the treaty will meet to discuss and to formalise how to take it forward, and I am encouraged to note that the UK Government are having bilateral discussions with the Finish Government about how the UK can play its full part in that process. From where we were last year, we have made significant progress, which is why I am so optimistic, and something like an arms trade treaty will move from something that was a nice idea maybe two years ago, to something that in my lifetime working and campaigning in with Oxfam will actually happen.

Q13 Mr Colman: We have a list of seven countries that up to the end of September have expressed support for the treaty, one of which obviously was Finland. Perhaps you could let the clerk separately have a list afterwards of where we are on the 30, because that sounds significantly more promising.¹ At the meeting tomorrow, are you expecting to meet with the Secretary of State from DfID, as well as from FCO, given the emphasis that you have just made that it should be a developing country sign-up as well as, if you like, EU/North America and Japan.

Mr Parker: The Government is basically going to face the same obstacles that the NGOs identified when trying to put forward this idea of an arms trade treaty; namely that it is not going to work unless you get the support of the major exporting nations. Also, there is a danger that if it is seen as an initiative by industrialised developed nations to limit other people's access to weapons, then it will also fail. There is a lot of work to be done on those issues. From an international campaigning perspective we are very encouraged, I would agree with my friend from Oxfam, in that a year ago these governments were not talking about an arms trade treaty and

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now, thanks to the public campaigning by NGOs all over the world, not only has the UK come forward as the first major exporter in support of this, but so have other countries, representing five different world regions. So we are starting to tackle the idea that this really has to be a call from all over the world, both affected regions and supply regions.

Q14 Mr Colman: A small arms survey last year showed that, I think, 18 African countries were manufacturing small arms, and that was 90% of the small arms circulating in Africa. Colleagues will be talking about small arms subsequently in questions on that, but I again come back to ask: Is DfID in fact going to be represented at the meeting tomorrow?

Mr McLean: The meeting tomorrow is with the Foreign Office but we would certainly welcome a meeting with the Secretary of State for International Development, because, as you say, this is something which has to be pushed across government and the dialogue with developing countries obviously can be critical in that.

Q15 Mr Colman: Is Mr Parker concerned that there would need to be an unacceptable watering down of the details of the Arms Trade Treaty in order to pull in the manufacturers from the north.

Mr Parker: That is certainly a concern. We would not want to see the criteria watered down in any way but part of the debate is: Will the eventual instrument be politically binding or legally binding or will it cover all arms or small arms only? These are all up for debate and we will be taking forward with the UK Government as to its intentions on this tomorrow.

Q16 Mr Colman: Please keep us informed and perhaps have a talk with the clerks about your meeting with the Foreign Secretary so that we are up to speed on what is going on.

Mr McLean: We will do. I think your point about the need to engage the major players which you have just mentioned shows the importance of the G8, because within the G8 you do have the major weapons' exporters. That really is a critical opportunity next year to begin dialogue on this issue.

Q17 Mr George: The arms embargo imposed by the EU on Libya has been terminated, as you know. Do you have any comment on that? Should it have been terminated? After all the "Great Leader" was rewarded for his actions. Are you prepared to accept the terminating of the arms embargo or do you have any reservations?

Mr McLean: I think we do have reservations. Obviously the steps which Libya has taken to announce its weapons of mass destruction are very welcome and we do not underestimate the significance of that. But we would question whether lifting the arms embargo was really the right carrot for that. It was obviously one of the first things that flowed from there and the major concern about that is Libya's past role as a proliferator of arms on the African continent. There is well documented

evidence about the supply of weapons to Charles Taylor at the time when Liberia was under an arms embargo, so I think real questions have to be raised about the potential risk of diversion of any weapons that will actually be sent to Libya. I think it probably sends the wrong signal at this time when we have not had the chance to see whether the reforms that are under way in Libya are actually going to bed in and when we are not yet really convinced of the arms export control systems and records which the Libyans have in place.

Mr Sprague: I think it is also bringing the inter-related point of transportation into this because Libya is a major hub for global air transport—a combination of economics and geography: the fuel is cheap there and also it is in the right place for aircraft to come and refuel—but from my research and work on the arms trafficking and the embargo-breaking sort of gun-running activities, so many of the aircraft pass through either Benghazi or Tripoli on their way down to the conflict spots. So I think we need to think very carefully about how we can control that, and, hopefully, one of the things we can do is to start putting some money and resources and training into customs officials at the airports in Libya to look through paperwork on flights and to check that they are legitimate and they are not going to be going to undesirable end-users, because for me it is a clear problem.

Mr Parker: One other slightly tangential aspect of the Libya issue is that there has been talk of setting up asylum processing camps in Libya and elsewhere in North Africa to process asylum seekers coming to the EU. We would have concerns primarily because of previous treatment of asylum seekers and detainees by the Libyan authorities but also whether that would possibly lead to exports as incentives for countries, perhaps Libya, to set up such camps. There are already proposals for the Italians to send down speedboats, thermal imaging equipment and that kind of equipment, specifically for these kinds of processing camps. So it is one to watch for the future.

Q18 Mr Evans: The China-EU arms embargo has been in place since 1989. The French and the Germans have been pushing hard to get that lifted. There was a summit at the Hague on December 8 and a press release came out from the Chinese afterwards saying that they were very content that the EU now were working towards lifting that embargo. Whilst Britain is not leading the campaign, it seems to suggest that they will go along with whatever is decided. What do you think the consequences will be of lifting the arms embargo on China?

Mr Parker: Fifteen years on and there is still no redress for the victims of the Tiananmen Square crackdown. There are still activists imprisoned for their peaceful activities related to getting an investigation into what happened at Tiananmen Square. Amnesty has seen no substantial improvement in the human rights situation in China and we would really pose the questions to the EU: What signal does this send to human rights

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defenders who are imprisoned for their activities in China? What leverage does the EU then maintain, if any, over China if it gives up the arms embargo in terms of human rights? What measures will the EU take to ensure that China does not interpret this as the EU saying, “Well, we do not really care about all the activists who are still in prison from the Tiananmen Square crackdown”? We could also then look at the role of China as a proliferator and the role of regional stability, but I think from Amnesty’s point of view we were concerned about what message this would send to human rights defenders still in prison in China.

Mr McLean: One of the arguments put forward for lifting the embargo is that the consolidated criteria could do the job very well instead. I think that is an erroneous argument because, as you see from our audit, we do have concerns about the implementation of the consolidated criteria to a number of countries around the world and I think the EU embargo is having an impact. Out of the 22 Member States who reported licences in 2003, 17 licensed nothing to China. So I think the arms embargo is having an impact there over and above what the consolidated criteria would have on their own.

Mr Sprague: It is probably more a point for our colleagues to follow these discussions, but, in terms of the industrial cooperation with the US, my analysis of the situation would be that the US would have severe concerns with the re-export of US technology to China because their position is even more robust than the EU’s. Maybe there is a consistency of policy point here because one of the main strong reasons for the incorporation guideline changes of a couple of years ago was the fact that we need to maintain very strong strategic and industrial relations with the US. I have my concerns about the changes to those guidelines, but it seems like this may well undermine that very statement.

Q19 Mr Evans: It does appear that the United States, Japan, Taiwan have huge reservations about it but we will be talking with our Foreign Secretary shortly and this is going to come out no doubt. If he says, “We would be quite happy and content for the embargo to be lifted because we have the EU Code of Conduct Criteria to ensure there is not proliferation,” what would your view be to that?

Mr McLean: It would be the point I made to you previously, that the embargo is having an effect over and above the EU Code of Conduct, and I think the fact that 17 out of 22 States did not licence anything in 2003 is an indication of that. Obviously, of course, China is potentially a huge market and so if the embargo is lifted there will be substantial economic and industrial pressure within the EU Member States to launch an export drive into China, so I think it is quite clear to me that if we do relax the embargo that will lead to a liberalisation of export policy.

Q20 Mr Evans: Are you happy that the EU Code of Conduct is sufficiently rigorous to ensure that there is not going to be a problem?

Mr McLean: Not the way in which it is being currently implemented, no. Obviously UK exports to China, as well as having to meet the test of the embargo, currently have to meet the test of the consolidated criteria, and yet there were something like £76.5 million worth of exports in 2003 and £37.5 million January to June 2004—and that is including things like components of military helicopters, components of military aero engines and technology for the production of combat aircraft. So that is going with the dual safeguard of both the embargo and the criteria. I think if you have the criteria alone, unless they are elaborated and more tightly implemented they would not do the job.

Q21 Mr Bercow: I would like to question you on the EU Code of Conduct on arms exports, in respect of which there does seem to be a pretty stark difference between the current stance and ambition of the Government on the one hand, and the current stance and ambition of yourselves on the other. Very specifically, as I understand it, the Government’s position is to say, “Well, we should harmonise EU Member States’ reporting methods and we could very usefully examine the legal status of the code and consider the rather important issue of whether that code should become the common position, but ministers reckon that the present information sharing system is adequate. Your *magnum opus* on the subject is really very much more ambitious, as I am sure you will acknowledge. You want the code to include consideration of corruption in the arms trade; all exports of relevant equipment; police equipment and components, to bolster transparency and information exchange; to widen the impact of the criteria to include legislative and administrative capacity; to harmonise annual reporting. There is literally a plethora of subjects: tackling licensed production overseas; the transit of arms, etcetera, etcetera. There is a big difference. May I ask you in the light of that, and given that you are in the world also of *real politique* which of those agenda items you regard as the most important. What would you go to war over?—if I may put it that way.

Mr Parker: The figure that is quite illustrative of this, extrapolating from the Foreign Secretary’s comments in his last evidence session to you, is that it appears that around 25% of the consultations result in an undercut at the moment. That would appear to be quite a high figure for a system which is based on common interpretation of criteria, so I think that anything that can help the common interpretation, harmonise the interpretation of the criteria, is our priority. We would probably go for changing the wording of the criterion to start with. As you say, in the real world there has been a year’s review and there have been maybe one or two tinkering changes to the criteria but that does not seem to be up for grabs at the moment. So we would put forward the idea that the UK should be promoting the development of substantive guidelines, along the lines of those that have been developed from criterion 8, to enable people to interpret the criteria in a common way. Out of all the criteria, our priorities would be numbers 2 and 4 and

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it would be interesting to have a conversation around criteria 5 as well and the issue of national security and how states are interpreting that one.

Q22 Mr Bercow: How have you been involved in the review? Although it is not for us to advise you—and you do not need any advice from us on your campaigning techniques—have you been able concretely to demonstrate that the effect of the existing code, which you regard as too restrictive and too weak, has been to allow the continuation of the spread, for example, of small arms to destructive effect in human terms? In other words, are you able to demonstrate to ministers that unless they take a more robust stance of mind, which you favour, there is going to be greater repression because there already has been—and you give the examples—and further loss of life, because there already has been—and you can give the examples.

Mr Parker: I think I would point to the fairly recent Amnesty report: *Undermining Global Security: the European Union Arms Exports*, which does just that and goes through picking examples where we feel states have either deliberately or unintentionally let things slip through, resulting in human rights violations.

Mr Bercow: I very much appreciate that. May I say, Chairman, Mr Parker has just added to my extensive Christmas reading list.

Q23 Chairman: I have just asked the clerk to request copies for the Committee.

Mr Parker: Of course.

Mr McLean: That is a very good question and obviously the ultimate litmus test of the effectiveness or otherwise of the criteria is being able to demonstrate that impact on the ground. But I do not think that is the only test we should be looking for. I think it would be a mistake if all the debate on export licensing focused on specific instances where NGOs could demonstrate that exported equipment had had an abusive effect on the ground because obviously the great stride with the EU Code of Conduct is that it is a risk-based system of assessment. I think it is important that officials are looking at and we are scrutinising whether the Government is taking an effectively cautious enough approach in its licensing: Is it fully assessing the future risk that this export could be used for internal repression or regional stability? That requires a much more far-sighted assessment rather than just whether there is evidence of that particular piece of equipment having been used in a specific instance in the past.

Q24 Mr Bercow: You touched on criterion 8 amongst the different criterion you have mentioned. Are you aware that the Government is participating in a group to produce a users' guide, so that people can make better use of that criteria which is often seen to be a weak link. Do you think the Government is taking into consideration your concerns when developing this users' guide?

Mr Sprague: We produced this report in May last year which is looking at precisely this issue. The UK has been particularly active in working in this

working group on criterion 8. Although it has not been agreed formally, we hope agreement is going to be reached on 2 December with the EU COARM meeting—but it looks like it might slip until early January. We do believe that the guidelines they have produced broadly reflect some of the recommendations we make in here, so we do think it will help. It is a horrible pun, but it is the weak person's criterion. I think even from the last report there has still only been one UK refusal on the grounds of sustainable development. I think the wording on the criterion itself is slightly problematical because I think it sets the threshold very high because it talks about a "serious risk of undermining sustainable development" which I think it is actually difficult to work out, whether something is a serious risk or not. I think if we just look at a UK example from the annual report, in the last quarter there is a very large increase of equipment to Nigeria. The last quarter figure is significantly larger than any of the previous reporting periods, if you look at 2002–03 or the first quarter of 2004, and this includes equipment such as artillery systems and four-wheel drive vehicles. It is entirely possible that this equipment is for use for peacekeeping but without a further elaboration in the actual reporting it is very difficult for us to tell that, so it would raise serious concerns here about the sustainable development impact of those transfers.

Q25 John Barrett: You mentioned there has only been one refusal in 2003. I wonder if you or your colleagues have any comments on the fact that there has only been one refusal in the space of five years.

Mr McLean: I think it is surprising. When you look at the high value of UK exports, then I think you would expect more than one licence to have been refused. We would certainly hope that with these new extrapolated guidelines the number of licence refusals would increase, not just in the UK but across the EU, because it is much clearer to officials how actually this criterion should be implemented. But I think the point the Committee has made in the past, about the need and importance of assessing the cumulative impact of licensing decisions on sustainable development and not just the impact of one specific licence, was very important. I think that is now the position of the Government in the EU but it is important to ensure that that actually happens in practice.

Q26 Sir John Stanley: In this all-party Committee we nonetheless decided in our report on the Government's secondary control legislation under the Export Control Act, House of Commons paper 620, to quote a very important sentence from the Labour Party's general election manifesto in 2001: "We will legislate to modernise the regulation on arms exports with a licensing system to control the activities of arms brokers and traffickers wherever they are located." In our report we drew attention to the fact that the Government, by applying these secondary controls solely to missiles with a range in excess of 300 kilometres and to certain types of

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torture equipment, was only touching an absolutely fractional amount of the trafficking and brokering trade. I would judge, myself, less than 1%—given that long-range missiles are outside trafficking and brokering, and are entirely done government to government, and, as far as the torture equipment is concerned, it is said it should be included but as we all sadly know there are any number of instruments of torture that you can construct if you get denied access to certain types of handcuffs. In our report, we made the recommendation in paragraph 50: “. . . that the Government should seek to extend extra-territorial control of all the trafficking and brokering which, if conducted in the UK, would not be granted a licence.”² That was a unanimous conclusion of these four Committees. The question I would like to ask all three of your organisations—and do respond verbally now but I am also going to encourage you to search your filing cabinets and all the research facilities that you have—is: Do you have actual evidence that you can provide to the Quadripartite Committee of UK individuals or UK companies overseas actually engaging in trafficking and brokering of a huge cache of weapons that so far are outside the secondary control legislation? As we all know, the overwhelming volume of weapons that are trafficked and brokered are small arms, automatic weapons, rocket propelled grenades, explosives and so on. It would be interesting if we could have factual evidence, particularly before we see the Secretary of State in January, as to the evidence you have as to trafficking and brokering by UK individuals and companies overseas brokering weapons to destinations that would not be granted a licence if carried out in the UK.

Mr Parker: I guess we should start by saying that of course these people would not have needed to go overseas until May 2004, because their activities were not controlled in this country when they were in-country either, so in theory that kind of paints the picture of how hard it is to track these people down if they only would have had to go overseas since May. If I may, there is a case closer to home which could be seen potentially as a test case for the Export Control Act involving a UK broker reportedly brokering equipment to Sudan. Recent press reports and an Amnesty Sudan report have named the company. The supporting documents seem credible and I believe that the company is now under investigation, so I will not go into detail here, but it would seem to us that one of the stated purposes of the Export Control Act was to stop the UK being used as a base to supply weapons into conflict zones and this would appear to be a good test case. Whether that individual would then go off-shore because they found the legal teeth of the Export Control Act were starting to tighten, is another point, but I am sure we can look for instances where we do have on record UK citizens trying to engage in this kind of activity.

Mr Sprague: Of course we fully support—and it is our view as well—the decision that we should have full extra-territorial controls on arms brokers and

traffickers. The UK position is possibly now out of step with, for example, the EU common position on arms brokering and a more recent OSCE document on arms brokering which actually talks about the desirability to extend extra-territorial controls. I notice that a recent US congress report has again pointed at the fact that the UK only have partial extra-territoriality and they are looking to that as a weakness. I can think of one specific example that I know of involving a UK broker. This was done through a press investigation but I have seen some of the documents, and this was basically a UK broker who was operating and regularly does operate out of Bulgaria. He even had his own mobile phone. Although he did not end up supplying, because the operation was a sort of sting operation with a journalist who was doing it, he was openly prepared from Bulgaria to negotiate the supply of small arms to Syria at a very, very interesting time vis-à-vis the conflict in Iraq and some of the conversations that the journalist had with this individual make it clear that the possibility of diversion to other destinations from Syria, including Iraq, might be possible. Now this is clearly somebody negotiating a deal from outside of the UK, from Bulgaria. I know that the same individual has operating bases in Kenya, for example, as well as Bulgaria. That is just one example. It did not, thank God, result in an actual transfer but clearly the intent was there.

Q27 Chairman: I am conscious that we are in a public session and it might be information that it is appropriate you could pass on to us privately. If investigations are taking place, we do not want to jeopardise them. I am as anxious as Sir John, we all are, to have information of that kind; I am just careful about not going too far into detailed discussion of individual cases.

Mr McLean: One other brief point on arms brokering. If you look at the range of countries in the recent report from which weapons are being sourced, it does not of course give you the destinations but it is a very, very wide range of countries from which weapons are being brokered. Of course it does not tell you the location of the broker but it does give you a very good indication of the internationalisation of this trend. If arms brokers are sourcing weapons from places, even including Sri Lanka, then surely it is not beyond their wit to move out of UK soil to actually organise the deal. Another point around your question as to what percentage of the trade will actually be covered by the existing controls, is that, again, that is going to be quite difficult to get at because of the lack of transparency in the report, because under the brokering licences it does not list in the reports the type of equipment they cover. I think if that type of equipment was listed, then it would actually enable us to see what proportion is of the type of weapons that we are talking about.

Sir John Stanley: I fully agree with what the Chairman has said, if there are any issues of breaching *sub judice*, but, as far as the Committee is concerned, in so far as you are able to be specific, possibly even referring to press reports and so on, it

² HC 390.

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would be very helpful for the Committee to be able to be as specific when the Foreign Secretary comes in front of us.

Q28 Chairman: As Sir John has said, we would be very interested to have any information on this at all.

Mr Sprague: The case that I referred to was actually submitted as part of the evidence to the secondary legislation and consultation process so it should actually appear somewhere in a public document.

Chairman: We will ask the clerk to make sure we have it.

Q29 Mr Hamilton: May I return to the issue we touched on at the beginning of the session and that is licensed production overseas to countries that are purchasing a product from the UK. Many of those countries demand that a certain proportion of what they buy is manufactured in their own country. During the past year the Government has announced the sale of Hawk jets to India. I understand that 42 of the 66 jets ordered are to be produced under licence in India. You have all commented on licensed production in the past. Do you have any specific concerns about this Hawk jet deal?

Mr McLean: Yes, we have, and significant concerns—partly because of the essential risk that the transfer could result in an increase in regional instability and a breach of criterion 4. It has been well documented that, although Hawks are training jets, they do have a ground attack function that could be very useful in the mountainous terrain of Kashmir. Also, one of the reasons the Indian air force is keen to acquire trainer jets is to train their pilots to fly faster fighter jets that are capable of carrying a nuclear payload, so I think there is a serious concern about abetting future proliferation as well. As you say, the fact that some of these planes will be manufactured in India then of course loosens the degree of control we have over the deal and the potential re-export, for example. So I think it is a good example of how there is this growing trend towards licensed production and it does inevitably mean that the UK Government then has less control over the use to which these weapons will be put. A linked point to draw the Committee's attention to is the role which the UK now plays in exporting production equipment to other countries. Sometimes this may be part of licensed production deals, sometimes it may not, but, in the last 18 months, trawling through the report I have a list of 77 states to which the UK has supplied either software, technology equipment or components for overseas production.

Q30 Mr Hamilton: Could you let us have a copy of that.³

Mr McLean: I can. And that includes a lot of countries which have raised a lot of eyebrows. So I think that is an important thing to keep an eye on in

this globalised defence world as to the role which the UK is potentially playing in assisting the development of production facilities overseas.

Mr Parker: We have an example of a case study where French helicopters built under licence in India, including all sorts of component parts from around the EU, have subsequently been given to Nepal—basically attack helicopters that we do not feel would have been given licences from within the EU. So that is illustrative of the risk of further proliferation once the equipment has been made.

Q31 Mr Hamilton: Do any of you have any evidence that British goods manufactured under licence or exported from the UK could have been used in Kashmir in that conflict or have been re-exported for end use elsewhere?

Mr McLean: Of course these Hawks have not yet been built. The licence was only granted the last year.

Q32 Mr Hamilton: I mean, any other arms that have been exported or manufactured under licence in India.

Mr McLean: Again, the issue is about risk. It is not actually necessarily about evidence of things being misused on the ground in Kashmir. We do not have people on the ground in Kashmir, so we do not have that direct evidence. But the question we need to be continually asking ourselves and ensuring that the Government are asking is: Is the criterion being implemented? and the criterion is a risk-based assessment about the potential use of this equipment for internal repression or regional instability.

Q33 Mr Viggers: American legislation the International Traffic in Arms Regulations (ITAR) severely limits the export of weapons and technology from the United States. It is a wish of both President Bush and our Prime Minister that the UK should be given a waiver from those regulations—the famous ITAR waiver. This was agreed between the President and the Prime Minister in February 2001. The House of Representatives Committee on International Relations produced a very critical report which said that the British export licensing system was porous. What is your view of the US House of Representatives Committee on International Relations' report which criticised British regulations? Do you think these criticisms were valid?

Mr McLean: I think one of the things they were looking for was a notification of onward exports of equipments within which would have been US components. I think that is something which actually we would encourage the UK to provide to the US. I think it would be very useful in terms of beginning to establish a greater transatlantic dialogue on export issues and a potential convergence in export policy between the UK and the US. I think it is also actually the type of end-use agreement that we would encourage the UK to ensure is inserted into licences which we are granting to other countries as well. Obviously, if we are expecting that to happen of the recipients of British

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arms, then I think it is only fair that we would be expected to do it to the US as well. So I think that particular criticism we would share. If the UK did introduce that system, it would be very positive.

Mr Sprague: There was another quite stinging criticism from the US report that I think is quite relevant. They make a point around the five nations' agreement, in that the UK has agreed prior notification for re-export for commercial reasons and the American committee quite rightly point out that that seems to be inconsistent with the view not

to want to do it for matters of national security and US national interest. That seems to be quite a strong point.

Chairman: Thank you very much indeed again. If we have any further questions to ask of you, we will obviously contact you. We hope to produce a report early next year, for reasons that may be pretty obvious. If there is any additional information you feel the Committee ought to be aware of in relation to our inquiry please do not hesitate to contact us. Thank you very much.

Witnesses: **Mr David Hayes**, Export Controls Compliance Manager, Rolls-Royce plc, **Mr Tim Otter**, Vice President, Business Development, Smiths Detection, **Mr Michael Bell CB**, Export Controls Consultant, BAE Systems, and **Mr Brinley Salzmann**, Exports Director, Defence Manufacturers' Association, Export Group for Aerospace and Defence, examined.

Q34 Chairman: Gentlemen, good morning. We note that the Defence Manufacturers' Export Licensing Group have been rebranded and you are now the Export Group for Aerospace and Defence, or EGAD. You are very welcome as always. Can I thank you also for the written submission you made in respect of this meeting.⁴ It has been very helpful. Perhaps I ought to kick off the questions. Could I start with the issue of the arms embargo in relation to China which you do refer to in your submission. Could I ask you to briefly identify what you think are the main risks and the main opportunities of lifting the arms embargo?

Mr Salzmann: I do not personally think there will be much in the way of additional opportunities for the British defence industry arising from this. Certainly the practical experience of a lot of our member companies who have applied for export licences for China for equipments which are well outside the scope of the EU embargo is one where refusals are extremely common. I know for instance of three instances last year of member companies which applied for licences for the supply of non-offensive, non-weapon related naval equipment to China where the licences were refused and I am aware of some instances this year as well. I do not think there will be any increase in business opportunities for British defence companies in China but there is, as was referred to by Oliver from Oxfam, a certain threat of what the American reaction would be to the removal of the embargo, especially if that were to result in another EU Member State approving a licence for something which was previously caught by the embargo. I think one thing that could be said is the removal of the embargo will not have any effect on British suppliers in that I cannot possibly envisage a scenario in which equipment which would previously have been caught by the EU embargo being approved by the British Government when assessed against the EU criteria.

Q35 Chairman: Who do you think would benefit then from the lifting of the embargo?

Mr Salzmann: Of course there is a lot of political symbolism in the embargo and as been reported in the press, a lot of it driven by non-defence commercial interests because of Chinese perceptions and Chinese annoyance at the continuing embargo being in place. It has been reported widely in the media that the Chinese are wanting to put relations with the EU on a more traditional basis and are wanting the embargo removed. So it could well be that it is more commercial business interests rather than strict defence business interests which would potentially gain from the removal of the embargo. Certainly I can confirm that as far as I am aware no-one in the British defence industry is doing any lobbying of any kind to the British Government supporting the removal of the embargo, so we are publicly fairly neutral about the whole thing because we do not see that there are any particular benefits to us to be had from it.

Q36 Chairman: Given the strong views that the US has on this issue, do you think there is any risk that US trade with Europe will be damaged if the embargo is lifted and that might in any way impact on British defence manufacturers?

Mr Salzmann: We fully support the British Government's reported efforts to try to strengthen the EU embargo to satisfy and allay the American Government's concerns and the American politicians' concerns on this, and also to introduce some greater degree of transparency so that the Americans can be more satisfied that the Code of Conduct will be preventing any additional defence sales to China, and that they can then see the proof through greater transparency that that has been the case.

Q37 Mr O'Neill: I was asking previous witnesses about the Export Control Organisation and they may come at it from a slightly different standpoint to your own. How do you envisage the impact of the imposed, probably Gershon driven, efficiency savings affecting the smoothness of the operation?

Mr Salzmann: We would be concerned about that greatly, as we say in our submission. At the moment the feedback from member companies is that the

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licensing system appears to be working more expeditiously and more efficiently than at any time in living memory. It appears to be working extremely well. We would not want to see any retrograde steps taken as a result of Treasury-inspired arbitrary cuts in personnel and resources allocated to export control. As we have said in our submission, at this time when there is increased recognition of the importance of export controls, if some staff really are surplus to requirements for the licence processing then surely they can be reallocated to what we call missionary-type work, going out there trying to be more proactive, trying to identify companies who currently are operating outside of the system, either deliberately or inadvertently.

Q38 Mr O'Neill: One of the problems is that we have just had a major review. We have the unusual circumstance of both yourselves and the NGOs being broadly in sympathy with the direction in which the organisation is going. One thing I am not very clear about—and I do not think in our brief we have had any information about—is the charging process at the moment for the licensing procedures.

Mr Salzmann: There are no cost charges made for licences in the UK. There was a proposal made in the Green Paper in 1996 to introduce such charges but by the time the White Paper came out in 1998 that had been put to one side. We do have naturally, as you would expect, some concerns about that but we do also recognise that there is charging, for instance, in Australia, the United States and I believe Germany for licences, so there are other countries who have charging for licences. We would have some concerns. Certainly we would have concerns for instance about the charging for rating inquiries because that could act as an encouragement to non-compliance for those companies who do not know whether the goods are licensable or not. We want to encourage them to apply for ratings and to find out, not to put anything in their way which might discourage them from doing that.

Mr Bell: Could I add a couple of points there. The first is that the costs to companies are already significant in terms of compliance. We are audited, we need to keep records, we need to make sure that everybody is compliant, so it is not as if it is free already. The second is it is not a licence like a TV licence or a dog licence, the licence is not a guarantee that you will be able to export. It is always made clear that if circumstances change the licence may be withdrawn or its conditions changed and I cannot see that the Government can operate in any other way. So charging one for a licence of that nature does seem to be rather unreasonable.

Q39 Mr O'Neill: I think the point is that you are getting a service for free when a number of other government departments in the export business, when they offer it, actually require people to pay for the advice and assistance they are getting. I just wonder if you want to maintain the quality of the service, which I think we all agree has improved, that it may well be that some form of charging, whether

it is on a per licence application basis or a percentage of the value of the contract, might be a way of ensuring the quality of the service.

Mr Bell: It is quite likely to encourage non-compliance.

Mr Otter: Yes. I think I am also right in saying—and I stand to be corrected—that in those countries, if for instance you are an NGO and you want a copy of the export licence report you have to pay for it at market rates so there is a *quid pro quo*. If you want to go and find out information from US regulator you have to pay for it even as a member of Congress, I think.

Mr Hayes: I share my colleagues' concerns about the number of companies who are operating currently outside the system. One good example of that would be when the new legislation was enacted I believe in excess of 250 companies registered to use the general export licence technology for military goods. It is reasonable to conclude that as a minimum the bulk of those companies were previously operating outside of the system and there is a very real danger of erecting barriers to compliance which would discourage companies from coming on board rather than encourage them.

Mr Evans: Following last time when representations were made to us by this group relating to the fact that you thought that Britain was far more severe than any of our EU partners in the way that they interpret various rules and regulations and the time that they take to progress applications and so on, we made a recommendation in our report, number 48 (I am sure you remember well) and in the Government's response they gave us a kicking, quite frankly, for believing you on virtually every count, particularly you Mr Otter who made some severe allegations. We had said to the Government, "Come on, shape up, we are losing out," and they refuted virtually everything that you had said on things like painting some equipment blue so it could get through (that is the French Government) that you could just phone up the German Government and get an answer over the phone within 36 hours whereas it takes many days for us. The Government virtually refuted every allegation apart from the one on riot shields and even then they say they are looking at that one themselves. Here is your opportunity to get your own back.

Q40 Mr Williams: Mr Otter, this is yours.

Mr Otter: Very simply, having made what were some pretty straightforward and severe allegations I thought it was incumbent upon me to prove them, so very shortly thereafter when I was in Germany I used one of our subsidiaries to phone the German Government and get a temporary export licence for equipment over the telephone that I would have to get a written export licence for in the UK. I hope that I have got other colleagues who are doing just the same at the moment to get yet more.

Mr Salzmann: The case in question was for the temporary export of nuclear, biological and chemical warfare equipment to Qatar.

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Mr Otter: It was a temporary licence exactly, as I said in my evidence, over the phone from the German Government.

Q41 Mr Davies: And you got it?

Mr Otter: I got it, even with my pretty hesitant German, I have to say.

Q42 Mr Evans: We could be here all day, frankly, just going through point by point and we have not got the time. I think it is important for us to be able to at least hear properly what you have got to say because you have brought new evidence to say the Government is talking rubbish because you have proven that you have been able to do what they say you cannot do. It is important that you at least supply us with some information so that we are able to go back to the Government. You will not be able to do it all now verbally but at least give us some written submissions to be able to have a look at some of the things they have said because mostly they say on things like Britain being more severe on the Chinese embargo, where is the evidence?⁵ They say that you came out with a lot of stuff but there is no real evidence that you were able to produce that what you have said is true. You have now been able to do that on temporary licences in Germany and there may be some other things that you will be able to write to us to say the Government have got it wrong and that they are being hoodwinked by either the French or the Germans and we are more severe.

Mr Otter: I am quite prepared to do that. The other thing that I think is new since we talked last time is I have gone round all of our international representatives overseas that I was able to in the time that was available and I have compared and contrasted their experience of being on the receiving end of the French, German, US and British export licence regimes. The general consensus of 10 of the 12 people I managed to contact—these are people as far afield as Australia and South Africa—was that once you get through the initial bureaucracy of the French system, it is very, very much easier to operate than the British one. Once you get through the fact that you have got to comply with the ITAR in the United States it is very much easier to operate. The German one is much easier to operate. The British one is by far the most bureaucratic. That was the unanimous opinion of the people that I spoke to.

Q43 Mr Evans: Just one final point on this, Chairman, which is you say that under the new regime our record-keeping is much more onerous than theirs, and it going to be very costly. The Government come back and say that businesses now concede that the regime is less onerous than you first said.

Mr Otter: Yes, I would accept that, but if you look at our own company we have had to effectively take on two extra people since the new legislation came into force to do it. It is not as onerous as we thought it was going to be but it is still pretty onerous.

Mr Salzmann: Also at the moment there is a little bit of inconsistency in the way that compliance officers are interpreting the record-keeping requirements, especially in the transfer of technology side, which some of our member companies are reporting as a result of the audits which those compliance officers have been undertaking at their premises. There does appear to be inconsistency there which we are hoping the DTI will be able to address.

Mr Otter: There is also an issue of, if you like, a bureaucratic sleight-of-hand in that some of the licences have been shifted (and I mentioned this last time) out of the DTI's area into the MoD and FCO's area in that they are conditional on a 680 being granted, so instead of having to fill out a piece of paper for the DTI, we are now filling it out for the MoD. It is still a piece of paper, it still takes time, it still takes money and it still takes record-keeping. Technically speaking it is not licence reporting, it is 680 reporting.

Mr Hayes: Another point worth making on the level playing field, in terms of the interpretation the whole scenario can actually be at a much more fundamental level whether we are talking about the criteria or whether we are talking about embargos. There is one case in the written submission where the difference between the Member States was at the level of whether the item itself was specially designed or modified for military use, which is the fundamental basis of the controls. Unfortunately, that term is not defined so it is not possible to argue that the other Member State's interpretation is wrong, it is merely different, but the consequence of that is where an export would undoubtedly be licensed from the UK, it does not even appear as a controlled export in the Member State concerned because their decision is that the goods are not subject to control at all.

Mr Evans: Perhaps you will be able to give specific evidence of that too.*

Chairman: As Nigel says, we are very concerned about this area and in your recent written submission there are a number of areas where you say you will be happy to give us further information. I appreciate that some of it may be sensitive in relation to your competitors and so on but if you would like to liaise with the Clerk we do take evidence in the strictest confidence from government and we would be happy to take it in the strictest confidence from you as well. We are anxious to address this problem. There are concerns, as Nigel said, what we put to Government and if they kick it back to us then we would quite like to kick it back to them. Mike Gapes?

Q44 Mike Gapes: Can I get back to questions on the ITAR waiver, and you may have heard what was said earlier. As you know, the British Government and the American administration reached an agreement in May 2003 but since then we have had this problem of Congress. What is your assessment of the current position and the likelihood of any progress? If, as seems clear, there is not going to be

⁵ Ev 59

* Not printed.

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much progress given the politics in the American political system, what is going to be the effect of failing to secure the ITAR waiver on the UK defence industry?

Mr Bell: Well, as you know, the House Conference agreed that there should be an accelerated system for the United Kingdom and Australia and required the State Department to put forward proposals for arranging that. Nobody quite knows what this means, including the State Department. It is very difficult to say at the moment what the correlation of forces will be in the new set-up. The administration remains in favour of the waiver. Whether it will be able to put sufficient pressure on the opponents in the Congress is at the moment very unclear. I think there is a reasonable chance that we will get it. There is some discussion, as you know, of a treaty because there is considerable support in the Senate for a waiver and a treaty would bypass the House of Representatives where the main opponents of a waiver are. Then of course there are other practical things to be done like new regulations and so on. The consequence of not getting it is the desirable things we would get out of the waiver—the freer flow of goods and technology, the ability of companies like ours to harmonise more quickly and easily our technology bases on both sides of the Atlantic—will just not be possible to achieve.

Mr Salzmann: One thing which needs to be added is that any ITAR waiver will not remove or undermine in any way the American re-export control system so if the equipment comes here it would still need American licensing approval to go from here. That is one thing which I think has to be made clear. It does not undermine American re-export controls.

Mr Bell: That is a specific feature of the agreement between the two governments and there is a memorandum of understanding which deals with this specific issue.

Q45 Mike Gapes: Can I take you a step further. The position in our Government's defence policy generally, the move towards network-enabled capabilities and the whole attempt to try and keep up as much as possible with technological developments in the US clearly is predicated on an exchange of information and joint defence work. Do you think that Representative Hunter and his committee in the House of Representatives, the House Armed Services Committee, actually want to destroy the relationship with the UK or do you think they are just being stupid?

Mr Bell: Neither.

Mr Salzmann: Well said!

Q46 Chairman: You have two alternatives there.

Mr Bell: Indeed, and like a good former civil servant I shall choose a third! Their concern is about the threat to US technology. Representative Hunter and Representative Hyde are the two key figures. Representative Hyde is the Chair of the House International Relations Committee which is mainly concerned with this issue. They are mainly worried about leakage of US technology and it is a question of balance, as it always is. It is in this country; it is in

the United States. We believe that the risk is low and the benefits are high, but it is not entirely surprising in the American system that there are others who do not take this view.

Q47 Mike Gapes: So you do not accept the criticisms made by the committee chaired by Duncan Hunter that the British system is porous and allows unscrupulous individuals to get hold of technologies to kill Americans, Australians and Brits, apparently!

Mr Bell: It was in fact a report of the House International Relations Committee chaired by Representative Hyde. All I will say about it is that it is somewhat tendentious; there are answers to the points they made.

Q48 Mr Davies: This is a question specifically for Mr Bell. How relevant is the ITAR waiver to the need of British Aerospace Systems to receive the requisite degree of technology transfer to enable you to manufacture parts of, to assemble, and in due course to upgrade the JSF as part of your co-operation in that programme?

Mr Bell: Well, there is no question that it would help. Do not forget that the proposition on the table refers only to unclassified US exports and transfers. Of course, by far the largest proportion in number of transfers in relation to JSF will be unclassified, although the really difficult bits are classified. Those bits will continue to be difficult whether we get the waiver or not. So it would help; that is how we see it. It is not really in that area that we see the principal benefits of a waiver but rather in the area of discussion between ourselves in the UK and our American friends in BAE Systems North America at earlier stages of projects where it is very difficult to put together what the Americans call a technical assistance agreement, a TAA, since if you are talking about a common effort to develop R&D you may not be able to satisfy the conditions of the TAA and say who the customer is and so on. It is that kind of area where we see the great benefits of the waiver.

Q49 Mr Davies: Thank you. Are we missing a possible trade-off here? The House of Representatives are very keen indeed that the European Union does not relax its arms embargo on China and the House of Representatives appears to be very keen that the administration should not get its way over the ITAR waiver for Australia and the United Kingdom. Is there a sense in which it might be made clear that if we are slapped in the face by the Congress and the promised ITAR waiver is not delivered, we are less likely to wish to pursue an argument within the EU with some of our partners against their proposals to relax the arms embargo to China?

Mr Bell: I think I will take refuge in the proposition that that is well above my pay grade.

Q50 Mr Davies: Is it a sensible question? Should it be asked at a higher level of pay grade?

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Mr Bell: I think the view would be in the United States that they would not expect us to weaken on either. That is a government-to-government matter. We do what we are told at BAE Systems.

Q51 Mr Davies: It is not a question of what we think of the ITAR waiver, we still want the ITAR waiver, we were promised it, we think we are entitled to it. We think our defence industries are sufficiently responsible to be able to operate it in good faith, do we not; that is correct?

Mr Bell: Absolutely.

Q52 Mr Davies: We are therefore shocked and disappointed as allies who have operated in good faith that the House of Representatives is now proposing to deny us that waiver, are we not?

Mr Bell: I am sure that the House of Representatives would take the views of Members of Parliament, law makers as the Americans say, very seriously on this point.

Q53 Mr Davies: I am glad to use this opportunity to express at least one UK legislator's view on that particular subject.

Mr Salzmann: Also I think we would be very wary about risking our other general very important and lucrative business in the United States on establishing this particular relationship between the two issues. We would not want to risk or jeopardise that in any way.

Mr Davies: Let me just pursue the thought.

Chairman: Can we move on.

Q54 Mr Davies: Just one more question on this because I think it is a very important issue on the China embargo. Are we not in danger in this country of getting the worst of all possible worlds? If the EU arms embargo for China is brought to an end the French and the Germans will get the credit for that with China. You have given us evidence this morning that in practice there probably will not be that many arms sales but there may be other commercial benefits. Those will largely accrue presumably to those Continental partners of ours who made the push in that direction. So we will not actually gain anything there but we may well lose a lot of the US special relationship which is so vital to us in so many areas of national policy, not least in the areas of defence co-operation and the co-operation between the defence and aerospace industries in this country and the United States? Is there not a danger we will lose out in both ways and we will have the worst of all possible worlds?

Mr Salzmann: That would certainly be part of the equation which we expect the British Government to take into account when it is framing its position on the lifting of the embargo.

Q55 Mr Davies: Fine. If I can now move on to something else. The NGOs have given us testimony, as you know, that the British Presidency in this coming year both of the EU and of the G8 is an opportunity to improve arms export control regimes around the world, first of all in the instance of the

EU Code but then more generally around the world and of course the British Government has subscribed now to the concept of an arms control treaty. Do you yourselves feel that this is a useful opportunity? How do you think it should be pursued?

Mr Salzmann: We would hope that, yes, the situation next year when the UK takes over these two Presidencies will put us in a good position. Of course the fundamental weakness in global counter-proliferation is the sheer diversity of export control policies, systems and procedures in place in all the countries around the world which means that at the moment, frankly, proliferation cannot be prevented, it can only ever be delayed and act as an inconvenience to the potential customer whilst they go off and try and seek an alternative source of supply. So we welcome any efforts on behalf of the British defence industry intended to try and come to a degree of harmonisation and compatibility between the export control policies systems and procedures in the countries around the world and certainly in that regard we warmly welcome the principle behind the international arms trade treaty which is intended to try to look at this on the policy side and achieve a greater degree of harmonisation.

Q56 Mr Davies: The Government appear to accept that view and be pursuing that objective. Are there any specific recommendations or suggestions that you would like to make to the British Government on the eve of their adopting those two Presidencies?

Mr Otter: I think one of the things I would like to see, if it were possible, is some rationalisation and common sense brought to the WMD provisions. If you look at the proliferation of WMD, I do not think there is a single company that has applied for a licence that has been involved in proliferating WMD. It is all too easy, if you look at India and Pakistan, to acquire WMD (nuclear weapons) outside of the licensing system, and I would really like to see—and NATO is beginning to pull this together—some more effective counter-proliferation against the proliferators rather than against the legitimate companies that are working within the system.

Q57 Mr Davies: Are you suggesting applying the EU Code to civilian technologies which have traditionally not been regarded as relevant to military capability which could be relevant to the development of nuclear weapons or biological and chemical weapons? If that is what you are suggesting there is an enormous lacuna in the present system; the present system is actually being made a complete fool of.

Mr Otter: The present system is obviously being made a complete fool of because if you look at it everybody talks of a club of five for nuclear weapons when actually it is a club of seven and probably more, and those others however many there are have acquired their weapons completely outside the system.

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Q58 Mr Davies: And how are you going to produce an extension of the Code such that it covers this area but we do not have the export of every industrial technology being subject to the arms licensing control procedures?

Mr Otter: It is hugely complex and I think it is probably deserving of more hours than we have got minutes available to discuss it. However, I think there are things that could be done. They largely revolve around Customs and Excise and looking at the routes that proliferators use rather than the actual equipment they use. There are things that could be done that involve the procedures that some of the dual-use manufacturers go through in checking where their equipment goes to when it gets to the other end.

Chairman: Again, it would be very helpful to the Committee if you could give us a note on this. Unfortunately we have to move on to other areas but it would be very much appreciated if you could do that.⁸

Q59 Mr Bercow: Very, very briefly because the Committee has dealt with the issues and you have responded very thoroughly, in essence, what you appear to be saying is that the harmonisation of arms export systems and complementarity between and the transparency of them are not merely, or even principally, a commercial threat but a potential opportunity for you. How widely known is that, do you think?

Mr Hayes: It is a topic that has been the subject of quite a lot of debate in various seminars and fora. It is hardly something that has been kept in the dark. There is a growing perception amongst industry internationally that the greater the extent of the conflict between what you might call competing export control systems, particularly competing extra-territorial export control systems, simply creates more noise in the regulatory environment in which the intended targets of the provision can potentially hide.

Mr Bell: I think it is also true that we can share an interest with our competitors in reducing the amount of bureaucracy in the system. The fact is that we have a global defence industry which is controlled on a national basis. We export 23 million items or more of intangible technology each year. The vast majority of that goes to the United States. It is covered of course by an open general export licence for the most part but it has to be licensed. Then when it gets to the United States and is exported again it is governed by the ITAR and so on and so on. My company has completely separate, different and, unfortunately, expensive export control organisations in every country we operate in. One can see ways in which we might be able to attack this issue and in which governments could attack this issue. Now is perhaps not the time to discuss them but they could be done. To answer your question directly, this is a subject of spectacular tedium which does not attract the slightest public

interest and I think it is one of the world's best kept secrets really. In the "conventions of the sad", which my colleague mentioned, we do talk about it!

Mr Hayes: Just to echo Mr O'Neill's point from earlier, if we are going to be, as seems inevitable, in an environment of decreasing resources then I think it is perhaps vital that instead of doing as many things or more things poorly in the area of non-proliferation, we do the more important things better.

Mr Otter: If I may just add something. That requires a different model on which you do your licensing.

Chairman: Again, any further evidence on that in writing would be greatly appreciated but I am afraid we have to move on. Fabian?⁹

Q60 Mr Hamilton: Gentlemen, on 22 September this year, as you know, the UK arms embargo on exports to Libya was lifted. Could you tell us how well placed British companies are to enter this market? Are you in a better or worse position than other EU companies?

Mr Salzmann: Certainly British companies are interested in the Libyan market and they are looking at what opportunities might arise, but I think it is safe to say that it is not going to be open house where you can sell anything you want to the Libyans. All licence applications will still have to be judged against the EU Code of Conduct and I am perfectly certain that the British Government will have concerns about particular types of equipment—weapons systems, riot control equipment, more sensitive high tech equipment—going to the Libyans so, as I say, it is not going to be a completely open market where British companies are going to be able to sell anything they want there. British companies could be at a slight disadvantage in that the USA has still maintained its embargo on US munitions list items to Libya and an awful lot of the British equipment has American munitions list components systems and sub-systems contained within it. Therefore, British companies would not be able to bid those systems. They would have to try to identify potential alternative sources of supply to replace the American content before they could bid for anything to the Libyans. At the moment I do not think anybody has sight of what the Libyans shopping list is and what exactly it is they are looking for. As I say, a lot of what they might be looking for the British Government would not allow British companies to supply in any case when judged and assessed against the EU Code of Conduct.

Q61 Mr Hamilton: Does anybody else want to comment?

Mr Otter: At the risk of getting another good kicking from the Government (but then that is what being a second row forward is all about—I kick back) I know for a fact that the Libyans have already got equipment that Smiths would produce and have had for some years, and it was supplied by Finland and France, end of story, so we are not even thinking about going there because it is a done deal.

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Q62 Mr Hamilton: How does our export control licensing system compare with other EU states as far as Libya is concerned? Does everybody take the same view on what can and cannot be sold?

Mr Salzmann: I think that would be open to interpretation. I am sure that would be open to interpretation between the various governments. The removal of the embargo is all about interpretation of the Code of Conduct.

Q63 Mr Hamilton: Presumably that puts British companies at some considerable disadvantage from what you are saying?

Mr Otter: I would think so. I cannot make a definitive statement but quite obviously from Smiths narrow perspective as opposed to NBC UK's general perspective, our competitor equipment is already there.

Mr Salzmann: Until we have got a constituency of test cases of which companies are applying for licences and see what is approved and refused, we cannot tell at this stage.

Mr Otter: From the NBC and defence industry's point of view, British companies are just not wasting their time going about applying for the licences or the 680s.

Q64 Mr Davies: Am I right in thinking that the burden of the testimony we have just been hearing from Mr Salzmann and Mr Otter is that the interests of our country in the defence industry would be enhanced if the responsibility for administering and enforcing the EU Code was a single responsibility, say in the hands of the EU Commission rather than left to the individual Member States to apply this Code in various ways and often in ways more favourable to the arms exporters. Is that right? Is that a reasonable and logical conclusion to draw from what you have just said?

Mr Bell: No, in the sense that whatever industry might feel about this, the fact is that the administration of defence exports is a national responsibility.

Q65 Mr Davies: I know it is at the moment. I am simply saying is it not a logical conclusion from what you have said this morning that it would be in our interests if in fact the administration and enforcement of the Code were in a single hand?

Mr Otter: I think if there was an EU embargo on a country then there is at least discussion worth having about whether the EU administered licences to that country.

Q66 Mr Davies: To avoid the differential problems of enforcement you have just drawn attention to which always seem to work against the interests of this country? That is the testimony we have received from you this morning and I am drawing what I think is an inescapable and logical conclusion.

Mr Salzmann: Although the British Government when we raise these points in meetings with them say that there are other cases when other EU Member States will refuse licences which the British Government would not.

Q67 Mr Davies: Do you know of such cases?

Mr Salzmann: Not off the top of my head, no.

Q68 Mr Davies: Does Mr Otter know of such cases?

Mr Otter: No.

Mr Davies: I think the point is established.

Q69 Chairman: I think your proposition would be very difficult to implement from my discussions with the French.

Mr Bell: I wonder if I could just make one additional point. We have been rather rude about the DTI this morning but there are many features of the British system which are very good, notably the open licensing system, and I would hesitate to have that scrapped and that baby thrown out with the bath water, so I think any changes would need to retain the virtues of the British system, whatever else happened.

Q70 Mr Viggers: I am still not really sure what your priorities are in the review of the Code of Conduct. Are we harmonising up or harmonising down? What steps would you like to see taken?

Mr Salzmann: I think efforts to try to harmonise up the interpretations to what we regard as being the high level that the UK has, and trying to harmonise and make the Code of Conduct stricter. Certainly, as I said earlier on, we feel that that is going to be necessary before the removal of the arms embargo in China. To satisfy American concerns, the EU's Code of Conduct has to be strengthened and also of course there needs to be harmonisation in terms of reporting and transparency. We would love to see other EU Member States producing the same sort of quality of work and reporting that the British Government does.

Q71 Mr Viggers: Is it the Code of Conduct which needs to be harmonised up or is it the interpretation of it by different Member States? I suppose that is another way of asking the same question.

Mr Hayes: Arguably the Code of Conduct is harmonised anyway. It is the same Code of Conduct in all of the countries, therefore almost by definition it has to be the interpretation of that Code which needs further work.

Q72 Mr Viggers: Are you expecting that you will have to disclose more information or less after harmonisation?

Mr Hayes: Given that the reporting that is already done by the DTI is the most transparent within the EU, I would not expect the result to be that even more transparency is required from every Member State. I think it would be more a case of the other Member States endeavouring to emulate the reporting transparency of the DTI.

Q73 Mr Viggers: And are the EU regulations and the harmonisation of them a factor which comes into discussion with the United States over the ITAR waiver? How do the two inter-relate?

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Mr Bell: They have not inter-related at all. The American authorities have chosen to regard the relationship as strictly bilateral. They accept that our controls are “comparable” and, as has been said earlier, the agreements do require acceptance of American re-export controls, and that I think is about where matters stand.

Q74 Mr O’Neill: The Export Control Act came into force on 1 May this year and there have been about four different Orders as well. When you last gave us evidence I think our report reflected what you and the NGOs and ourselves thought that perhaps a fresh look at the administration of export licences as a whole would be desirable. That was rejected by the DTI who felt that the new system should be allowed to bed down but they did bring in road shows and the like. You yourselves were, I think, quite concerned that at least some of the people involved in exporting armaments did not really know how the old system worked and they were not really sure how the new one was going to work. Have things improved with the road show system and the various booklets that have been published, are you conscious of people having a clearer idea of what is going on?

Mr Salzmann: I think things have improved to a certain extent. Certainly the road shows and the awareness activities undertaken to try to promote awareness within the United Kingdom industry of the new regulations helped to galvanise awareness of the existing regulations where some companies have slipped through the cracks. There are companies that suddenly became aware of the fact that they had been doing things for 20 or 30 years without licences and now they have found they need them. It has helped to a major extent but the feedback we are getting from a number of people, including the export control consultants who operate in this country—and there are less than half a dozen of them—is that more is needed because, as one of them said at a seminar last month, the industry is divided between three types of people, the good, the bad and the ignorant, and there is still an awful lot of ignorance out there on the part of some people so certainly we warmly commend the DTI’s efforts at promoting awareness but more needs to be done, which is why I made the comment earlier on that maybe the resources which the DTI now finds are surplus to requirements for licensing could be more effectively reallocated to missionary work to try to find these other people.

Q75 Mr O’Neill: One last point, I think the estimate was made prior to the implementation of the legislation that it would probably cost a large company about half a million pounds over and above existing costs. Was that estimate an exaggeration or has experience shown that it has been more expensive?

Mr Bell: We did produce a rough order of magnitude estimate from our company BAE Systems. We estimated that the extra costs amounted to about £1.8 million in the six months

leading up to the implementation of the Orders on 1 May, so I think the figure of half a million is a substantial under-estimate for us.¹⁰

Q76 Mr O’Neill: I think the point is, with respect, it was not preparing for it, it was that once it was in place it was going to cost half a million. You could spread the £1.8 million over several years because hopefully there will not be that many changes that will be that expensive in the future. Obviously you are the biggest. A “large” company may not be the biggest one, so perhaps your argument is not, with respect, the most relevant. Mr Hayes, you are not quite the same size but of similar magnitude.

Mr Hayes: In our case we estimated that the cost of the additional training arising from the legislation would be in the region of half a million and that has actually proved to be an accurate estimate.

Q77 Mr O’Neill: You have come in on budget, which is one of the things that British Aerospace does not always do, of course!

Mr Otter: That could be like manifesto promises!

Q78 Sir John Stanley: I think you were in the room when we had the earlier exchange about trafficking and brokering. I want to understand better than I do now whether you have real as opposed to gut reaction objections to our recommendation that the Government should seek to extend extra-territorial control to all trafficking and brokering which if conducted in the UK would not be granted a licence. I absolutely understand where you come from. As companies in the private sector, you have an instinctive nervousness about any government proposal to extend regulation into your area of life. I understand that and I sympathise with it, but as members of the Defence Manufacturers’ Association you are law-abiding, responsible companies and you have a huge level of reputational risk, and I find it difficult to believe that you would want to circumvent arms export licensing controls by going overseas and engaging in selling your products to countries where you would not be granted an export licence if they were sold out of the UK. If I could put the question to you, if you could dump instinctive nervousness to one side, do you have any actual, genuine, real live objections to the extension to the present extra-territoriality of defence export controls generally on the basis that if they were conducted in the UK they would not be granted a licence?

Mr Salzmann: We would not know whether they would be granted a licence or not until we had applied for a licence and received a refusal, therefore no corporate entity could make that decision as to whether that would be licensable by the British

¹⁰ Note by witness: The figure of half a million pounds (£460,000) was published by the DTI (see Final Regulatory Impact Assessment, 7.1) as an estimate of initial training costs, seen by the DTI to be the main costs to Industry of implementing the new regulations. The BAE Systems’ figure of £1.8 million is comparable with the company’s own pre-implementation estimates.

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Government or not without seeking a licence. That is a pre-condition as to what deals would need to be licensed which no companies can actually satisfy.

Q79 Sir John Stanley: Surely you would be able to establish that from the DTI, would you not?

Mr Salzmann: Not without applying for a licence because the advisers in the FCO and MoD would want the full information which is provided in a licence application in order for them to make a detailed proper and assessment as to whether that licence should be approved or not.

Q80 Sir John Stanley: Can I put it to you the other way round. Would you as responsible law-abiding companies want to get into a position whereby you got involved in an offshore arms deal which would inevitably be picked up by the media, and no doubt by this Committee—I hope—and would involve you in a hugely bad reputational position?

Mr Salzmann: No, but of course it is very difficult to try to define in legal terms what constitutes an act of trafficking and brokering. It is a bit like a few years ago an American judge commented in a court, “I can’t define ‘pornography’, but I know it when I see it!” (Supreme Court Justice Potter Stewart (1964)). We all know what it is we want to try to control or curtail—the supply of Bulgarian Kalashnikovs to Sudan or whatever—but it is very difficult to define that in legal terms without sweeping up a whole raft of other commercial activities which are the norm within supply chain relationships.

Mr Otter: I think what you are saying could be done if there were a different model in place, and one of the things we have put in our written submission is that rather than wait for the period when the DTI come along and say that is when we start reviewing, that this Committee, industry and the NGOs sit down together and work out what it is we want to do so that at that point we can enact the legislation that we think is right rather than waiting for that period to transpire, then go through it, so that is another year or two years before you get to a new system. I think that has to be an option and a way forward. Everybody should sit down now, work out what it is we really want to do, and then do it, and it depends on a different model of licensing. It depends perhaps on the way the Germans and French do it which is they license you to carry out a deal with that country

and unless they tell you to stop, you can continue. I think that has to be the way forward and it would also help deal with the issues of shortage of staff and goodness knows what else.

Mr Hayes: I think one of the inherent dangers of extra-territoriality is the level of complexity and the effect of the law of unintended consequences. Mr Otter is an expert on the law of unintended consequences because a lot of his activities have been swept up by the new controls which perhaps were not intended to be. Turning specifically to the question of extra-territoriality, not within the context of trade controls but within the context of technical assistance and transfers of technology, the Government set out to render the transfer of software or technology by a UK person subject to control where this was intended for use outside the EC. In the main Order the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order, they actually use the word “transfer” in relation to extra-territorial activity and then define the transfer as an act taking place within the United Kingdom. So therefore it is arguable that the extra-territorial provision they intended to put in place there is not actually effective. That illustrates the complexity that we are dealing with.

Mr Bell: Assuming that the extra-territorial controls are effective, it seems, as I think the NGOs mention, particularly odd that they are applied to long-range missiles and UAVs which are only sold to governments.

Q81 Sir John Stanley: That is what I said.

Mr Bell: With the support indeed of our own Government. The only effect of that is greatly to complicate the life of our friends in MBDA and increasingly us in BAE Systems as we go into the UAV business, and to inadvertently criminalise Brits working on programmes which are covered by restricted goods controls in third countries. This does seem to be a strange way to go on.

Chairman: Thank you, gentlemen. Sir John got the right answer to the last question there. We are very grateful indeed, as always, for your presence, and indeed for your written evidence. You have offered to respond to some specific questions we have raised. If we have any further ones we will get back to you. But thank you again for your attendance this morning; it is greatly appreciated.

Wednesday 12 January 2005

Members present:

Mr Roger Berry, in the Chair

Donald Anderson
 Tony Baldry
 John Barrett
 Mr John Bercow
 Mr Tony Colman
 Mr Quentin Davies
 Mr Nigel Evans

Mike Gapes
 Mr Bruce George
 Mr Fabian Hamilton
 Mr Piara S Khabra
 Mr Bill Olnier
 Mr Martin O'Neill

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

Q82 Chairman: Foreign Secretary, welcome. Perhaps for the record and for the benefit of the public, you could introduce your two colleagues.

Mr Straw: Edward Oakden, though I am not sure of the title now.

Mr Oakden: Now Director for Defence and Strategic Threats, which means counter-terrorism, counter-proliferation and organised crime.

Mr Straw: We have had a reorganisation where the jobs are the same and the titles have changed, so he is Director for Counter-Terrorism and Strategic Threats.

Dr Landsman: Head of Counter-Proliferation Department.

Mr Straw: His title has not changed. I am the Foreign Secretary!

Q83 Chairman: You are very welcome. Thank you to yourself and your colleagues for the replies you have provided to again a substantial list of questions which we submitted and you kindly responded to. Could I perhaps just say that there have been a number of issues in the media recently in relation to arms exports, some of which we are not going to cover this morning. For example, the Export Credits Guarantee Department and allegations of transparency or the lack thereof is an issue which I know the Trade and Industry Committee is going to be pursuing. I mention that primarily for the benefit of the public. There are some issues which you might think we would question the Foreign Secretary on, but in fact other committees are pursuing them with appropriate Ministers, so I thought I should mention that. Foreign Secretary, could I just start by asking you about the Export Control Organisation in relation to the job cuts following the Budget Statement this year. How will that affect the number of people employed in this activity?

Mr Straw: It will not have an effect on the Foreign Office where we are making efficiency savings, but this is an important aspect of the Foreign Office's work. It is a matter of public knowledge that the savings required of the Department of Trade and Industry are greater and this is more of a problem for them. It is the determination of Patricia Hewitt, the

Trade and Industry Secretary, and myself to ensure that the current standard of service continues at its present level and improves and we work around it.

Q84 Chairman: As we understand it, the Export Control Organisation faces cuts of 25% this year and then further cuts a year later. Both the NGOs and the defence manufacturers have expressed concern about this and, at face value, it does seem an alarming thing to do if we want to be very effective in terms of dealing with arms export licence applications.

Mr Straw: I will ask Edward or David to comment in more detail, but can I say that I have had a lot of experience in efficiency exercises over the years and I think there are colleagues here in different guises who have done so serving on their local authorities or as Ministers. My experience of that is that they are worthwhile exercises. Often if you do drill down into an organisation, you end up with a more efficient organisation, employing fewer staff. Both Patricia Hewitt and I accept that there are plain limits and the key here is that we deliver an appropriate level of service, but my own view is that we will be able to achieve that and there are plenty of organisations you can point to where at the same time as staff numbers have been reduced, you end up actually with a more efficient service. I cannot guarantee that that is going to happen here, but I can tell you that, as I say, we are determined that the current level of service should continue. Edward, is there anything you wish to add?

Mr Oakden: I think what is absolutely clear is that between the different departments there is a shared commitment to retain the coherence of the present system, the integrity of the regime and the integrity of the controls. We have seen over the years a number of incremental improvements and the introduction of the Smart Front End over the last year or so has been a real success and we have seen that in the performance figures. There is almost always with an organisation of this size a better way of doing things in some particular aspects.

Q85 Chairman: Sorry to interrupt, but we have only just had the JEWEL exercise, which stands for "joined-up and more efficient ways of export

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licensing". Your latest report says that you have reviewed these processes via the JEWEL exercise and you then go on to say that the JEWEL review has confirmed that, "whilst performance has been improving, we can do more to make it better", and then within a few days of that being published, effectively there is the announcement that the Export Control Organisation is going to face 25% job cuts in the near future. You will understand, Foreign Secretary, why I ask the question.

Mr Straw: Of course, absolutely.

Q86 Chairman: In these circumstances, is there not some risk that the export control regime will not function as you wish?

Mr Straw: I understand the question. All I am saying and Mr Oakden is saying is that it does not follow that because you are securing efficiencies, the result of that is going to be a lower level of service. You are right to point to the sequence, but I also just say this: that whilst comparisons between government, central or local, and business should not be taken too far because they are performing different functions, the Government has to be much more accountable than business. In business operations, businesses, if they are going to stay alive, have constantly to seek better and more efficient ways of performing.

Q87 Chairman: Foreign Secretary, we all understand the reason for making efficiency savings, but we have had the JEWEL review, the process has just been undertaken, and now we are told that there will be 25% job cuts.

Mr Straw: Mr Chairman, you are right to point that out and we are both acting as soothsayers about the future, but my response to that, just to repeat, is to say that the Trade and Industry Secretary, Patricia Hewitt, and I understand our statutory parliamentary responsibilities about ensuring that this system works efficiently and we are determined to ensure that that happens. Let us see, but I take on board obviously the concern that you have expressed, which I dare say is shared around the table, that of the NGOs and that particularly of the industry.

Q88 Chairman: I was going to ask if at this stage you know where the cuts are going to take place, which particular activities?

Mr Straw: We do not know. The purpose of them is that this is an administrative operation and it is quite a complicated one. It aims to be very efficient and it aims to deal with the scores and scores of very, very detailed questions which we have received from your Committee as efficiently and as effectively as possible which, I have to say, does add to the burden, but it is maybe a necessary part of all this. Anyway all I can say is that having witnessed all sorts of administrative systems which have both reduced their numbers and improved their efficiency, I do not believe that there is a level of staffing which has to be fixed and what we are also trying to do all the time is to improve the use of information technology in this area.

Q89 Donald Anderson: You will understand the suspicion, Foreign Secretary, that, having survived an efficiency operation, the cuts are simply a mechanical cut across the board.

Mr Straw: Of course I understand that. You may want to get more detailed evidence from Patricia Hewitt because the responsibility for this is split principally between the DTI and ourselves, but obviously MoD and DFID have an involvement as well, but what I have said is what I have said and, as I say, I am well aware of our responsibility.

Dr Landsman: As far as the Foreign Office is concerned, the Foreign Secretary mentioned some changes of name and some organisation changes which we have been making, what we call the Organisation Project, reallocating resources. May I suggest that we are operating within the JEWEL framework of the Export Control Organisation, but we, as part of our efficiency changes and reorganisation, have made some changes very recently in the way that export controls are handled in the Foreign Office side. That, we believe, will save us some resources by, in this case, concentrating the processing work and the bureaucratic work within my department rather than scattering it around the whole of the FCO and the geographical departments. That will save us some resources and we believe it will actually make us more efficient and effective.

Q90 Chairman: I understand that and my question really about the Export Control Organisation was to do with joined-up government and all of that, but let me just ask you two very quick questions. Do you believe reduced staffing will result in the greater use of open licences?

Mr Straw: I see no evidence to that effect. We have to make judgments about open licensing on the basis of the merits of the case.

Q91 Chairman: Fine, that is what I was hoping you would say, Foreign Secretary, thank you. Have you considered charging for the Export Control Organisation's services?

Mr Straw: Some other countries do charge and that includes the United States, Australia, I think France, and Germany charges as well. It is possible. We have not done so. I would need a lot of persuading, and I think so would the Trade and Industry Secretary, about the case for charging. Obviously we need to take the industry with us and the industry, as you are aware, have got complaints about the way the process operates and we are constantly in contact with them to try and alleviate those concerns. We do not happen to believe that the system is more onerous than those of other countries, though we are always willing to look at where they think it is, but there are no present plans to bring in charging.

Q92 Mr O'Neill: On the question of charging, it is the case that your embassies do charge companies for trade information when they want to get

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involved in non-defence activities, so it is not a matter of principle, it is just a matter of pragmatic judgment, I take it.

Mr Straw: The charging for trade information is a way in which UK trade and industry can recoup its costs, but also it is about ensuring a level playing field between those companies which seek to use or choose to use the British Government's trade and investment services and those which may go to private consultants. This is actually different. This is a control established not for the convenience of the industry, but for public purposes. You could argue that there are charges for licences in many other areas, for example, there are charges which are imposed, and quite substantial charges these days, in respect of planning applications, so I am not saying that it is a black-and-white issue, but we have to think it through very carefully and, as I say, be aware of the potential consequences for the industry if we are to go down that route.

Q93 Donald Anderson: Foreign Secretary, are there any suggestions within the European Union to harmonise the position in respect of charges, otherwise there might be unfair advantages to some countries?

Mr Straw: No, I have not seen anything about that. We may come on to deal with the issue of the EU arms control system for China, but one country in the EU at least which is quite a substantial arms exporter, Germany, does charge. I am not aware of the level of charges and I do not know whether either of the officials here are, but we could get you information about that.¹ I doubt there would ever be an argument in favour of the harmonisation of charges in any event because the level of the charge relative to the total value of any arms sale would have to be fairly low and you could not get, as it were, forum-shopping by arms exporters; arms exporters have to apply for a licence in the country of origin.

Q94 Mr O'Neill: If we could go on to the transparency of government reporting, Foreign Secretary, and I do not want to appear churlish because I think most of us would agree that the Government has broken new ground in being open—

Mr Straw: Good.

Q95 Mr O'Neill:—although I think some of us are a wee bit concerned because the detail which is offered is tantalisingly inadequate in a number of areas. For example, parts and components of electronic and communications equipment, there is not much information about that. There is information about brokering, about the source, but not the recipient, and there is little information about end use. As I say, some of this information could be in greater detail and at the moment we are seeing the tip of the iceberg and I think we would, therefore, be asking if you could provide us with more information because there is a feeling that perhaps having been asked to

provide more information, what you have done is provide a little information about a lot more things, but not really very much about what they want to do with it.

Mr Straw: Well, you said you did not want to be churlish, Mr O'Neill, but I think you are being a tiny bit churlish.

Q96 Mr O'Neill: You know the spirit in which it is intended.

Mr Straw: Sure. I have always sought to be very open and properly so in my dealings with Parliament and the public. We now have, my guess is, the most transparent system of arms control in the world. There is a limit to the amount of information that can be put on the public record because you have to take account of the concerns of the industry and legitimate end users, but if there are proposals from the Committee for an increase in information, I will look at them, but I also say that there has to be, since you are concerned about the efficient operation of this system and, with different hats on, everybody around this table, regardless of Party, has a responsibility to ensure that there is, a limit to the amount put on the public purse. The necessary duties of this Committee do themselves add significantly to the overall cost of running the operation. In those countries where they do not have parliamentary scrutiny, the system is very much more straightforward. It is self-evident that there would be much less systematic record-keeping, much less concern about consistency and so on. I happen to believe in this system, but there has to be a limit and there is a balance to be struck.

Q97 Mr O'Neill: Given that we can agree between us as to the quality of the substance of the information you are providing and against the backdrop of job cuts, can you give an assurance to the Committee that the standards that you have already reached, not the ones we would like you to aspire to, will be sustained and defended through the changes?

Mr Straw: Yes, I can. Can I just say that we have altered the reports in two respects. One is that we now provide quarterly reports and I think we are the only country to do so. I may say, just adverting to the issue of EU arms control, when I took to the Foreign Ministers' meeting the annual report which is two or three centimetres thick and showed it to colleague Foreign Ministers and took them through the detail, they were astonished about the amount of detail that we are providing. I think we may get to a position where they are also under an obligation to provide similar detail which would be a very good thing, so we have done that. We now make quarterly reports on the website which, as I say, is a major improvement and instead of simply listing the aggregated goods items licensed by country SIEL, the quarterly reports show the number of SIELs issued for each specific goods summary. If we take both the quarterly reports and this change, this adds significantly to the transparency of the reports.

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Q98 Mr O'Neill: I think we would accept this and we would hope that you might encourage EU colleagues to publish reports on a quarterly basis.

Mr Straw: I am because with, as it were, competitive advantage, that transparency across Europe is absolutely essential if there is to be a consistent standard in the application of the EU Common Criteria.

Q99 Mr O'Neill: One of the undertakings that was given to the Committee was that information on new types of licences created under the Export Control Act would be more comprehensive and that they would be not dissimilar to those available for OIELs, but it does not include any information on the type of equipment or technology being licensed. Do you think that there could be scope for greater information there? Well, maybe you could come back to us on that point because undertakings were given that there would be more information.

Mr Straw: We always stick to our undertakings, Mr O'Neill.

Mr O'Neill: Eventually!

Chairman: And we always chase them!

Q100 Mr O'Neill: Sometimes we have to qualify what your undertakings actually mean.

Mr Straw: There is no more assiduous select committee than this one, in my view, and you have got the cream of four other select committees!

Q101 Mr O'Neill: In your response to our last report, you said that providing more information on end use would be an unjustifiable diversion of limited resources. Is it only possible to extract this information from databases manually? One would have thought with the amount of money that the Government spends on software that there might have been something within the system which could be incorporated to avoid the use of manual extraction, not least at a time when you are trying to achieve staff cuts.

Dr Landsman: It is the case that with the present software it is simply impossible to extract this information automatically and it would have to be done manually with, we believe, a disproportionate amount of effort. Clearly when the next generation of software is introduced, this is something that we will be aiming to take account of. I think it would be difficult to justify replacing the software early purely for that particular purpose, but it is obviously something we will take fully into account.

Q102 Mr O'Neill: When do you anticipate changing the software?

Dr Landsman: Those decisions have not yet been taken. Work is progressing on the next generation of software. Dates for implementation of the project will depend in part on decisions which are taken about the future restructuring of the Export Control Organisation in DTI.

Q103 Mr O'Neill: And could you give us an assurance that the kind of software that would be required to end the manual extraction will be given

consideration as far as the incorporation is concerned, even if as yet you have not really scoped the exercise?

Dr Landsman: Officials will certainly take into account all of these aspects and obviously Ministers will need to decide what is done.

Q104 Mr O'Neill: And you will let us know in due course?²

Dr Landsman: Sure.

Q105 Chairman: End use is important. Indeed arguably end use is all that matters when it comes to arms export controls. We have really got to know where the stuff is going, so there is a degree of urgency about having as much information in the public domain as possible about end use. My question, Foreign Secretary, is about the Freedom of Information Act. Do you expect that to influence what you publish in future?

Mr Straw: No, because I doubt it and I cannot anticipate decisions under that Act and you are aware of how it works. If you are not, as the author of the Act, I am very happy to provide you with an extensive seminar.

Q106 Chairman: Thank you. I look forward to it!

Mr Straw: The Act makes clear that information which is due to be published in any event cannot have early or advance publication, so I am quite clear that were it not for this very open system that we have at the moment, we would be expected under the Act to publish the kind of information we publish in the quarterly reports, but since it is published in the quarterly reports, I am quite clear that we would be justified in refusing any prior application which obviously would just be chaotic and could serve no particular purpose. In terms of more detailed information, well, it may be that there will be individuals who will seek further information about individual licence applications and their consideration. The final decision on those would be subject to the tribunal and then to other provisions in the Act, but when the Act was drafted, a number of clear exemptions were introduced and agreed by Parliament. Some of them were absolute exemptions about the security service for the Royal Family and others, which you are about to talk about, were qualified ones where there is a public interest harm test, but those are issues of commercial confidentiality, general confidentiality and international relations. My own view is that I am certain we have one of the most, if not the most, transparent systems in the world, number one, and, number two, to go further than this would be to compromise, to damage the necessary commercial interests or commercial confidentiality of the industry and this is an important industry which sustains a large number of jobs and we all around this table have a responsibility to ensure that it continues and that is why there is an export control system, not an export prohibition system.

² Ev 85

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Q107 Mr Bercow: Foreign Secretary, during the British Presidency of the European Union, can you tell the Committee, because we have had quite a lot of evidence on this subject and other aspects of the strategic export control system, what you judge to be the priorities? If you look at strengthening the legal control of arms exports, tackling arms brokering and trafficking and building capacity to address the availability and the misuse of weapons within Africa and you have got six months, you have got to prioritise.

Mr Straw: There is completing what the Luxembourg Presidency have on the agenda and a lot of the agenda for any Presidency is completing work already in hand and it may be that the Luxembourg Presidency, which has already started, is able to complete the review of the Code of Conduct which has arisen in the context of the decision made in December 2003 to review the China arms embargo. A number of Member States, of which the UK has been in the lead, have used that decision to look again at the China arms embargo to seek to upgrade the way in which the Code of Conduct operates, and that is obviously very important. There is a user's guide on Criterion 8 of the Code of Conduct and this has prompted some Member States and the UK industry and NGOs to call for guides to other criteria, and we are happy to consider that. There is the issue of the candidate countries and also the new Member countries, the ten, where although, by definition, the ten have to sign up to these criteria, the standard of enforcement and transparency may in practice be less than in the former 15 existing Member States, so there is that. Then there is the whole issue of building up a consensus for the International Arms Trade Treaty which I personally am very committed to and that will be an international arms trade treaty and, as I spelled out in my Party's conference, is there to build on the work of the EU Code of Conduct in which we played a leading role when Robin Cook was in my seat seven years ago, so it is part of a wide agenda.

Q108 Mr Bercow: There is the issue of quality and enforcement, but equally importantly there is the issue, is there not, Foreign Secretary, of the extent of the provisions? What I would like to try to tease out of you, if I may, is the question of whether and, if so, to what extent you regard it as incumbent upon the British Government to look at how other Member States of the EU are behaving possibly within the terms of the Code of Conduct, but in a way which is, nevertheless, damaging? For example, if memory serves me, and I am sure you will correct me if I am wrong, there is an arms embargo within the EU on the export of weapons to Burma, but there is suspicion, and I put it no more strongly than that, that that embargo is currently being circumvented by Germany via the Ukraine. It is marvellous to have a Code of Conduct and it may have real merit and a great deal of attention may be paid to enforcing it, monitoring it and seeing if it needs to be updated in line with the concerns of the NGOs as

well as of the industry, but what about things which perhaps do not fall within its purview at all, but the effects of which are very damaging?

Mr Straw: Comparative testing is very important in all areas of government, but particularly here where, Mr Bercow, you are right to imply that having the Common Criteria in plain text is one thing, but having common enforcement of those criteria is a separate thing, and the first is a necessary, but by no means an efficient, part of the second. The advice I have received is that on the whole other countries are assiduous in their application of the Criteria, but there is a difference which is about transparency, and this has arisen acutely in respect of the China arms embargo and has wider application. That is that we share information where one or other of us is refusing a licence, so if I get an application, and you will be familiar with the arms system, and I decide that that application should be refused, that information is then pooled on a confidential basis inside the EU and I think I am right in saying that if one has notice of denial by another country, which sometimes happens, and I then decide nonetheless to agree an export, we pool that information as well, I think. That circumstance is the only one in which at the moment there is effective pooling of information about positive decisions to license rather than negative decisions to refuse licences. Now, the number of licences granted greatly exceeds the number refused because obviously in each country the industry has a pretty clear idea of what the market will bear. We do publish details of all the applications approved, though we do not formally give it to the EU, but it is on the public record, whereas some other countries do not, so it is for that reason that I have been very committed to having a fully transparent system both of refusals and of positive decisions on licences. On the end user point, I have seen no information whatever suggesting that Germany has licensed arms to the Ukraine which have then been shipped to Burma. I have to say that the German Foreign Minister, Joschka Fischer, has been very supportive and was very supportive of extending the sanctions, the common measures against the Burmese regime given their failure to meet the undertakings which they had made in April or around April of last year to release Aung San Suu Kyi and to allow the NLD to participate in the national convention, but we are always happy to follow these up.

Mr Oakden: Perhaps I can just add two points. Firstly, we are looking for greater information-sharing and the fact is that because we have got a more extensive network around the world, we sometimes get more information and there is potential for us to share that more with other Member States. The other is a slightly different area which is what happens when a country comes out of sanctions and one wants to avoid a situation where you go from very tight control under an embargo to any sort of lurch, so we are negotiating in the EU a so-called 'toolbox' which would essentially set in hand this series of procedures which would involve both consultation and three-monthly mutual notification about export procedures and what each country has done over the previous three months.

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Q109 Tony Baldry: Apart from the EU, the G8 and the Prime Minister's Commission for Africa, a lot of NGOs and a lot of us know that the scourge of Africa is the AK-47 and I just wondered what the FCO was doing in the context of the Commission for Africa on tackling and brokering and the presumption of denial. What is your input to the Commission for Africa and conflict prevention?

Mr Straw: The key thing I think for controlling small arms is an arms trade treaty because you have got to deal with a few countries in Africa who manufacture weapons. South Africa does and maybe other countries do and will certainly maintain them, but the main manufacturers are outside sub-Saharan Africa, so simply getting the African countries on board will not resolve the problem and we have to have an international arms trade treaty. We will be using the Commission for Africa, however, as a forum in order to build up support for this Arms Trade Treaty which will certainly include small arms, but will have to include other arms as well. You are right, Mr Baldry, to say that the scourge of Africa is the AK-47, but it is the landmine, it is rocket-propelled grenades and all of the other terrible relatively small arms which wreak such havoc and destruction on the continent.

Q110 Donald Anderson: Foreign Secretary, a number of the countries which joined the European Union on day one are traditional arms exporters, such as the Czech Republic.

Mr Straw: Sure.

Q111 Donald Anderson: Are you satisfied that the administrative procedures are sufficient in those countries, and of course there are coming in two or three years' time Bulgaria and Romania? At what time will the export control on arms kick in in respect of those countries?

Mr Straw: On the satisfaction about the new ten, I am able to give you a detailed answer. Am I personally satisfied? I am not sure is the answer. What is the case is that each of those countries had to meet criteria, very, very detailed criteria in 32 separate sections or chapters of the EU *acquis* and it was that that the European Commission were measuring when they were determining whether or not each candidate country had met a sufficient standard in order to be recommended for membership of the EU. The process is a very, very rigorous one. The Czech Republic has, to give you my impression, quite a good level of public administration, I think, of the EU ten and I have seen no reports of their system failing, but I also would accept that it is probably the case that for all the new ten, it will take some time for their systems to be quite up to the level of the previous existing 15. As for the new candidates, the two new ones coming forward, Bulgaria and Romania, we have now agreed a date and in the period between now and accession, they have to show that they are implementing all the standards that they have agreed in those 32 chapters. I think formally the system only kicks in on the day of accession, but there is a glide path and this issue arose quite acutely in respect of

Romania, not Bulgaria, when there was some discussion in the margins of the meetings before the last European Council as to whether or not, because there were concerns about the level of public administration in Romania, the corruption and so on, we should not give a differential date or impose differential conditions in respect of Romania compared to Bulgaria. We decided not to and the reassurance there is that it is open to the European Commission at any stage before the date of accession to say, "This applicant nation is not meeting its trajectory on the glide path and, therefore, we should delay further the date of accession".

Q112 Mr Colman: During the G8 Presidency, you mentioned that in a sense you are following previous initiatives. Can I ask you about the Kananaskis Ten Plus Ten Plus Ten and will you intend to push this forward, particularly in terms of a further parliamentary assembly, and there was one held in December 2003 at which I represented this Select Committee and the idea was in fact that after the European Parliament had reconvened, as it were, after the elections, in our Presidency we would move forward significantly on that arms control initiative. Can I ask, Foreign Secretary, what is proposed?

Dr Landsman: Mr Chairman, Mr Colman is referring to the so-called 'G8 Global Partnership' for addressing the threats from the weapons of mass destruction from existing stocks primarily, but not exclusively, in the former Soviet Union. We certainly intend to take forward that initiative during our G8 Presidency and we have plans for two specific initiatives, one to address implementation of existing projects to ensure that any obstacles there are addressed and removed and the projects move forward, and we also intend to promote a threat-based assessment of priorities, as it were, for the next generation of projects under the G8 Global Partnership. As far as to the parliamentary conference, I am afraid we will have to revert to you with some more thoughts on that in due course.³

Q113 Mr Bercow: Very briefly on the subject of the EU's WMD Action Plan, how do you intend to take that forward, not least with regard to the results of the peer review of dual-use export control systems?

Dr Landsman: Specifically on that issue of the Action Plan, that exercise feeds into ongoing work in the EU on implementation of the Code of Conduct of the export controls and we will want to do some more work on ensuring that the Code of Conduct is being implemented as part of the work which we will oversee during our EU Presidency.

Q114 Mr Evans: Foreign Secretary, on the arms embargo on China, France and Germany are very keen to get it lifted and your opposite number in the Netherlands, Bernard Bot, said he hoped that it would be lifted this year. What is your view?

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Mr Straw: When this issue first arose in the EU European Council Summit on the 18th December 2003, I, because I happened to be there in our seat at the time, supported the proposal from President Chirac and Chancellor Schroeder that we should review the EU China arms embargo because, on the face of it, it had run its course. First of all, it was imposed in the light of the specific circumstances following Tiananmen Square and, secondly, at the time of its imposition, there was no EU Code of Conduct, so you either had an embargo across the EU or you had nothing consistent across the EU. Now, the human rights situation in China has eased, though I am not pretending it is fully acceptable and it is not as we spell out in our Human Rights Report, but it is certainly significantly better than it was 15 or 16 years ago. Secondly, there is now the EU Code of Conduct and what has been interesting in terms of the work that has been done both in the UK and across the EU is that it transpires that most of the applications for arms exports to China which have been refused in recent years have been refused under the EU Code of Conduct and not under the embargo which is narrow in its scope and, moreover, most of the refusals under the embargo would have fallen to be refused under the Code of Conduct in any event. As far as the latter is concerned, I think I am right in saying that for the UK there were only two refusals under the embargo, and those were not particularly significant, which would not have been refused under the Code of Conduct, so that is the background to this. What the Council decided this December, just three and a half weeks ago, and we supported this language both by definition, but also because we did, was this: "In this context, the UK Council reaffirmed the political will to continue to work towards lifting the arms embargo. It invited the ex-Presidency to finalise the work . . . in order to allow for such a decision. It underlined that the result of any decision should not be an increase of arms exports from the EU Member States to China neither in quantitative nor qualitative terms and in this regard the European Council recalled the importance of the criteria of the Code of Conduct on arms exports, particularly in relation to human rights, stability and security in the region and the national security of family and allied countries". That is where we are and, as I have always intimated, we are currently working on the revised Code of Conduct and the new instrument on measures related to what is called 'the toolbox'.

Q115 Mr Evans: So now that we have got the Presidency of the European Union, are you actively promoting the lifting of the arms embargo?

Mr Straw: Our decision in principle is that subject to satisfaction on the issues laid out by the European Council in December, we called, also, for a lifting of the arms embargo and that has always been the case and that was why, for the reasons I have intimated, we supported the original reconsideration of it. Indeed if it is lifted, we will end up with as effective arms control in respect of China in practice as we have now, but they will be ones which will apply to every other country, apart from one or two, like

Burma, and also we will have a strengthened system across the EU. I have to say that I have long understood China's argument which is that to lump them in with, say, Burma and Zimbabwe is not appropriate and I do not think it is.

Q116 Mr Evans: Is there a likely timescale on this?

Mr Straw: I am a betting man on big races, but I do not bet on these things, not least because it would be viewed as insider information, but I think you would get relatively short odds on the decision happening over the Luxembourg Presidency. In other words, it is more likely than not that this will be decided under this Presidency.

Q117 Mr Evans: The final point then on this is that clearly you have got a very close working relationship with the United States of America. They are not keen on the lifting of the arms embargo along with one or two other countries, so what are you going to do to pacify them that the options that you are announcing today that you argue in order to see this lifted this year will satisfy them?

Mr Straw: The United States have an entirely legitimate and understandable interest both in the effectiveness of the European Union's system of arms control and in issues of regional stability in that area and it needs to be borne in mind that we often think of the United States as an Atlantic power, but it is also very much a Pacific power and China and Taiwan and other countries are across a pond, albeit quite a large pond. So there have been intensive discussions with the United States because it is a point I have often made in the room in talking on this issue in the European Foreign Ministers' meetings and in the European Councils that we have to do our very best to provide reassurance to the United States. They are our closest ally and it would be ludicrous to turn this into an issue of aggravation between these two allies, so a lot of effort is going into that. Part of the difficulty has been, frankly, a lack of information and an understanding in Washington and elsewhere about how our system works, so, for example, there was a report by a congressional committee, I think, last May about the UK system which was critical and based on a number of clear misunderstandings about the nature of our system. Our embassy weighed in and provided a point-by-point rebuttal of the system. I have on many, many occasions pointed out, number one, that the EU arms embargo itself has no legal force, that it is an agreement. People may say, "What about the Code of Conduct?" The Code of Conduct is backed by our law and the laws of other countries, so it has a different level of legal application. Also, and this is a critical point, what is not realised in the US, and why should it be until we explain it, is this central issue which is that since the embargo was imposed, you now have the EU Code of Conduct, the interpretation in most countries of the embargo, including the UK, has been a narrow one, that most of the decisions to refuse arms licensing to China have in any event been made under the Code and, as I said, most of the decisions which have been made to refuse under the embargo would have been made

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under the Code anyway and we also then take through our United States interlocutors a criterion in the Code relating to human rights, relating to regional security and so on.

Q118 Mr Evans: So you hope to satisfy the United States, but if at the end they still are not satisfied and they are still pressurising you to keep the arms embargo there, you will carry on with your policy?

Mr Straw: It does not work that way. In the United States there are many issues where the United States Government makes a decision which we would not necessarily have taken ourselves because our political and economic circumstances are different. The same applies in respect of decisions made by European countries, including the UK. The crucial issue is not to say to the US, "Are you going to vote for this?" anymore than they ask us to vote for some of the decisions they have made; it is to say to them, our very close allies, "We hope that we have provided you with both an explanation and a reassurance of why we are supporting this decision and why, in our judgment, there is good evidence that it will not do the thing which you fear it might".

Q119 Mr Davies: Foreign Secretary, are you saying that the American attitude towards the EU giving up its arms embargo on China is based either on a misconception, a misunderstanding because the Americans wrongly believe it will have some actual concrete and specific impact on the flow of arms exports, whereas you are saying it will not, or that it is based on a worry about the psychological effect of this embargo being abolished at this particular time and that will be seen as a very favourable gesture to the regime in Beijing?

Mr Straw: Well, it is based on both and obviously different people within the Administration and Congress have different opinions about it.

Q120 Mr Davies: So it is not based at all, in your view, on substance? In other words, there is not a danger that there would be any significant increase in arms sales?

Mr Straw: I understand their starting point and it is hardly a secret that whilst there is lots of suspicion about the UK's motives in relation to Third Countries, there is suspicion in the United States in many ways across parties about the motives of some other countries inside the European Union, so I understand their concerns. It is the case that the level of information about the nature of the arms embargo and how it operates was lower than I had anticipated. There was genuine concern about whether a lifting of the embargo would, first of all, lead to a significant increase in arms sales by European countries to China and it is for that reason that we got unanimous agreement by the European Council at the Summit last month to those words that there should not be any "quantitative or qualitative" increase. There has also been concern about whether the lifting of the embargo of itself could exacerbate tension across the strait between China and Taiwan. Now, to some extent those concerns have now lessened in any event as a result

of the elections held in Taiwan on 8th December which led to the election of a President who is less exercised about relations with China than his predecessor.⁴

Q121 John Barrett: If I can move on to Libya, in a way it is linked, because their arms embargo was lifted, to our discussions about whether to lift China's arms embargo or not. You mentioned in your previous answer that the EU Code of Conduct in fact restricts a number of weapons systems and equipment which may have been exported to places like Libya or China, but it is up to the individual EU States to interpret that EU Code of Conduct. Do you think that under the UK Presidency this is something which should be addressed because if, for instance, there is an EU-wide arms embargo in place, it could be that if the administration of that arms embargo was dealt with at an EU level, there would be consistencies throughout the EU, but when the arms embargo is lifted and we are then relying on the EU Code of Conduct, it is then up to Member States to look after this?

Mr Straw: First of all, by definition, if there is an embargo then the answer in every case, provided the application comes within the terms of the embargo, is no, so there is obvious consistency. If you go back to the China arms embargo, there is quite a lot of room for interpretation about the scope. As it happens, the UK interpreted the China arms embargo in a narrower way than some other Member States. The second thing is, for the avoidance of doubt, you could have a system of arms exports run by the Commission and turn that into a competence of the European Union. I am, and so is the British Government, wholly opposed to that because it runs straight into the rights of individual nation states within the EU to run their own defence policy and defence forces, and their arms industries are a very important part of that nexus. On your key point, Mr Barrett, about consistency, because the criteria are open to interpretation, there is an issue of consistency. I have to say that the advice I receive and what I have observed is that all Member States, particularly the large arms exporters, seek to take their responsibilities under the criteria seriously. There may be suspicions about one or other Member States across the water, but I have seen no evidence of Member States treating the Code in a cavalier way. However, there has been this issue of transparency. We have not had enough information about how it has been applied. That is why improving the transparency of the system by using the revisions to the Code in the toolbox are very important generally as well as in relation to China.

Q122 John Barrett: The arms embargo to Libya has been lifted, and in many walks of life the future performance of any administration is often such that you have a good idea as to how it is likely to go, based on what they have done in the past. Libya has

⁴ The Foreign Secretary was referring to Legislative—not Presidential—elections in Taiwan in December 2004 in which the opposition "pan-blue" alliance won an absolute majority, a result not predicted by the polls.

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a bad track record for passing on arms to other sub-Saharan countries, eg the DRC and Sudan. Now that the embargo has been lifted, what concerns do you have that when they are modernizing their equipment their old equipment will not be passed on to some of these countries?

Mr Straw: Libya did have a bad track record, but on 19 December last year there was this dramatic historical announcement—

Q123 Donald Anderson: December 2003?

Mr Straw: Of course, yes. There was a dramatic announcement on behalf of the leader acknowledging Libya's previous bad record, giving a full disclosure of what they had been doing and turning over a new leaf in the most dramatic way. It was a very, very courageous decision and they have co-operated fully with the international community and particularly with the US and the UK and the IAEA in fulfilling their obligations. Do you want to add anything to that?

Mr Oakden: Two things if I may. Firstly, there is a continuing dialogue with Libya, with ourselves and the Americans about particularly the implementation of the WMD side but also other aspects too. And we have said in addition that bilaterally we want to work with Libya to help it develop its legitimate defence needs, such as border security and so forth. If you put that together with the EU Code of Conduct, they result in our developing a dialogue with Libya, which other EU Member States would have as well, to ensure that precisely the concerns that you have mentioned do not happen.

Q124 Mr Davies: Foreign Secretary, can I come on to the matter of the ITAR waiver. The US Congress's apparent wish to resile from the promise we received from the administration on this is a considerable blow in the face, is it not? It is something which our record of dealing with America on defence exports or defence generally, which has always been a very fine record and conducted in very good faith from our point of view, in no way merits.

Mr Straw: I agree with you. We were greatly disappointed that the Congress deleted the provisions for an ITAR exemption from the Defence Authorisation Act. We welcome the fact that language was included in support of the expeditious processing of export licence applications and we were discussing the way forward with the US administration. It has been a constant source of discussion between the Prime Minister and President Bush, Secretary Powell and myself and our officials. It is disappointing. The administration did its best. On these issues it is for the Executive to propose and for Congress to dispose and they came to a different view. It is disappointing, particularly given what a close and reliable ally we have been for the United States through thick and thin.

Q125 Mr Davies: Do you think this prospect being held out of providing us with a promise of more expeditious processing as an alternative to the ITAR

waiver actually does amount to an effective substitute for an ITAR waiver or was it just a meaningless sop to us?

Mr Straw: No, it is something, but it is in no sense an effective alternative to it.

Q126 Mr Davies: A reversal like this is something of a challenge to British diplomacy. Can you tell us what sort of instruments you have been trying to use to try to reverse this decision?

Mr Straw: There is not an issue about the position of the US administration; they are on the same page as we are. We are dealing with Congress. Without going into detail, let me say that there are particular members of Congress who are in powerful positions and who have a different view from both that of the UK Government and also the United States Government. As you are aware, Congress works in a slightly different way from the way in which the British Parliament operates. Here we simply make a good argument and, in regards to the party, if it is a good argument it is accepted.

Q127 Mr Davies: I am well aware of that, but this is the second occasion this morning we have come up against a situation where what you are telling the Committee is that members of the US Congress had misapprehensions about the workings of our export controls system and therefore their concerns are unreasonable in relation to that. That is a challenge to British diplomacy. We have a very expensive embassy in Washington. We have a very expensive diplomatic service. The idea that the US Congress should be making decisions on the basis of misapprehension of the facts, in other words a failure of information, is a very serious one.

Mr Straw: I do not wish to endorse particular adjectives you have adopted. There are plenty of occasions, if I may say so, where members of the British Parliament may come to an unreasonable misapprehension about the position of US Congress and administration. I constantly find myself trying to put the record straight on behalf of the US administration. So these things happen. Mr Oakden is writing me a note.

Q128 Chairman: I am not sure we are going to get much further on that.

Mr Straw: Mr Oakden's writing is very neat but sometimes a little bit difficult to follow. Anyway, what he is saying is that protectionism is a real point and that is a key element of it. You would have to talk to the members of Congress themselves. They will say they are not under any misapprehension of the facts. They simply come to a different conclusion about the US's national self-interests.

Q129 Mr Davies: The other day I put to one of the industry representatives who came before this Committee the idea that there might possibly be an element of *quid pro quo* here, an element of leverage we could use and that was to link in some way the ITAR waiver to the US Congress's strong view that we should not go along with a proposal to abolish the arms embargo for China. Is there a prospect for

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using this linkage effectively with the US Congress, indicating subtly, no doubt, that if the ITAR waiver, which we were promised, is withdrawn by the Congress then we might feel much less inclined to use our influence with our colleagues in the EU to prevent the arms embargo with China being removed? He gave me the answer that that was above his pay grade. I do not imagine it is above your pay grade. Perhaps I can put the idea to you and see what your reaction to that suggestion is.

Mr Straw: There may be those in the US who say that the two are linked. I have to say, however, that opposition in some quarters in the US Congress to the ITAR waiver predates any suggestion of a lifting of the China arms embargo and moreover, as I have explained, on the basis of the decisions made at the European Council this December, there is no reason for there to be anxieties in the US system. Our embassies around the world, including in Washington, are efficient and effective. We are also going through an exercise to cut their costs. I have to say that in my view in Sir David Manning we have one of the best ambassadors of any country around the world and he has very, very good access to the administration. That is not the issue. It is about members of legislative assemblies, including in this Parliament, having strong opinions.

Q130 Mr Davies: What about the linkage?

Mr Straw: That is my answer to the linkage. I do not think there is one, although it may be presented in that way. We are working very closely with British industry and with the administration and members of both Houses of Congress to try and find a way forward. I have had frustrating conversations with some members of Congress and I have also had very good conversations with other members of Congress who are going way beyond the call of duty to support the British Government's position and British industry.

Q131 Donald Anderson: You should not have written off a change in the Congress because there are influential senators, who you will know, who have sought ways and means of circumventing the House opposition.

Mr Straw: No, of course. I have not written it off at all.

Q132 Mr Colman: I would like to take you back to the international arms trade treaty. You mentioned that you were personally committed to this going ahead. Could you share with the Committee perhaps what you are personally committing to do in your leadership role this year?

Mr Straw: Let me put flesh on the bones of the proposal. I am very happy to receive ideas either formally or informally from this Committee and from NGOs with whom I have had discussions. In a speech which I intend to make next month I will set out my thoughts about the overall architecture of this and part of that is that it should have standards which apply to all arms transfers. There have been some suggestions it should simply be a small arms treaty and whilst it is true that small arms are a major

part of the problem in places like Africa, they are not the whole of the problem. If you have a cut-off you then have got problems. It should take account of the need to avoid arms being used for, among other things, internal repression, international aggression, civil war, breaching international humanitarian law and being used by terrorists. There is then the issue of how it would work. I have already said that we would draw on the experience of the EU arms embargo (a) because it has worked and (b) because that is the best way in my judgement to do it.

Q133 Mr Colman: You mean arms embargo or the Code of Conduct?

Mr Straw: The Code of Conduct. That is the best way of getting a consensus inside the European Union. We are working particularly with Finland which has also been actively supportive of this and I have had a number of informal conversations with Erkki Tuomioja who is the foreign minister of Finland. There will be further discussions in other international fora to try and build up a consensus so that it will reach a state where we can put it forward more formally.

Q134 Mr Colman: I understand you were in a meeting with UK-based NGOs on December 16. How would you wish them to campaign on this in the current year? "We have to make poverty history" is one of the slogans of 2005. Is there a slogan? Is there a campaign? Is there part of their briefing you wish to share with us?

Mr Straw: I have not got a slogan for it. I am always slightly allergic to slogans if they are a substitute for careful thought. I have good discussions with the NGOs. We have got to campaign for this very widely. It is not an issue in this country, nor is it an issue between parties so far as I know in the UK. We have got to build up support for it in the European Union. We have got to seek to get the United States on board. We have got to get former CIS countries on board who are major arms exporters, one in particular. There will come a moment when I believe there will be a sufficient international consensus that we can move forward with formal proposals.

Q135 Mr Bercow: Foreign Secretary, I look forward to hearing your speech on the subject of arms control with eager anticipation. Perhaps we can just have an advance glimpse of your thinking. Would you agree that any arms trade treaty which allowed the continuing supply of arms to the Government of Sudan whilst deliberately and calculatedly denying them to rebel forces really would be nonsense?

Mr Straw: There has just been the signature of a peace deal in Sudan, this was over the weekend, on the north-south access, with the deal being signed by Dr Garang and Vice President Taha. I am not going to anticipate decisions which I think we ought, or the international community ought, to be making in respect of the Sudan. What I would say, however, is that so far as the situation in Darfur is concerned, recently there have been more transgressions in ceasefires by the rebels, according to the UN Secretary General Special Representative, than

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there have been by the Government. I think the implication of your question was that it is the Government which is in the wrong and the rebels which may be entirely in the right. That is not the case. The Government of Sudan has a prime responsibility for security because it is the Government and a point I keep making to Government ministers and to the President is that it is unwise for them to seek to be compared with the rebels in that sense because they are the Government, but there is wrong on both sides. We have been very careful about arms embargoes and arms supplies. In terms of if there were a treaty in force and how that would apply in respect of the Sudan, frankly, it is too hypothetical, Mr Bercow, because we are not going to get a treaty in force for some time. I hope and pray that we are able to resolve politically the conflict in Darfur well before that.

Q136 Mr Bercow: I understand that it is hypothetical but it is such a practical example of where progress has to be achieved for the text to be meaningful that I hope it will at least be in the forefront of your mind as discussions proceed.

Mr Straw: Indeed. Getting a text and getting it agreed and implemented will be really important. It will not mean then that there will be a bonfire of all the weapons that are around Africa for example, but establishing much, much better standards and universal standards of control over the supply of arms and ensuring, too, that as a result of that there is much more intensive focus on the unofficial criminal arms dealers who make millions and millions of dollars trading in arms across Africa, that will be very important.

Q137 Mike Gapes: Foreign Secretary, we have already touched on the review of the EU Code of Conduct. Do you expect the revised Code of Conduct to be agreed under the British presidency in the second half of the year? What are the aims of our Government with regard to that Code of Conduct and any review? Will it be likely that we will have fewer national undercuts by this country and by other countries of any agreements than there have been in the past? We had that evidence from Save the World who were saying that there have been 25% undercuts by EU states. You yourself gave evidence to us about five undercuts in 2003 by our Government. What are we doing to get out of this?

Mr Straw: First of all, as I indicated to Mr Evans, I think it is more likely to be agreed in this presidency than any other, but who can say. Where we have got to so far is that there has been an increase in the scope of the Code so that its criteria cover all applications for brokering, trans-shipment and intangible technology transfer licences, as well as physical exports, as at the moment. An obligation on Member States to refuse export licences if they consider that there is a clear risk that the items covered by the licence will be used to commit serious violations of international humanitarian law is a proposal that has been suggested by the International Committee of the Red Cross. I think it

is a good idea. There is an obligation on Member States to take particular account of the final use of any products which they know are being exported for the purposes of licence production in third countries and an obligation on Member States to produce a national annual report. I think those are all good moves. Will it lead to fewer undercuts? I am not certain, Mr Gapes, but I think over time it will do, because the more transparency we have the more there is shared information about not only why countries are refusing applications but also which applications they are agreeing. Then over time there will be greater consistency. I have to say that this is an inter-governmental Code because defence is a competence of sovereign Member States of the EU and although it is in force and people take their obligations seriously, because it is us and it is not the competence of the Commission and it should not be, there are bound to be some areas where, with the best will in the world, two Member States on the same information will come to different decisions. This happens with ministers. You get very, very finely balanced arguments. Sometimes I will say we should refuse an application and then there will be more information and I will say we should accept it or vice versa. There can be some inconsistency.

Q138 Mike Gapes: In this process of the review have you taken account of these national variations in legislation or interpretation?

Mr Oakden: We have taken account of them, which is why we are doing it at European level. That is the best way to address them.

Q139 Mike Gapes: Has there been a move towards greater convergence of approach? We were told by industry representatives that there are quite different interpretations of the Code in different EU states and that this could aid the proliferation of weapons in certain areas.

Mr Straw: There may be, which is why we need more information about that and changing the Code is not going to get more information.

Q140 Mike Gapes: Are we going for the highest common factor or the lowest common denominator here?

Dr Landsman: There is an ongoing discussion within the EU at working level on the way the Code is implemented, so there is discussion between the officials who make the recommendations to the Ministers in each country on an ongoing basis. That is something which has an incremental effect over time regardless of the specific changes that you make to the Code of Conduct itself.

Q141 Mike Gapes: You talked about transparency and presumably that involves the sharing of information between different EU states. One issue that has come up is where one government might deny a licence but then another government grants it without knowing that the other state has denied it. Do you think we need to have much more

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notification of denials and more information given to other states about the basis on which applications have been dealt with?

Mr Straw: Whenever I get an application to deal with I am told whether there has been a denial by another state.

Q142 Mike Gapes: Are you always aware of that?

Mr Straw: I cannot prove a negative. Could there have been a denial of which we were not made aware? How on earth could I tell? I am always made aware of the denials of which the office is aware. I have not seen any evidence that other countries are holding back denials from us, if that is what you mean.

Q143 Mike Gapes: What about if the Government decides to have a transfer directly on weaponry to another state which is outside the licensing system, do you know about that?

Mr Straw: I do not see how we could.

Q144 Mike Gapes: How much exchange of information is there really between the EU states about what is going on?

Dr Landsman: We have a system for checking that transfers are government-to-government transfers gifting or whatever it might be are consistent with the criterion. The F680 process is used for that in our case.

Q145 Mike Gapes: We produce quarterly reports and we give very much the best information, but not all states have the same level of reporting as we do.

Mr Straw: One of the elements of the new revised Code is an obligation on Member States to produce an annual report and we want to get more transparency and then we will learn much more about the patterns of licensing and decision-making on other Member States. At the moment the only consistent information we have is about their denials. If I may say so, Chairman, you have asked me to be brief. I think I may have explained this point on a number of occasions.

Q146 Chairman: Could I ask about equipment that I do not see listed in the EU Code, ie equipment that could be used primarily for torture. When the Government introduced a very welcome ban on exports of torture equipment in 1997 the then Foreign Secretary said that there would be attempts to encourage other EU Member States to have a similar ban. Where are we on that point?

Mr Straw: We certainly enforce the ban.

Q147 Chairman: The Government made a claim in 1997 to encourage other EU Member States. Is this part of the discussion on the EU Code?

Dr Landsman: The EU Torture Regulation specifically covering this point should be adopted later this year. So the work has been taken forward.

Q148 Chairman: So there is a similar list of equipments such as that that the Government has published. So it will be a common policy throughout the EU?

Dr Landsman: Yes.

Q149 Tony Baldry: Secretary of State, the working group reviewing Criterion 8 was due to finish its work last month. Has it finished? What has been the outcome? Are you concerned that, in relation to Criterion 8, because the threshold set is for serious risk of undermining sustainable development, by setting the threshold so high it will become meaningless?

Mr Straw: I do not think so. These countries are entitled to have defence forces. Indeed often it is precisely because they are in areas of instability they need them. It would be impossible for them to operate without defence forces. I think that the current criteria and the way it is worded are satisfactory, but there is this working group on its implementation.

Q150 Tony Baldry: Has it finished its work?

Mr Straw: It will do so shortly.

Q151 Tony Baldry: It is always a good line to take, shortly!

Mr Straw: In the Luxembourg presidency.

Q152 Chairman: Is there a similar review of Criterion 2 on human rights because Criterion 2 will be interpreted in very different ways by those controlling arms exports? Has there been any discussion of trying to clarify when Criterion 2 kicks in?

Mr Straw: There has not been up to now. There is no reason why there should not be in the future.

Q153 Chairman: Given that the UK is going to become the presidency of the EU in the second half of this year, would that not be an opportunity to try to flesh out Criterion 2?

Mr Straw: I am happy to think about that, Chairman. It depends on the resources available that we have to pursue it and whether we can get a consensus to start looking at it, but I am happy to think about it.

Q154 Mr Hamilton: Foreign Secretary, can I move back to the question of extra-territoriality because I think that is something that exercises many of my colleagues on this Committee and many of the people we have interviewed from the NGOs. In light of the allegation that UK companies were brokering the export of arms to Sudan, are you confident that current legislation on extra-territorial trafficking and the brokering of arms by UK nationals is adequate? Do you intend to strengthen that legislation?

Mr Straw: There is a big issue about extra-territorial jurisdiction and it has caused a lot of problems for perfectly legitimate exporters (not of arms) from the UK to third countries where a ban on trade with those third countries has been put in place by the

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United States administration and the US has adopted an extra-territorial jurisdiction not just over their nationals but over third country nationals. There are a number of examples of this which have caused real problems for British business. If all countries start to claim extra-territorial jurisdiction over third country nationals you have got some really serious difficulties in terms of international order. People do not seem to be aware of this. It is not a simple issue, extra-territorial jurisdiction. Our policy is that extra-territorial jurisdiction should be applied only to the most sensitive transfers and obviously the export of torture equipment is banned as are exports to embargoed destinations, save in exceptional circumstance, according to the terms of the embargo and it is therefore appropriate to impose strict controls on brokering torture equipment and to embargoed destinations to prevent UK people overseas who may circumvent the UK ban. We also should apply it to other groups which are not necessarily banned from export from the UK which are extremely sensitive, ie intangible transfers and technical assistance related to WMD and also to trade in long range missiles. It is an issue which is complicated.

Q155 Mr Hamilton: Last month, as you will know, we interviewed a number of representatives of non-governmental organisations. They suggested that in some cases UK nationals may have relocated their operations to avoid regulation under the Export Control Act. Have you got any evidence that this is happening?

Mr Straw: I personally have seen no evidence of this. I do not know whether officials have.

Mr Oakden: I do not have details. It is clearly a possibility that we would need to have taken into account.

Q156 Mr Hamilton: Is it possible to let us know more in writing if you have got any more information?⁵

Mr Straw: Yes.

Q157 Mr Hamilton: I want to ask one final question relating to a company called Aviant Air. I understand that this company has admitted to being involved in flying arms and other defence logistics for the governments of both Zimbabwe and the DRC and yet they were pictured in television pictures in December being contracted by the UK Government to deliver humanitarian aid to the victims of the tsunami disaster. I wonder if you have got any comment on that at all.

Mr Straw: I have no comment on that, Mr Hamilton. This is the first I have heard about it. If you want to send me more details because obviously you have more details, I will give you an appropriate reply.⁶

Mr Hamilton: I would be pleased to do that.

Q158 Mr Evans: You may remember that when the industry came before us last as part of our report we included some of their allegations about the fact that

we are stricter than some of our other EU counterparts and then in the Government's response the Government hit back at industry and said "piffle". They gave us some extra evidence when they came to see us and they have written to us since to say the allegations that they made were absolutely true and they have got evidence that it seems as if the French and the Dutch are supplying arms that could be interpreted as dual use when companies in this country have been denied. Do you have anything to say in response to that?

Mr Straw: We certainly did not say either to you or to the industry "get lost". We would not dream of doing so. I have a very high regard for the defence industry and what it does. They happen to know that. We would not dream of saying "get lost" either to the industry or to this Committee.

Q159 Chairman: I think Nigel was paraphrasing.

Mr Straw: I am just making this point. We did not say that. Neither could that inference be drawn from our response. We did say this as the answer to some of their concerns. I am always happy to look at detailed evidence which the industry has got about the regulatory burden on the UK industry in comparison with other European countries. This Committee has a very important responsibility in terms of the regulatory burden that is imposed because we have this much more transparent system than other countries. That requires a much higher degree of record keeping, of accuracy and ministerial involvement than applies in other countries. So it does not lie in the mouth of this Committee to start criticising the Government for the fact that if there is an additional regulatory burden, it is there unless you, the Committee, are going to seek to play your part in lightening that burden. I tell you very seriously, when you decide to put in hundreds of detailed questions you need to be aware of the staff time that is going to be involved. At one time last year about a month's work was contained in one letter from this Committee and although I will always seek to answer questions from the Committee and we did there, you have to make your own judgements. It does not lie in your mouth to complain about the fact that there have been hold ups in applications because we all know what the Germans and the French are doing, which is to spend so much time answering these questions. Big questions, yes; smaller questions, no. I am in favour of and I have got a good record in lifting regulatory burdens.

Q160 Chairman: As Chairman of this Committee you would expect me to say this because we had the discussion 12 months ago. We ask questions that we need to ask to do our job and one of the problems has been our surprise at the lack of some information that we thought would have been readily available using the kind of technology available these days and that answering some of those questions seemed to us to take longer than we would have expected. We know perfectly well that if we request greater regulation there is a cost involved in terms of time and money and so forth. You can be

⁵ Ev 85

⁶ Ev 90

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assured we know that. We are always conscious of it. I think I have to stress that the Committee has its responsibilities as well as your department. Nigel's question is still open for further responses.

Mr Straw: May I also refer you to page 25 of Command 6357 where we say, "Evidence suggests that the United Kingdom's refusal rate is comparable to that of our European counterparts. Specifically dating from the 2003 Annual Report and the Code of Conduct . . . shows that in 2003 0.91% of the UK's decisions were to refuse compared to 1.57 for France and compared to 0.57 for Germany."

Q161 Mr Evans: When the industry came to see us on two occasions when I have been sitting on this Committee they gave examples where they believe that we are stricter in interpretation than our European Union counterparts. When you are talking to other European Union countries you take very seriously what the industry has to say, do you?
Mr Straw: Of course. A criticism of me is more likely to be that I have erred on the side of granting a licence rather than refusing it where it is a marginal case, not where the issue is marginal, but the judgment is very finely balanced. I would draw attention, for example, to the incorporation statement which I made in June 2002 which was potentially very controversial but I thought was justified given the way in which the industry has

changed its international configuration. I am very happy always to take account of concerns of the industry.

Q162 Mr George: Secretary of State, industry has expressed some concerns about uncertainties relating to WMD controls over them. Do you have any observations to make on this? There are a limited number of instances where industry has had restrictions imposed on them as a result of the Government's insistence on more complete controls over possible implications for WMD exports.

Mr Oakden: I think that may be referring to the need for a licence when it is being transferred to UK forces operating outside the UK.

Q163 Mr George: That is the second question. I hope this does not impose too much on you, but I am sure the Chairman will write a letter and maybe you could answer.

Mr Straw: If you have got specific concerns, I will follow those up, yes.

Chairman: We have finished slightly earlier than anticipated. Foreign Secretary, could I thank you very much indeed for your presence this morning. There are one or two issues arising that we will pass on to you in writing ever aware of the fact, very sincerely, that it does take time for your officials to respond, but we only ask questions that are important for this Committee to do its work and so a few more of those will be coming in your direction.⁷ Thank you very much indeed.

⁷ Ev 84

Written evidence

Asterisks in the written evidence denotes that part or all of a document has not been reported, at the request of witnesses and the agreement of the Committee.

Appendix 1: Letter to the Chairman from the Secretary of State for Trade and Industry

I am writing to propose changes to the way we publish data in the Annual Report to Parliament on strategic export controls, in order to increase transparency and accountability. The main proposal is that we publish licensing data quarterly instead of once a year. I would be grateful for responses by 9 July 2004.

As you know, the Government has been considering ways in which it can meet the Committee's request for enhanced scrutiny of export licensing decisions. In the course of his evidence to the Committee in February, the Foreign Secretary indicated that we had been looking within Government at enhancing retrospective scrutiny. I am now in a position to set out our proposals.

We all share the objective of promoting as transparent an export licensing system as possible, consistent with efficiency and commercial confidentiality. That is why we introduced the Annual Report, and also provided in the Export Control Act for better scrutiny of secondary legislation, published guidelines (the Consolidated Criteria) and clear parameters for strategic export controls. We are also subject to a high level of scrutiny by the Committee, which has increased very significantly in recent years. Furthermore, we are committed to improving efficiency in the export licensing system, and for the first time ever, achieved the over-arching target of deciding on 70% of SIELs in 20 working days last year. The number of long outstanding cases is also at the lowest it has been for some time.

We now want to build on these innovations, accepting that more can be done to achieve greater accountability and transparency, whilst respecting commercial confidentiality and the constraints imposed by the resources available to us.

The three main proposals are:

- to move to quarterly statistical reporting via the internet;
- to use a clearer format; and
- to prepare a separate quarterly confidential report for the Committee alone. This will cover enhanced information on refusals; and lists of extant OIELs, neither of which it would be possible to include in the published reports because of security considerations and commercial confidentiality.

We believe that these proposals would enhance the Committee's scrutiny of export licensing decisions by publishing licensing data more frequently and to a greater level of detail than currently. In shaping them, we have taken account of the specific areas in which the Committee has requested that additional information is included in the Annual Report.

In addition, we need to be sure that we do not compromise industry's legitimate concerns about confidentiality. As now, no commercially confidential data will be included in the new reports.

We have consulted industry informally on the new proposals. They have some concerns that more frequent publication increases the risk that information on licences (and especially temporary licences to allow demonstration) could alert competitors to a business opportunity, where a contract has not yet been signed, and could therefore jeopardise a sale. However, we think this risk is low we are proposing to publish the data three months after the end of the quarter in question, not immediately and is outweighed by the public interest in increased transparency. At present the delays in publication up to 18 months for licences issued at the start of the calendar year are unnecessarily long.

The Committee has also asked for more information on refusals and on OIELs. We propose to provide this to the Committee in confidence. I am afraid however that, because of its inherent sensitivity, we are only able to provide the Committee with end-user information following careful checking that to do so would not compromise commercial confidentiality. As such, end user information cannot routinely be provided for all export licence applications, even in the confidential reports. We have looked at whether we could provide information on categories of end users (eg government/non-government), but the limitations of our current licensing databases mean that this is not currently possible.

It is particularly important that the Committee respects the confidentiality of any information provided to it as such, including the quarterly confidential reports. I mention this because the Committee, in its last report, chose to publish end user information which the Government had provided to it in confidence. Disclosure by the Committee of information in the confidential reports would of course lead us to review whether or not these could be continued.

I attach a paper giving more information on the proposals. They represent a step change in the level of transparency offered to readers of the Reports.

Having, as we committed to do, considered the issue very carefully, the Government remains of the firm view that *prior* scrutiny of export licence applications raises unacceptable constitutional, legal and practical difficulties and does not intend to take this issue further.

I look forward to receiving the Committee's comments on these proposals. We would then hope to implement them as soon as possible, ideally by publishing in July the data for licences issued in the first quarter of this year. I should be grateful if the Committee could provide a response by 9 July 2004.

I am copying this letter to Jack Straw, Geoff Hoon, Hilary Benn, and the Cabinet Secretary.

Patricia Hewitt

June 2004

Appendix 2: Letter to the Secretary of State for Trade and Industry from the Chairman

Thank you for your letter of 27 June, which my office received on 2 July.

The main thrust of your letter is very welcome. However, I should stress that I am replying in a personal capacity, as it has not been possible to arrange a meeting of the Committee, or even to consult with Committee Members, within the deadline that you have set.

QUARTERLY PUBLICATION

I welcome in particular your proposal to publish licensing data quarterly. This is in line with a recommendation made by the Committee in its last Report (paragraph 52). It will improve the relevance of the Government's reporting by enabling us and the public to scrutinise the Government's licensing decisions in a more timely way. You propose to publish this information only on the Internet, and annually on CD-ROM. Given the volume of information involved, I can well understand the reasons for this proposal. But given that the Internet is still not accessible to all, can I suggest that you might wish to make paper copies of this information available on request (at cost price), and that you might also wish to place paper copies in the libraries of both Houses of Parliament?

CHANGES IN FORMAT AND PRESENTATION OF INFORMATION

My understanding is that all of the information currently made available in Annual Reports will continue to be available in future.

You propose to reformat the presentation of data on SIELs. The proposed use of tables looks as if it will be clearer than the current use of lists. As I understand it, your proposal will enable the reader to see how many times the Government has issued a licence to a given country for a particular type of equipment in the course of a quarter or year. This will increase in a small way the amount of information available to the public. But I am not sure that repeating essentially identical information is the best way to show that more than one licence has been granted. If five licences have been granted to Algeria for "technology for inertial equipment", would it not be better to state: "technology for inertial equipment (5 licences)", rather than repeating "technology for inertial equipment" five times?

PROVISION OF CONFIDENTIAL INFORMATION TO THE COMMITTEE

Your proposal to provide a separate quarterly confidential report to the Committee is also welcome. The Committee has consistently requested enhanced information on refusals and I am grateful to you for your decision to provide this information unprompted. I trust that the information will be at least as full as that provided to the Committee in previous years.

PROVISION OF END-USE INFORMATION

I would be grateful if you could reconsider your decision not to provide the Committee in confidence with end-user information as a matter of routine. You state that to do so might compromise commercial confidentiality, but this surely cannot be the case given that the information would itself be provided to the Committee in confidence. I also cannot remember a single occasion on which the Committee has in the past been refused end-user information because of commercial confidentiality concerns. I would much prefer it if, where there are serious confidentiality concerns, you were to withhold information in those specific instances with an explanation, while making end-use information on other licensing decisions available to the Committee in confidence as a matter of routine.

I should add that end-use information is often necessary to understand whether concerns about a licensing decision are justified. If you do not provide this information as a matter of routine, the Committee will no doubt wish to continue to request it in relation to certain licensing decisions, as it has in the past.

The end-use and end-user information provided to the Committee in confidence earlier this year in relation to SIELs issued during the first eight months of 2003 (in response to parliamentary questions from Sir Menzies Campbell MP) was particularly useful and well presented, and I hope that it might be used as a model, where the Government provides such information in the future.

RESPECT FOR CONFIDENTIALITY

I really must correct your claim that the Committee published end-user information in our last Report which had been provided to us in confidence. The Committee has always respected confidentiality absolutely. In circumstances where the Committee wishes to draw on information provided to it in confidence, the Committee Clerk is under a standing instruction to ensure that the Government has no objections to the Committee's proposed course of action. In this case, the Clerk met FCO officials on 20 April to talk through a number of possible issues, including the text of the paragraph you refer to. He was assured that the proposed text was acceptable and would not be a breach of confidence, as it did not identify the end user of the licence or describe equipment or end-use conditions in more than the most general terms. Indeed, he was told that the Government would welcome the publication of this information, as it would help to assuage public concern about the nature of these exports. It is important for us that we are able to rely on advice from Government officials, especially in an area as sensitive as this.

LOOKING TO THE FUTURE

I note your view on prior scrutiny of export licence applications, but hope that you will remain open to future suggestions for improving the timeliness and transparency of Government reporting on strategic export controls. I look forward to the publication of the Government's first quarterly report.

Roger Berry

July 2004

Appendix 3: Memorandum from the Foreign and Commonwealth Office

SECTION A: UPDATES

The Committees would appreciate updates on the following topics. The aim should be to provide as far as possible information which can be published, but where important information can only be provided in confidence, the Committees would of course prefer to receive this rather than not.

1. REVIEW OF THE EU ARMS EMBARGO ON CHINA—DEVELOPMENTS SINCE MAY 2004

The review of the embargo instigated by the European Council continues. The EU's General Affairs and External Relations Council discussed this subject on 11 October, and will continue to take a keen interest in this subject.

2. REVIEW OF THE EU CODE OF CONDUCT—DEVELOPMENTS SINCE MARCH 2004

Significant progress has been made towards text for a new Code of Conduct, and the current draft is consistent with the UK objectives discussed previously with the Committees. In particular, there is strong support for making applications for brokering, intangible technology transfer, transit and transshipment licences subject to the Code's criteria.

3. CRITERION EIGHT (SUSTAINABLE DEVELOPMENT)—DEVELOPMENTS SINCE MARCH 2004, INCLUDING PROGRESS TOWARDS A COMMON INTERPRETATION OF THE CRITERION AND PROGRESS IN THE WORK OF THE COARM WORKING PARTY ON THESE ISSUES

As the Committees are aware, the UK is participating in an ad hoc group, which also comprises representatives from France, Germany, Netherlands and Sweden, which was mandated in February 2004 to produce a draft "Users' Guide' on Criterion 8 of the EU Code of Conduct.

The aim of this guide is to promote greater consistency in Member States' assessments of licence applications against Criterion 8, without precluding the need for individual judgement. Further considerations are that the guide should be simple and practical to use, and should point users towards easily accessible data of use in making such assessments.

This ad hoc group met for the third time on 29 September, and presented a draft document to the wider COARM meeting on 15 October. It is anticipated that a final version will be agreed at the subsequent COARM meeting in December.

4. INTERNATIONAL EXPORT CONTROL REGIMES—DEVELOPMENTS SINCE MARCH 2004

Nuclear Suppliers Group

The Nuclear Suppliers Group (NSG) Plenary was held in Gothenburg on 26–28 May. During the Plenary the Group accepted Lithuania, Estonia, Malta and China as Participating Governments. This recent expansion broadens the NSG membership to include all EU states, and all Nuclear Weapons States.

The Plenary adopted a “catch all” mechanism into the NSG guidelines. This provision provides a national legal basis to control the export of nuclear related items that are not on the Control Lists. The Plenary adopted measures to modernise the NSG Information Exchange Meeting (IEM) and to improve the Group’s outreach activities. The Plenary agreed to strengthen the relationship between the NSG and the IAEA.

The next meeting of the NSG was an intersessional meeting, the Consultative Group, in Vienna from 20–22 October. The UK co-sponsored two proposals to amend the NSG guidelines. The first was to address recipient non-compliance with IAEA Safeguards obligations, and the second to introduce a set of criteria governing the supply of sensitive items and facilities to recipient states. A substantive discussion on these proposals is expected at the next meeting. Discussion on strengthening the relationship between the NSG and the IAEA continued.

Zangger Committee

The Zangger Committee met on 18–19 October. The Committee began discussion on the proposed revisions to the guidelines. Outreach activities were also discussed, and it was agreed to provide a report of the Committee’s work to the UNSCR 1540 committee.

Missile Technology Control Regime

The Missile Technology Control Regime (MTCR) last met in Paris 13–14 April at its intersessional meeting, the Re-enforced Point of Contact. The meeting discussed membership issues, and agreed to accept Bulgaria’s application. It also discussed outreach activities. The MTCR most recently met in Seoul on 6–8 October for its annual Plenary. The Plenary admitted no new members to the regime. There were, however, fruitful discussions on outreach; transit, transshipment and brokering of MTCR-related items; and China’s potential MTCR accession.

Australia Group

The Australia Group (AG) met for its annual Plenary in Paris from 7–10 June. As part of the Group’s ongoing work to keep its common control lists up to date and based on sound science, participants agreed to add five plant pathogens to the control lists. Discussion also focused on enhanced information sharing, and the Group agreed to consider the issue of brokering controls. Such controls could play a key role in curtailing the activities of intermediaries and front companies. The next Plenary meeting of the AG will be held in Australia in 2005.

Wassenaar Arrangement

The WA held its first General Working Group meeting of the year in May. The meeting focused on taking forward conclusions from the Plenary in December. The UK continues to press for a denial notification system for military items (to match that for dual-use items) and a consultation mechanism for both types of controlled items.

Outreach discussions have taken place with a number of target countries, including China, South Africa and Brazil. The UK co-organised an Outreach seminar for NGOs, think tanks, academic institutions, specialist media and representatives from non-WA member states on 19 October 2004, to increase awareness of the WA.

5. PROGRESS ON APPLICATIONS OF NEW EU MEMBER STATES TO JOIN INTERNATIONAL EXPORT CONTROL REGIMES

Nuclear Suppliers Group

Lithuania, Malta and Estonia—were accepted as Participating Governments during the NSG Plenary in May 2004. All EU Member States now participate in the NSG.

Zangger Committee

Of the new EU Member States, Cyprus, Estonia, Latvia, Lithuania and Malta are currently not members. The UK fully supports the participation of all EU states in the Committee.

The Missile Technology Control Regime

Cyprus, Estonia, Latvia, Lithuania, Malta, Slovenia and Slovakia are not currently in the Regime, but all have submitted applications. Discussion on outstanding applications will be held at the forthcoming MTCR Plenary in Seoul (4–8 October), the outcome of which is described above.

Australia Group

All of the new EU Member States are members of the Australia Group. Estonian, Latvian, Lithuanian, Maltese, and Slovenian applications were accepted at the Plenary in June 2004.

Wassenaar Arrangement

Slovenia, Malta, Lithuania, Latvia, Estonia and Cyprus are not currently members of the WA. The UK has participated in a number of intersessional meetings on membership and expects WA Participating States to make progress on this issue at the Plenary in December.

6. OUTREACH—DEVELOPMENTS SINCE JANUARY 2004, AND COMMENT ON PURPOSE AND EFFECTIVENESS

Since the beginning of 2004 the UK has conducted outreach visits to China, Hong Kong, Macao, the United Arab Emirates, Singapore, Serbia and Montenegro, Albania and Malaysia. We have also hosted visits from Israel and Ukraine, co-organised a conference for a number of EU Member States and (at the time) Acceding Countries in Slovakia, and participated in a number of multilateral outreach activities and conferences. In November we will be co-hosting with the US the 6th International Export Control Conference, in the DTI's headquarters building in London, at which over 150 delegates will be attending, from around 50 countries.

The purpose of our outreach work is to assist other countries to improve their export controls, and to learn from their experiences. These countries range from those who already have a competent set-up, to those who need advice on establishing a robust export control system.

Our outreach programme is conducted by officials from the FCO, MOD, HMCE and DTI. This cross-departmental approach has enabled us to provide advice across the range of relevant subjects. The US value our work and seek our participation in theirs. Outreach has already contributed significantly towards the UK's wider Counter Proliferation objectives. We have: helped to reinforce Hong Kong's export controls; assisted in the development of export control legislation in a number of Eastern European countries; promoted the EU Code of Conduct outside the current EU membership, such that several countries now ask our advice as to whether a proposed export should be permitted; established good export control links with South Africa, which have benefited to our wider Counter Proliferation relationship with that country; and encouraged Chinese export control reforms.

Of course, UK technical assistance alone is not able to transform a poorly functioning export control system into an effective one. However, if the country in question has the political will to develop an effective system, and can devote the necessary resources to this activity, support and advice from countries such as the UK, who have experience of operating a rigorous export control regime, can be valuable.

7. STRATEGIC EXPORT POLICY TOWARDS LIBYA—THE GOVERNMENT'S POLICY ON REVIEWING THE EU ARMS EMBARGO AND ON THE EXPORT OF STRATEGIC GOODS AND TECHNOLOGIES TO LIBYA

The EU arms embargo on Libya was lifted at the 11 October GAERC (General Affairs and External Relations Council). The Government now considers all export licence applications to Libya on a case-by-case basis against the Consolidated Criteria.

8. IMPLEMENTATION OF NEW CONTROLS UNDER THE EXPORT CONTROL ACT—DEVELOPMENTS SINCE MAY 2004, WITH COMMENT ON HOW THE GOVERNMENT HAS ADJUSTED IMPLEMENTATION OF THE CONTROLS IN THE LIGHT OF PRACTICAL EXPERIENCE, SUCH AS THE FARNBOROUGH AIR SHOW

Licensing under the new controls and against Regulatory, Impact Assessment (RIA) Estimates

This table covers applications received/registrations from 1st Nov 2003 (ie the beginning of the six month implementation period) to end of August 2004.

<i>Licence</i>	<i>RIA (forecast for 12 month period)</i>	<i>Actual Nos applications/registrations received to 31 August 2004</i>
OGL Registrations		
OGTCL	550	239
Miltech OGEL	20–40	371
“Individual Use” OGEL	170–200	239
“Modcons” OGEL	Not estimated	128
Standard Individual Licence applications		
SITCL	900–1,500	81 (66 finalised at 31 August)
SIEL (Miltech ITT)	800–900	323*
WMD (new “end-use” controls)	very small	2
Open Individual Licence applications		
OITCL	Not estimated	68 (54 finalised at 31 August)
OIEL (Miltech ITT)	Not estimated	129*
WMD (new “end-use” controls)	Not estimated	15 (12 finalised at 31 August)

Processing times of licences introduced under the new controls

This table covers the period 1 November 2003 to end August 2004.

<i>Licence Group</i>	<i>Licence</i>	<i>% completed within 20 or 60 working day target as relevant</i>
Standard Individual Licence applications	SITCL	64% **
	SIEL (Miltech ITT)	c79%***
	WMD (new “end use” controls)	0% (only 2 applications received however)
Open Individual Licence applications	OITCL	87%
	OIEL (Miltech ITT)	c66%***
	WMD (new “end-use” controls)	92%

* These figures are based on licences issued for line items with an ML22 rating (for both physical and electronic transfers of technology)

** This represents a decrease in performance caused by events unrelated to the introduction of the new controls and outside of HMG’s control, that is, the UNSCR on Iraq and the need to delay processing until its finalisation.

*** These figures are (i) approximate as we do not differentiate between licences issued for physical and electronic transfers and (ii) based on licences issued for line items with an ML22 rating.

The Export Control Organisation (ECO) has not received as many licence applications as predicted in the RIA revised after the public consultation (numbers are more in line with pre-consultation estimates). As the table above shows, the great majority of applications that have been received have been processed swiftly. The introduction of the new controls has not had an adverse impact on overall licensing performance, with performance against Government targets improving this year, to-date, on last year’s performance figures. Also, we have not received negative feedback from licence applicants.

Compliance visits have generally found that companies have prepared well for the new controls, and, importantly, that only a small number appear not to have sufficient awareness of them or satisfactory compliance procedures in place. This is now being addressed. Awareness visits to individual companies have confirmed this, showing successful training for and implementation of the new controls. A similar picture has emerged from feedback at regional awareness seminars where knowledge of the new control environment has been high. We intend to continue with our comprehensive awareness and wider outreach programme to ensure that this is sustained.

The main industry requests for clarification have related to the WMD end-use controls and HMG has been working with those affected to explain in detail the practical effect of the new legislation, to iron out any uncertainties. The main residual concern raised by industry since the new controls completed their coming into force in May, was regarding the application of the WMD end-use control to those providing technical support to the UK MOD and troops on deployment. This has been addressed by the introduction of two new OGELs; the Military Goods: UK Forces deployed in non-embargoed destinations OGEL and the Military Goods: UK Forces deployed in Embargoed Destinations OGEL. The DTI guidance is being updated.

Industry has previously expressed concerns about conflicting advice from DTI on the new controls. ECO strives to give exporters a consistent message, within the confines of a case-by-case approach to licence applications. We take seriously any suggestions of inconsistent generic advice. So far as all the instances brought to our attention have in fact related to slightly different questions/situations.

The implementation of the Act was discussed at the October Export Control Advisory Committee (set up to create a structured dialogue between the Government and exporters), and at the October Defence Market Access Forum, and no substantive concerns were raised by industry.

It is too soon to draw any firm conclusions but so far the new controls appear to be working as intended and at the same time do not appear to have caused any major difficulties for either industry or government. HMG will continue working with industry to address any further issues which arise, and will also continue to closely monitor the application of the controls.

Farnborough International Air Show

In respect specifically of Farnborough, it would appear that, as a result of extensive awareness programmes and efficient licence processing, no major problems were encountered by the organisers, exhibitors or Government. We propose to adopt a similar approach to future trade fairs.

ECO took steps to ensure that the organisers of and exhibitors at the Farnborough exhibition were aware of the UK's export control regime and its impact on them. HMG worked with the exhibition organisers, the Society of British Aerospace Companies (SBAC) in the run up to Farnborough on UK licensing requirements and made a special guidance note on the relevant UK export and trade controls available to the Farnborough organisers for dissemination to exhibitors. We also put this guidance on the website alongside the extensive guidance on the new controls. ECO provided awareness material for exhibitors on the UKTI stand at the exhibition and briefing on the new controls for UKTI and DTI staff who staffed the UKTI stand.

The majority of licensable trade activities involving controlled goods that took place at Farnborough were covered by the Open General Trade Control Licence (OGTCL). Overseas exhibitors and visitors were eligible to register to use the OGTCL and in excess of 20 overseas companies exhibiting at Farnborough did so. Furthermore, overseas parent companies registered on behalf of themselves and in many cases several subsidiary companies. Allowing overseas companies to register to use the OGTCL negated the need for these companies to apply for individual licences and the resource implications attached to processing these licence applications. We intend to retain this approach for future trade fairs.

As expected, there were some instances where exhibitors and visitors were planning to undertake licensable activities and were unable to use the OGTCL, for example for the promoting and marketing of long-range missiles and UAVs. The ECO ensured that all Farnborough related applications and all applications for Standard Individual Trade Control Licences (SITCLs) and Open Individual Trade Control Licences (14 in total) received before and during Farnborough were finalised in time.

ECO established a dedicated helpline to provide advice to visitors to and exhibitors at Farnborough and we intend to follow a similar practice for future trade fairs.

9. PROGRESS TOWARDS A COUNCIL REGULATION ON TRADE IN EQUIPMENT RELATED TO TORTURE AND CAPITAL PUNISHMENT

Discussions at official level in Brussels continue on this subject. However, given that the European Commission revised proposal of 8 June 2004 introduced many new elements it is unlikely that the Regulation will be adopted during 2004.

10. PROGRESS ON IMPLEMENTATION OF THE EU'S "ACTION PLAN FOR THE IMPLEMENTATION OF THE BASIC PRINCIPLES FOR AN EU STRATEGY AGAINST PROLIFERATION OF WEAPONS OF MASS DESTRUCTION" OF JUNE 2003

An EU Strategy against the Proliferation of Weapons of Mass Destruction was agreed by the European Council in December 2003. The Strategy, and its associated Action Plan (agreed in June 2003) included both measures for immediate action, and measures for the coming months and the longer term.

Progress in implementing the Strategy and Action Plan has been good in a number of areas. For example, the Peer Reviews of Member State' export control systems have been completed. The Task Force overseeing the Peer Review process is currently working on an action-oriented final report. The Report is likely to highlight best practices and identify areas where implementation of Dual-Use Items Regulation could be improved.

A model non-proliferation clause for all mixed agreements with third countries was agreed in November 2003. This is an important example of the EU mainstreaming Counter Proliferation policies into its wider relations with third countries. This approach has been tested to the full in the protracted negotiation of the EU-Syria Association agreement.

Other positive developments over the past year include agreeing a Common Position in favour of the universalisation of multilateral agreements; the continuation of the EU programme to assist the Former Soviet Union in disposing of WMD stocks; the promotion of a catch-all clause in various export control regimes, a series of outreach activities and EU endorsement of the Proliferation Security Initiative (PSI).

The Strategy and its associated Action Plan were agreed as living documents. As such they must be responsive to changing priorities, such as, for example, the need to take action to encourage all states to fully implement the recently adopted United Nations Security Council Resolution 1540 and to back that up with the offer of technical assistance.

11. COMMENT ON REPORT "US WEAPONS TECHNOLOGY AT RISK" OF THE US HOUSE OF REPRESENTATIVES COMMITTEE ON INTERNATIONAL RELATIONS OF 1 MAY 2004, AND SPECIFICALLY ON ITS FINDINGS RELATING TO THE BRITISH EXPORT CONTROL SYSTEM

12. PROGRESS TOWARDS A BRITISH WAIVER FROM THE US ITAR REGULATIONS

The terms of a United Kingdom waiver from the US International Traffic in Arms Regulations were agreed with the US Administration in May 2003. The waiver would apply to the export to the UK of certain unclassified defence items and technical data. New legislation as required by the US Arms Export Controls Act and the Security Assistance Act 2000 was proposed in the first Session of the 108th Congress, but was not enacted. The House International Relations Committee continues to have difficulties with the agreed waiver and published a report on the subject, as mentioned in the Committee's question 11. Enabling provisions were again deleted from the Defense Authorizations Bill in this Session. We shall discuss the US Administration the way forward on ITAR and licensing issues in the light of the Congressional language.

SECTION B: SPECIFIC LICENSING DECISIONS—2003, AND FIRST QUARTER 2004

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. In the case of refusals and revocations, it should also include the reason for refusal or revocation.

Where the Committees have requested information on a single licence application, it is open to the Government to provide information on other licence applications to the same country as well, if the Government would like to do so. A possible alternative to the past practice of laboriously compiling this information for the Committees might be to provide the Committees in confidence with the relevant case documentation, such as application forms and end-user undertakings.

13. ALL REFUSALS AND REVOCATIONS DURING 2003

14. INCORPORATION SIELs ISSUED DURING 2003 AND THE FIRST QUARTER OF 2004 FOR THE FOLLOWING DESTINATIONS (COUNTRIES WHICH HAVE NOT ALIGNED THEMSELVES WITH THE PRINCIPLES OF THE EU CODE OF CONDUCT).

For incorporation SIELs, please also provide a description of the finished equipment in which the exports were intended for incorporation, and on the eventual end users of this finished equipment, where this is known, and on any end-use conditions attached to the export or use of the finished equipment.

- (a) Australia,
- (b) Bolivia,
- (c) Brazil,
- (d) Burma,
- (e) China,
- (f) Hong Kong,
- (g) India,
- (h) Indonesia,
- (i) Iraq,
- (j) Israel,
- (k) Jordan,
- (l) South Korea,
- (m) Pakistan,
- (n) Singapore,
- (o) South Africa,
- (p) Switzerland,
- (q) Turkey,
- (r) USA.

15. SPECIFIC LICENCES ISSUED DURING 2003 AS FOLLOWS:

- (a) Aruba: 10 submachine guns
- (b) Australia: OIEL No 29. (This OIEL appears to allow the export in unlimited quantities of any equipment on the entire military list.)
- (c) Fiji: equipment including 540 assault rifles and 101 general purpose machine guns
- (d) Iraq: all licences
- (e) Morocco: 200 submachine guns
- (f) Turkey: OIEL No 30 for smoke hand grenades etc. OIEL No 32 for wide range of components
- (g) Yemen: SIELs for small arms ammunition and weapons. sights
- (h) Handcuffs: Barbados, Hong Kong, Malaysia and United Arab Emirates (and to Hong Kong in the first quarter of 2004). The Committees assume that these licences were for oversized handcuffs ostensibly for use as handcuffs on prisoners with large wrists. What steps did the Government take before granting these licences to ascertain whether the handcuffs might be used as leg-irons or shackles?
- (i) Surface to air missiles: in 2003, Indonesia: OIEL No 9, Malaysia: OIEL No 69, South Africa SIELs; and in first quarter 2004, Oman: OIEL No 8, Singapore: OIEL No 7, Turkey: OIEL No 8.

16. SPECIFIC LICENCES ISSUED DURING THE FIRST QUARTER OF 2004, AS FOLLOWS:

- (a) Angola: Armoured all-wheel drive vehicles
- (b) Guyana: 40 submachine guns
- (c) India: OIEL No 8—"Goods as specified by the following entries of the EG(C)O 1994(as amended): ML4b, MLS, ML10 b,d,e,f,g,h, ML11, ML14, ML15, ML16, ML171, ML18, PL5017, ML21a & ML22".

- (d) Israel: SIELs: Components for bombs; production equipment for optical target tracking equipment; weapon control systems. OIEL No 4: “components for surface to surface missile launching vehicles, components for armoured fighting vehicles”
- (e) Maldives: an explanation for the refusal of a licence
- (f) Qatar: 69 submachine guns
- (g) USA: 20,000 semi-automatic pistols
- (h) Uruguay: 763 semi-automatic pistols
- (i) Venezuela: Weapon day and night sights
- (j) OIELs granted for the export of body armour, components for body armour, bomb suits, military helmets, anti riot shields, ballistic shields, to countries including: Antigua and Barbuda, Bahamas, Barbados, Bermuda, Bulgaria, Sri Lanka, St Vincent, UAE.
- (j) OIELs for wide-ranging equipment granted to Australia (No 13), Brazil (No 9), Canada (No 14), Japan (No 11), Poland (No 10), Singapore (No 10), Turkey (No 11), USA (No 27).

SECTION C: OTHER GOVERNMENT ACTIVITY

17. ACTION BY CUSTOMS AND EXCISE SINCE JANUARY 2004

The Committee would be grateful for details of any prosecutions relating to breaches of export controls: identifying court references, including the name of the judge and court, the identity of the defendant (if disclosable), the nature and details of the charges, the fine imposed, the type and quantity of goods involved, and the destination of the goods. The Committee would be grateful to know the number of cases since January 2004 that have been referred to specialist investigators, and the type and quantity of goods involved. The Committee would also appreciate an indication of the quantity of small arms and light weapons intended for export stopped by Customs and Excise since January 2004.

Prosecution case

There have been no prosecutions in this period, but one case is expected to come before the courts in November.

Cases adopted by specialist investigators

Five new cases have been adopted by specialist investigators during the period in question. Customs cannot comment on the detail of these cases which are either ongoing or in the court system. It their policy not to comment on cases where no formal charges have been brought, as to do so could prejudice ongoing enquiries or future criminal proceedings.

Small arms and light weapons

Customs stopped a total of 81 firearms, 12 firearms parts, 286 rounds of ammunition 150 hand fired para illuminating rockets, 100 stun/training grenades and 700 thunderflashes.

18. DETAILS OF PROMOTION ACTIVITIES BY MINISTERS FOR SPECIFIC DEFENCE EXPORTS SINCE OCTOBER 2003

Prime Minister

Czech Republic:

The Prime Minister spoke to Vladimir Spidla, the then Czech Prime Minister, in the margins of the European Council on 13 December 2003, expressing support for the Anglo-Swedish aircraft Gripen.

FCO Ministers

Brazil:

The Foreign Secretary expressed his support for the Gripen in his March 2004 meeting with the Brazilian Foreign Minister, Celso Amorim

Singapore:

The Foreign Secretary's met with the Singapore Foreign Minister Jayakumar on 15 April 2004, and expressed HMG support for Typhoon (Eurofighter)

MOD Ministers

Answer to follow.

19. DETAILS OF SURPLUS MILITARY EQUIPMENT OFFERED FOR SALE BY THE GOVERNMENT SINCE JANUARY 2003, AND OF THE PURCHASERS OF THIS EQUIPMENT

Military equipment that is surplus to the requirements of HM Forces may be offered for sale by the Government through the Ministry of Defence Disposal Services Agency (DSA). Information on the more significant export sales of military equipment is set out in the annual Report and Accounts of the DSA which is available on their website www.dsa.gov.uk. A central record of purchasers of military equipment is not available as a proportion of all sales are handled through firms on contract to the Agency.

Military equipment sold to overseas purchasers requires a licence to export and this information is recorded against the buyer country in the quarterly report of Export Licensing Statistics. The second quarterly report will be displayed on the websites of the Department of Trade and Industry and Foreign and Commonwealth Office shortly.

Equipment sold government-to-government, including surplus equipment, is listed against buyer country in a table of government-to-government transfers in the Annual Report on Strategic Export Controls. The next Annual Report will be published in mid-2005

20. THE ANNUAL REPORT STATES THAT "IT IS NOT POSSIBLE TO BREAK DOWN EXPORTS COVERED BY AN OIEL AS TO IDENTIFY INCORPORATION CASES" (P 12). PLEASE EXPLAIN WHY THIS IS THE CASE

There is currently no way to identify incorporation cases from our IT system without manually screening all the applications at the time of writing the Report. In addition, the nature of OIELs is such that they do not necessarily specify end-users in the permitted destinations; HMG nonetheless satisfies itself of the integrity of the exporter and assesses the full-range of risks associated with exporting the goods to the various destinations before issuing such licences. This includes incorporation where relevant.

September 2004

Appendix 4: Letter to the Chairman from the Secretary of State for Foreign and Commonwealth Affairs

LIAISON WITH THE QUADRIPARTITE COMMITTEE

Thank you for your letter of 25 October.

Your first point is well taken. As you know, agreeing a response to any enquiry directed to four departments is considerably more time-consuming than, for example, replying to the Foreign Affairs Committee alone. There was also a particularly large amount of licensing information to consider, but I accept that it is unfortunate that we were unable to supply the declassified data in time to meet the print deadlines for your report of 18 May. We have now published this data on the FCO's website, in order to be as open as possible.

On your second point, we did strive to meet the deadline officials agreed with your clerk to reply to your extensive and detailed report, and regret that this was not possible. With the resources available in this area, and the need for Ministers in four departments to comment on and clear the reply, our response was sent to the Committee two days before your meeting. I am sorry if this did not allow sufficient time for it to be

considered fully. Nevertheless, I hope you will agree that the answers (particularly the lengthy response to your conclusion 48) genuinely respond to all of the points raised, and show the seriousness with which Government takes the Committee's views on strategic export controls.

Jack Straw

November 2004

Appendix 5: Letter to the Chairman from the Secretary of State for Trade and Industry

Thank you for your letter of 25 October 2004 on behalf of the Quadripartite Select Committee regarding the issue of prior Parliamentary scrutiny of export licence applications.

The Government has set out its position on several occasions, notably in our Command Paper responses of July 2000 (Cm 4799), December 2000 (Cm 4872), July 2001 (Cm 5141) and October 2002 (Cm 5629). I would draw your attention in particular to what was said in our July 2001 Command Paper response, Cm 5141. The Government's further consideration of the issues prior to my 29 June letter did not lead to any different conclusions. In summary the Government considers it would be unacceptable to blur the line between scrutiny by Parliament of the Government's actions on the one hand, and participation by the Committee in the decision-making process itself on the other; and furthermore, any meaningful involvement by the Committee in the decision-making process would inevitably give rise to delay and call for additional resources.

As the Committee is aware, we concluded instead that more could be done to achieve greater accountability and transparency, by releasing on a quarterly basis the information on export licences which was previously released annually in the Annual Report on Strategic Export Controls. This will provide the Committee with licensing data nearer to the time the decisions are taken. Furthermore, alongside these Quarterly Reports, we provide the Committee with confidential report containing lists of extant OIELs and enhanced information on refusal decisions. These positive steps should enhance scrutiny of export licensing in line with the Government's commitment to greater transparency.

I am copying this letter to Jack Straw, Geoff Hoon and Hilary Benn.

Patricia Hewitt

November 2004

Appendix 6: Memorandum from the UK Working Group on Arms

The proliferation of arms is fuelling conflict, facilitating human rights abuses and violent crime, undermining development, threatening governance and increasing insecurity across the world. Most of the world's largest producers and exporters of arms are members of either the EU or the G8 or both. The negotiation, by States, of a legally-binding international Arms Trade Treaty would represent a major step forward toward curbing the proliferation and misuse of arms.

Complimentary measures are also required to regulate illicit arms trafficking. Arms brokers, for example, operating worldwide, play a major role in supplying weapons to conflict-zones. A succession of UN reports into sanctions-busting have highlighted the role of these middle-men who often buy weapons cheaply in Eastern Europe and organise their transfer to Africa. States must also take action to tackle other factors facilitating the trafficking of arms, including the lack of regulation and control over the air transport sector.

The proposals set out below are specifically focused on practical measures for action that the UK Government can promote during its Presidencies of both the G8 and EU in 2005. It was during the UK's last EU Presidency that the European Code of Conduct on Arms Exports was initiated. In 2005, the UK is in a unique position to strengthen its commitment to help reduce arms availability and combat armed violence by:

- (a) Strengthening legal controls on arms exports through wider support for the ATT
- (b) Tackling arms brokering and trafficking.
- (c) Building capacity to address the availability and misuse of weapons

THE G8

While the G8's implementation capacity is limited by the fact it does not have a secretariat, it does have a key leadership role in terms of developing norms and building political will. It has special significance with regard to controlling arms transfers, as it brings together most of the world's biggest arms exporting countries. It also has an important link to African countries now through the New Partnership for African Development (NEPAD). Leadership of the G8 throughout 2005, therefore, provides the UK Government with an excellent opportunity to advance the international arms transfer control agenda.

The G8 has previously issued statements on arms control, specifically around the proliferation of small arms and light weapons. In July 2000, the G8 Foreign Ministers issued the following statement:

“The G8 therefore strongly supports national, regional and international efforts to ensure that transfers of small arms are carried out in a responsible and legal fashion . . . The G8 will not authorise the export of small arms if there is a clear risk that these might be used for repression or aggression against another country.”¹

THE UK GOVERNMENT SHOULD WORK WITH ITS G8 PARTNERS TO:

Introduce international legal controls on arms exports

- Support the establishment of an Arms Trade Treaty. The UK Government has now signalled its explicit support for an international Arms Trade Treaty (ATT), and expressed its intention to “start work soon with international partners . . . to build support for an International Arms Trade Treaty”.² The Commission for Africa, which was launched by the UK Prime Minister in February 2004 with the intention that it should generate action for a strong and prosperous Africa, made explicit reference in its Consultation Document of November 2004 to the need to “[promote] an International Arms Trade Treaty to control small arms and light weapons.”³ Many governments and NGOs are now urging the 2006 UN Small Arms Review Conference to mandate the negotiation of an ATT, based on states’ existing responsibilities under international law. The UK Government should seek to persuade G8 leaders to state their support for such a process within the context of a G8 communiqué, and encourage members of the G8 to assist other states’ efforts to improve export controls at the national and regional levels (see below). At a minimum, the UK should ensure that the G8 communiqué endorses the principles of the ATT, namely that controls over the supply of arms should be based upon states existing obligations under international law. The UK should hold bilateral meetings with G8 members to seek further support for the ATT. France, for example, has expressed a willingness to introduce arms export control issues into the G8 process and recent discussions with French NGOs suggest that the French Government is warm to the idea of an ATT. The UK could also engage in bilateral diplomacy to break down opposition from potentially hostile G8 members.

Tackle international arms brokering and trafficking

Arms brokers from or operating in G8 countries play a major role in supplying weapons to conflict-zones.

- *Push for an international agreement on arms brokering.* Governments agreed in the UN Programme of Action to “consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons”. Yet most countries still do not have controls on arms brokers, and most states seem unwilling to act on international controls on brokering until the marking and tracing of small arms has been addressed by the UN. Controlling arms brokering is already part of the G8 Action Plan for Africa. An agreement on extra-territorial controls on arms brokers during the UK G8 Presidency would act as a stepping stone to the establishment of an international legally-binding instrument, and would be a welcome signal to the rest of the international community that arms brokering should be treated as a priority. The US, Belgium, Estonia and Finland all have full extra-territorial controls, while arms brokering laws in Poland, Germany, France, the Netherlands, Sweden and the UK all have an extra-territorial component. An agreement on comprehensive extra-territorial controls amongst all G8 countries is an important target for next year’s UK Presidency.
- *Set up a registration scheme for arms brokers and transportation agents.* To operate legally, arms brokers and transportation agents should be required to register. Brokering companies and transportation agents that fail to register but continue to operate should be prosecuted. The G8 governments should establish (and exchange information on) white lists and black lists of arms brokers. The G8 should also press the UN Sanctions committee to publish, update and maintain a list of brokers, companies and individuals, including transport and logistics companies that have been identified as violating arms embargoes. G8 members should also undertake not to contract transportation and logistics companies that have been implicated in arms trafficking. Recent newspaper reports have revealed that both the US and UK Governments have recently used air transport companies which have been reportedly involved in arms trafficking.⁴

¹ G8 Miyazaki Initiatives For Conflict Prevention.

² “Delivering progressive values to the wider world”, speech by Jack Straw, Foreign Secretary, Labour Party Annual Conference, Brighton Centre, 30 September 2004, <http://www.labour.org.uk/ac2004news?ux—news—id=ac04js>.

³ Consultation Document, Commission for Africa, November 2004, p 9.

⁴ The Evening Standard reported in August 2004 that the UK Government was using a Libyan-based company Buraq Air for aid flights to Darfur, a company that has been named in a UN Report documenting sanctions busting arms deliveries to Liberia. In May 2004, the FT reported that the US Government had contracted a transport company linked to notorious arms trafficker Victor Bout to support its operations in Iraq.

— *Agree and implement international standards over the shipping and logistics of arms transfers.*

It is clear from the ongoing glut of arms in most of the world's "trouble spots" that regulations and/or their implementation over the transport of arms are inadequate. The air-transport sector has emerged as a particular problem area in need of urgent international attention. Lax regulation or control over aircraft registration and ownership; flight planning processes; shipping documentation; inspections at transit and refuelling stops; maintenance and safety checks and insurance services has facilitated prolific arms trafficking to the world's conflict zones in recent years. The UK Government should consider the merits of a range of policy options to deal with this problem, for example through setting up a joint Wassenaar Arrangement and International Civil Aviation Organisation (ICAO) working group mandated to develop best practice guidelines and documentation for the transport of military goods by air. G8 governments should also commit resources to train customs officers, particularly in known transit points, to check shipping and flight documentation. Resources should also be made available to extend Air Traffic Control, GPS and tracking systems for all commercial aircraft.

Improve controls on Man-Portable Air Defence Systems (MANPADS). The threat from the proliferation of MANPADS has already been identified in several fora including the Wassenaar Arrangement and the OSCE. Governments are acutely aware of the proliferation risks associated with these weapon systems, particularly in relation to the "war on terrorism". G8 leaders should commit themselves to legally-binding international controls over the trade and manufacture of MANPADS, including the use of new technologies to prevent their unauthorised use. Consistent with ongoing negotiations for an international Agreement on Marking and Tracing Illicit Small Arms, every MANPAD system and missile should indicate, at a minimum, the manufacturer, the country of manufacture, a unique serial number, and the year of its production. States should also begin to respond to tracing requests as quickly as possible.

Provide for effective control over Licensed Production Overseas (LPO). The recent globalisation of the production of arms is attributable at least in part to Licensed Production agreements. LPO presents particular challenges to the control of conventional arms, as the proliferation of production facilities means that future control is made far more difficult. The spread of technology and production know-how, and the very real proliferation challenges this presents, has largely been ignored by governments. Support for an international Arms Trade Treaty would help control proliferation from LPO facilities, but G8 governments should also commit to pay particular attention in their export control regimes to the dangers inherent in LPO, ideally through the requirement that all LPO agreements should be licensed. This is also relevant for EU member states, where recent examples have shown how LPO has effectively allowed EU arms exports to undermine the EU Code of Conduct.

EU

The EU is an ideal institution within which to strengthen arms export controls. The EU Code of Conduct on Arms Exports is the most effective and dynamic multilateral export control regime so far in existence; through the carrot of possible future membership the EU can wield considerable influence over a number of Eastern European states widely regarded as a main source for arms supplies into conflict zones; and it has strong links with many countries that are suffering from an unwelcome proliferation of arms in society, eg in Africa.

THE UK GOVERNMENT SHOULD WORK WITH OTHER EU MEMBER STATES TO:

Strengthen legal controls on EU arms exports

- *Strengthen the EU Code of Conduct.* The EU Code has been in place now for more than six years, yet it has not had the anticipated impact on member states' export policies. Many of the criteria are ambiguous and provide too much scope for national discretion. This is likely to become a greater problem in an EU of 25 member states. Yet the current review of the EU Code, which is approaching completion, appears to have done little to tighten the Code criteria. There is an urgent need for member states to give much greater clarity to how the criteria should be interpreted. In 2004, the UK Government led a process to elaborate more sophisticated guidelines for one of the Code criteria (number 8). Following on from this welcome initiative, the Government should now use its Presidency to set in train a process to carry out similar elaboration for the other seven criteria. In this respect, a focus on states' existing responsibilities under International Humanitarian Law (IHL) would be particularly useful.
- *Agree common extra-territorial controls on arms brokering.* The UK government has taken action to control the activities of arms brokers operating from the UK by introducing the Export Control Act. However, it is still possible for a UK broker operating overseas to transfer military equipment such as small arms or tanks to countries such as Rwanda and Uganda without needing a licence from the UK Government. The EU has agreed a Common Position on controlling arms brokers (likely to be incorporated into the Code itself as part of the current review). Although the Common

Position ‘encourages’ states to introduce extra-territorial controls, it does not require it. The UK Government should reconsider its position on imposing extra-territorial controls on arms brokers, and push member states to make such a level of control mandatory.

- *Introduce a “presumption of denial” of arms exports to countries that EU member states class as “at risk of instability”.* This presumption can be overridden if the recipient government can demonstrate a legitimate defence requirement for the equipment in question and that it poses no problem under any of the export criteria. However, such a presumption would shift the onus of proof, making it incumbent on the supplier Government to demonstrate why this export is necessary, given the concerns that it already has about stability of the recipient country.

WORKING IN OTHER REGIONS

There are significant quantities of arms already in circulation worldwide that are recycled from conflict. Both the EU and G8 should help build local capacity to combat the availability and misuse of weapons to ensure that progress is sustainable.

In addition, if the above recommendations relating to international agreements to control arms transfers are to have a realistic prospect of success it is crucial that as wide a range of states as possible make such a commitment. Indeed, any attempt to internationalise arms transfer controls that comes solely from the EU or the established Northern powers could be counter-productive, as there is likely to be resistance from states who perceive that such controls may be discriminatory. However, there is already an acknowledgement in many parts of the world that unrestricted flows of arms contribute to human rights abuses and play havoc with peace, security and development, and a number of measures are underway to address this problem. In Africa, for example, the ECOWAS Moratorium on the Importation, Exportation, and Manufacture of Light Weapons, seeks to prevent unwelcome imports of small arms into West Africa, while the Nairobi Protocol is aimed at combating the misuse and proliferation of small arms in the Great Lakes region and the Horn of Africa.

The UK should be encouraging and supporting these efforts from other regions to improve national and regional export control systems, not only for their own sake but also as a means toward the agreement of an international instrument. Regional agreements are important stepping stones in the process toward international agreement as they help develop norms and codify existing responsibilities. Progress at a regional level would greatly legitimise efforts to establish an ATT.

THE UK GOVERNMENT SHOULD WORK WITH ITS G8 AND EU PARTNERS TO:

Build capacity to control the supply and address the availability and misuse of weapons

- *Establish National Focal Points and develop National Action Plans.* Governments from around the world have committed to establishing inter-departmental committees (known as National Commissions or Focal Points) to coordinate action against small arms. A number of governments, for example in Africa, have now done this with good result but many have yet to act. Once these committees are established the priority is to assess the small arms problem and develop a National Action Plan (NAP) to address it. These plans cover a wide range of measures including, amongst others, legislative control, weapons collection, development and community safety initiatives aimed at reducing demand and capacity building of state institutions and civil society organisations. The governments of Botswana, Kenya, Namibia, Tanzania and Uganda have all agreed NAPs. Countries such as Ethiopia and Sudan have indicated their interest in developing NAPs, but will require external support.
- *Strengthen police and law enforcement capacity.* In many countries the capacity of governments to implement controls is weak. Developing this capacity, ensuring the police are responsive to local needs and building trust between the police and local communities are critical factors in addressing the problem of armed violence and insecurity. EU and G8 governments should support the development of local and regional initiatives for civilian crisis management, such as the African Union Peace Support Operations Facility, which plays a critical role in intervening in crisis situations. EU and G8 governments should also support training programmes, encourage cross-border cooperation and second staff to help build the capacity of national law enforcement institutions and oversight bodies. All governments and police authorities should promote, publicise, incorporate in law and practice UN standards for law enforcement officials including the UN Code of Conduct for Law Enforcement Officers and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- *Strengthen the role of civil society.* The need for governments to work in partnership with civil society to address the small arms problem has been agreed in the UN Programme of Action. Non-governmental and community-based organisations have a significant role to play in implementing agreements and raising public awareness. They also have an important watchdog role in monitoring implementation by governments, as do the media and parliamentarians. However, the capacity of civil society to play these roles, and their knowledge of small arms issues is often very

limited. EU and G8 countries should support, promote and finance training programmes to increase the capacity of civil society organisations, and also to encourage governments to be willing to work in partnership with such groups and be prepared to tolerate their dissent.

- *Support regional initiatives.* In a number of areas affected by arms proliferation, initiatives to address the problem are underway at the regional level. In some cases, as well as considering demand-side problems, states are also addressing problems of supply. For example, the member states of the Nairobi Protocol⁵ are currently developing a set of guidelines which will set out minimum standards on the import, export and transit of arms. These guidelines will inter alia elaborate a set of criteria on which export decisions will be made. Once agreed, the guidelines will be used by the member states of the Nairobi Protocol to harmonise national transfer controls across the region. G8 and EU member states should be encouraged to support this and similar processes elsewhere not only as worthy initiatives in their own right, but also as a means of helping to build-up other regional blocs, which can then lead efforts to agree international controls on arms transfers. Wherever possible, this support should be advancing arguments in favour of basing export controls on existing obligations under international law, through the use of language consistent with the principles of the ATT.

December 2004

Appendix 7: Memorandum from the Export Group for Aerospace and Defence

INDUSTRY'S ASSESSMENT OF HOW THE NEW LEGISLATION IS WORKING IN PRACTICE (ESPECIALLY ON THE INTANGIBLE TRANSFER OF TECHNOLOGY SIDE)

The feedback that we have at present from Member companies is that, for the vast majority, there have been few problems encountered, and that the staff at the Export Control Organisation are to be commended for the highly constructive way in which they have sought to implement and enforce the new regulations, working with Industry on compliance issues and organizing a series of workshops around the country to help to spread awareness of export control regulations and how to comply with them. However, there are still some glaring uncertainties in a number of the more wide-ranging aspects of the new regulations (eg on WMD for the transfer of technology and technical assistance, and restricted goods/embargoed destinations under the trade controls), and discussions between Industry and the ECO are continuing constructively to try to iron out these continuing uncertainties on a range of issues. However, we would say that some of the DTI interpretations issued could be charitably described as being so tortuous in their logic and arguments that Industry's own legal experts have had to query the actual legality of the guidance that they contain. In the absence of certainty, one cannot comply with, only try to interpret, the law, which puts smaller companies with more limited dedicated resources at a considerable disadvantage, and at grave risk of inadvertent infringement of the regulations.

It is not just Industry which is confronted by the uncertainties arising from the immensely wide-ranging scope of some of the more extensive aspects of the new regulations, but also HMG, itself, and we know, for instance, of one example in which a British Training Team based in an allied nation overseas has felt constrained from discussing the operational use of an item of Chemical, Biological, Radiological and Nuclear (CBRN) technology with their hosts because of the possibility that this might result in the relevant supplier company falling in breach of the technical assistance provisions of the new Act.

One area in which there has been some more critical feedback is with regard to the apparent lack of any clear, consistent and accepted understanding in the interpretation of the issue of record keeping for intangibles between the staff of the ECO's Compliance Unit, who carry out the compliance audits of companies. There does appear to be some inconsistency in the understanding of what the DTI meant by its proposed "functional approach" to this matter, as described in its own supplementary guidance documents. As a result, in some cases, there appear to be conflicts of understanding between officials and with the guidance which the DTI has issued as to what records companies need to keep in order to demonstrate compliance.

Whilst the numbers of actual licence applications under the new regulations does not appear to be as great as many in Industry had feared would be the case, we believe that this is because:

- The portfolio and scope of the OGEL system has been noticeably increased;
- For some activities it is now stated by DTI that companies need 680s, rather than export licences (although this advice would appear to be in conflict with Articles 3.3, 4.5 and 5.2 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, which clearly state that licences are required).

⁵ The states party to the Nairobi Protocol are Burundi, Djibouti, DR Congo, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda.

One other additional area of concern that we have regards the guidance being given to companies by DTI on the provision of technical assistance (see: <http://www.dti.gov.uk/export.control/publications/sgnwmdeca2003.pdf>) where it states (on page 5) that “technical assistance” can only be provided where this activity relates to existing systems. We believe that this could defeat the intended legislative purpose behind the new regulations, which surely must have been to prevent undesirable persons from acquiring, deploying and using CBRN equipment/technology. This interpretation creates the potential loophole that someone can provide all the technical assistance they want to a customer perfectly legitimately provided that they provide this prior to the client actually acquiring the goods involved.

THE CHINA EMBARGO

Whilst we are sure that there is a perception that the Defence Industry must be lobbying in support of the proposed lifting of the embargo on China (as exemplified in a letter from Graham Watson MEP in the Financial Times of 10 December, in which he states: “No doubt several member states will face heavy lobbying from their industrial-military conglomerates while Beijing launches a charm offensive from the other end in support of lifting the arms embargo in place since the Tiananmen massacre of 1989”) the true situation is much more complicated than that. Sensitivities mean that it would be very difficult, and unwise, for anyone, claiming to be speaking on behalf of all or part of British Industry, to state publicly a stance one way or the other on this matter. However, we are certain that the perceived concerns of many that the lifting of the embargo could result in a flood of new business opportunities for the supply of defence equipment and technology to China are (at least as far as the UK is concerned) completely unfounded, as we are completely confident, based on the many practical experiences of our Members, that HMG’s interpretation of the EU Code of Conduct can be thoroughly relied upon to prevent any deals which would previously have been caught by the embargo from receiving licence approval after this has been lifted.

THE LIFTING OF THE LIBYA EMBARGO

Similarly, whilst we are certain that there will be considerable potential and wide-ranging requirements for the supply of export licensable material to Libya, many public perceptions concerning the lifting of the EU’s embargo on Libya are greatly oversimplified and fail to take account of the fact that all licence applications will be judged against the criteria set out in the EU Code of Conduct—thus the lifting of the embargo will not serve as the prelude to sales of anything and everything to Libya that they might require, and we are sure that there would be considerable difficulties for UK firms to obtain export licences for the more sensitive types of goods and technologies (eg weapons systems, riot control equipment, etc). Our standard advice for any UK firm considering doing business in Libya (and China) is always to seek 680 clearances beforehand, to avoid nugatory effort. The continuing US embargo on the supply of any goods or technologies on their Munitions List will also need to be borne in mind by UK firms wanting to sell equipment containing any US Munitions List content, such as components or sub-systems.

THE ITAR WAIVER

Our assessment is that any ITAR Waiver for the UK is now likely to be some way off, at best, due to continuing political opposition on Capitol Hill. The proposal contained in the FY05 Defense Authorisation Bill, passed in October 2004, for there to be introduced an expedited licensing process for the UK has yet to be described in any detail as to how this will work in practice, or what the “special circumstances” are under which this expedited process will not be used. Without this basic information we are unable to give any kind of assessment as to what benefits these proposals will create, whether they might not be so beneficial that the proposed ITAR Waiver would now be redundant, or whether this proposal is merely insubstantial window dressing.

THE GOVERNMENT’S RESPONSE TO OUR PREVIOUS EVIDENCE

Is UK Industry is being disadvantaged in China vis-à-vis our EU competitors and is the UK’s interpretation of the EU Embargo on China more strict than other EU members?

We feel, with hindsight, that perhaps it might have been more politic for us to have described the UK’s interpretation of the EU Embargo as being “exemplary”, rather than “more strict”, as we are certain that HMG could not have taken issue with that! We can provide the Committees with case studies to demonstrate the reasons why many British companies feel that a number of other EU Member States have different and more industry-friendly interpretations.

Are the German licence requirements for exhibitions as strict as the UK ones and does the German system allow the issuing of export licenses over the phone?

Whilst the Government has sought to take issue with these observations, we will be delighted to provide definitive and unequivocal evidence that the German system does, indeed, allow German companies to obtain temporary export licences for exhibitions overseas simply in the course of a telephone call, even including for the most sensitive of goods to quite sensitive regions.

Are France's NBC licensing requirements in the non-military sector as strict as the UK ones?

Again, we will be delighted to provide evidence to the Committee to support our previous comments.

Is there a lack of consistency in EU Members' control lists?

Whilst there are some discrepancies in the various EU Member States' control lists (which we have highlighted before), perhaps a more pressing inconsistency is in the various, and varied, national interpretations of what constitutes "specially designed or modified" for military use, which can result in some national regulatory bodies ruling that items are not even licensable whilst others (including our own) would rate them as being licensable and almost certainly refuse the subsequent licence applications.

We have a number of case studies reported to us by Members that we can give to back this up:

Case One: A British company was refused an export licence by DTI for the supply of a particular system to India. The Indian customer reported that a French subsidiary of a US company had picked up business associated with the supply of the same system, and then rubbed salt into the wound by gleefully remarking that they did not need an export licence from the French authorities at all. "We are definitely being penalized as a result of being British!"

Case Two: A member company has detailed the experience of an affiliate business based in another EC member state exporting goods, components of which were licensed as being military from two other member states (one of which was the UK)—thus strongly suggesting that the final goods were themselves, at the very least, modified for military use—to China for end-use by the Chinese military. The company which supplied the final goods made enquiries with its national government regulatory authorities, which concluded that the goods were "No Licence Required" and, even more bizarrely, that they were not caught by the military end-use control in EC Reg 1334/2000 because they were not military—this shows a fundamental lack of understanding of that provision. The final goods would have required a licence as military if exported from the UK, whilst conversely they will not even show up as a controlled export in the records of the member state concerned, as it was ruled that no licence was required. This serves to demonstrate both widely differing interpretations of the controls at a fundamental level and of the EU embargo on China. It reinforces the point that the UK Government interprets both much more rigidly than some other member states of the EU, resulting in disadvantage to British industry.

Lack of harmonised control mechanisms on technology have also been noted by a number of our companies.

Case Three: "We have seen absolutely no evidence of any kind of a European company controlling the release of Controlled Technology to the extent required under UK Export Control Regulations. We find that we have a real "issue" when applying the UK Export Control Law—particularly with respect to information exchange (tangibles and intangible data)—our EU and US (and other friendly nation) customers do not understand (and feel quite upset as customers) when visiting UK (or when giving our presentations to them), when we say we cannot give them immediate responses to their questions—but instead we now feel obliged to say "if you send me your request by letter with an End Use Certificate, I might get you an answer in about three to four weeks time." None of our EU customers appear constrained in this way, and cheerfully hand over documents, diagrams and drawings without demur as soon as we ask for them! We have never been asked to put our request in writing or to provide an 'end use' statement before they give us data."

Does the UK have a stricter interpretation of the EU Code of Conduct than other EU states and is there inconsistent interpretation of the EU Code of Conduct across the EU?

In response to the Government's response to the comments which we had made, one company's observation is:

"In simple terms rubbish—but is difficult to prove without name dropping other EU companies with whom we collaborate"

Case Four: "In 2002, we were approached by FIAR (now Galileo Avionica) to supply radomes for their Griffon radar to be fitted to the PRC 'Super Seven' fighter aircraft, for launch customer Pakistan Air Force. Applications were made to the relevant DESO directorates for 680 Authority to Promote in April 2002. A negative response was received in February 2003, citing Criterion 4 as grounds for refusal. In the meantime FIAR had located an alternative source in Italy who proceeded with radome qualification and supply."

Case Five: Earlier this year a British company applied for a 680 for the supply of armour tool kits to Indonesia, and was informed that the answer was “no go”. The proposed customer informed the UK company that they had been told that there would be no problems in obtaining the necessary materiel from a competitor in Belgium, instead.

Case Six: “During our last meeting I raised the issue of a French Company receiving Export Clearance for a similar product where we had been refused. We had been approached by a Danish Company to supply NBC Filters to the Pakistani Navy. This was for eight vessels, five built in Pakistan and the remainder in China. I was not hopeful for clearance!!! When I raised the question on the inquiry some months later I was informed that a French Company, SP Defence, had received approval to supply. This information came to me from the Danish but I have no reason to doubt the validity. The Pakistanis were particularly keen on our equipment, not only was it competitively priced but was technically superior to the French system.”

Case Seven: “Proof is a difficult thing to obtain. However, one can cite examples where one feels bound by HMG. On almost every occasion when we have tendered overseas and the tender has required a sample, we have to go through the export licence system. This, as you know is between 20 to 30 days long. Yet our competitors seem to be able to submit samples straight away. How can they do this? Do they have a slick export licence system? Or are they simply putting samples on carriers without an export licence? Both are difficult to prove, but I know that we are always last to provide samples, and this can not help us.”

Case Eight: “In respect of the export licence issues our experience recently shows that we find long delays in the granting of export licences for the issuing of export licences for personal body armour to be given to a major British private security company operating in Iraq. These delays, as can be appreciated, can endanger the lives of British personnel in such a hostile environment. We are all well aware of the consequences when our British soldiers did not get body armour. I find it hard to accept when a valid end user certificate is issued, and such equipment is for British personnel that such considerable delays occur endangering lives, as well as encouraging the placement of orders to other countries who can issue licences in a more prompt manner.”

Discussions with MoD (UK)

In response to HMG assurances that licensability of technical discussions with MoD(UK) would be a very rare occurrence, a panel of Industry experts was consulted, whose conclusions were:

1. There is a significant possibility a transfer will take place when two knowledgeable people have a technical discussion but a mere discussion itself will not constitute a transfer, unless a transfer does take place. Whether or not a transfer takes place is therefore a matter of fact and depends on the circumstances of each individual case. This needs to be considered in the light of whether or not what is transferred is licensable in order to determine the need for a licence. The definition of “technology” is very wide and catches just about everything.

2. In general terms, the purpose of having a “technical discussion” (or any other type of discussion for that matter) is to transfer information from one party to one or more others. It may be that there is an exchange of information and it flows both ways. A potential problem is that a discussion between two knowledgeable persons at a level that does not require a licence may move into areas where a licence is required as the exchange of information develops and is aggregated. The definition of “information” is very wide and will include views, beliefs, opinions etc as well as “hard” information such as facts, knowledge and data.

3. There is a presumption that a “technical discussion” will be between two or more “technical” people, all of which will understand what is being said and thereby allowing transfer to take place. You cannot have a “technical discussion” between, say, a technical specialist and an accountant; one will not understand the other and the discussion will fail. A licence would not be required in this instance as no technology/information would be transferred!

4. Articles 8 and 9 are silent on timing of the discussion/transfer and some of the advice given by DTI to Industry to date is irrelevant. It all depends on what is said; when it is said and the knowledge of who said it does not impact on the need to obtain a licence.

Given the above, the advice from this panel of Industry experts is that it would be prudent for companies to have a licence in place before entering into any dialogue with MoD(UK) where licensable technology may be discussed.

It should also be noted that DEFCON 126—International Collaboration, is included in all study/development type contracts. This gives MoD(UK) the right (subject to third party rights) to copy any information supplied under the contract and “issue for the purpose of promoting the establishment of an International Collaboration Agreement and for the purposes of technical oversight of an International Collaboration Agreement made”. Companies should be very careful about this because it introduces a presumption that MoD(UK) will disclose outside of the UK/EC, information supplied under a contract and for which a licence may be required. The DEFCON also contains a compulsory licensing clause, which may conflict with the requirements of the export controls regulations.

Attached, at Annex A, is a separate paper further discussing the issue of the licensing of exports or transfers to MoD(UK) in greater detail.

We really cannot understand, from a logical point of view, why there is not some kind of exemption for the supply of equipment and technology to our own Armed Forces and why, even if HMG is right that such circumstances might be quite rare (which we question), there are any circumstances in which companies should need such licences or what loophole such an exemption would create. Surely a licence is only meant to be required when there might be a threat of proliferation and the authorities might refuse to issue a licence—but under what circumstances would approval for the supply of goods or technology to our own Armed Forces ever be refused? If the answer is “none”, then what is the point and surely this whole bureaucratic requirement is merely a total, nugatory waste of everybody’s time?

Case Nine: One Member company has reported that it has developed a new CBRN technology which its legal experts have insisted that the company cannot even discuss with MoD (UK) without having to apply for a licence as, at present, they have no contract with MoD(UK) and, therefore, this is outside of the scope of the OGEL Exports or Transfers in Support of UK Government Defence Contracts.

Have the new UK regulations imposed a significantly greater record-keeping and training burden on Industry?

The simple answer is “yes”. The response of one company to the HMG’s denials of the increased burden is: “Rubbish—the new regulations are significantly increasing the paperwork burden when going overseas. Our senior management, engineers, marketing and sales, agents and representatives find the regulations difficult to understand and the lack of examples of what is and is not controlled technology disappointingly obscure. Because of the uncertainty and a natural desire not to be inadvertently caught ‘offending’ we are seeing a marked reduction in the use of lap tops overseas, with consequent detrimental impact to our efficiencies, customer relationships and long term business interests. Our management, engineers and marketing and sales think it lacks total proportionality. In imposing an over strict regime on all strategic exports UK government is in danger of missing the ones that really matter. It would have been better to concentrate on that which really worries them and we could all be able to recognize and work hard to eliminate them. The experience gained in just how little actual, practical control there can be on the totality of military exports will allow those determined to by-pass the system to do so with confidence. The system needs to be simplified.”

The three authoritative estimates that we have received to date from companies on actual costs of implementation, during the six month implementation period alone, came out at: £0.5 million, £0.5 million and £1.8 million, respectively.

Are there any examples of there being inconsistency or uncertainty in any advice that it is being given to companies by DTI

We are aware of a number of instances of this, but perhaps one of the most telling was the following:

Case Ten: This concerns a company which applied for a trade control licence for an item caught under the “restricted goods” classification. The DTI officials at first tried to reassure the applicant that no licence of any kind was needed in this case, and it took the company’s highly knowledgeable Export Control Compliance Manager’s enormous persistence and refusal to accept this ruling, that she knew was incorrect, and several phonecalls, before the DTI officials realised that they were, indeed, wrong and that a licence was needed. Of course, worryingly, a less knowledgeable company might have taken the DTI’s original verbal reassurances at face value and proceeded with the activity without a licence.

THE DTI’S COMPLIANCE ASSESSMENTS

We believe that more resources need to be put into the ECO’s Compliance Unit—the staff here are excellent, high quality, professional and highly knowledgeable, but are faced by an extremely heavy workload, which is increasing.

A GENERAL ASSESSMENT OF GOVERNMENT EFFECTIVENESS IN EXPORT CONTROLS

We do appreciate that the UK’s system is, in some aspects, better than many other nations’, although, there is still room for improvement and, naturally, for those companies who face the frustrations of having to deal with some of the less efficient aspects of it, this does not bring much solace.

One area of concern is with regard to the efficacy and user-friendliness of HM Customs & Excise. One company has reported to us the following case study, which leaves a lot to be desired:

“I was granted a temporary export licence for one item for Portugal, in support of a tender. I read the conditions of use and understood them to mean that I was to attach the export licence to the box so that HM Customs and Excise could process it when it passed through their hands. I duly informed FedEx that this parcel was export licensable goods and the licence was attached. FedEx told me to ring the customs at Stansted, as this is their despatch point, and inform them of this

parcel. What follows is the shortened version of events! This chap said that the conditions of the licence said that my local officer must process the licence and this was not him so it must be some one in Liverpool. He could not give me the number so I called the HM Customs help line.

HM Customs Help line: Sorry Sir, Liverpool does not have a local Office, you will have to ring HM Customs Oxford.

HM Customs Oxford: After the chap picked himself up from the floor, due to laughing at the thought that Liverpool did not have a HM Customs office and that the National Help line had given me his number, he gave me the Liverpool number.

HM Customs Liverpool: Sorry mate, we only deal with containers here, you will have to ring HM Customs in Leeds.

Me: By now I was a little frustrated. I am keeping to the law. I have applied for and obtained an export licence and merely wish to send the sample legally. However, it was up to me to get the licence processed and I am receiving no help from HM Customs. After a call to DTI to see if there is any other way that this situation can be managed, DTI inform me that it is my responsibility to get the licence processed and they could only recommend that I call the HM Customs help line. This is clearly not "joined up government"! So I rang Leeds

HM Customs Leeds: I got through to the wrong person but I was assured that he would get someone to ring me the next morning. So now I have lost a day. All the work and effort done to obtain an export licence as quickly as possible is being made a mockery of. Our competitors have their samples in place but I can't send mine, why? Administration.

HM Customs Leeds, next day: At last someone who knew what was going on. This lady confirmed that she was the Local officer for the Port of Liverpool and that the Liverpool number that I had called was for Seaforth Container Base HM Customs and that there are actually two HM Customs offices in Liverpool. So much for the Help line! By rights I have to keep the item in a place where it can be inspected for three days, while the local officer, from Leeds, comes to inspect it.

HM Customs Liverpool: A chap rang me to say that Leeds had asked him to process the export licence, so I duly took the documents and box to the HM Customs at Queens Dock, got the paperwork processed, rushed back to the company and called in FedEx. The parcel was duly picked up and delivered and we are awaiting the outcome of the tender.

It is impossible to say whether this lack of joined up government offices has been a threat to the tender or not. All I can safely say is that it clearly did not help. Another conclusion which must be drawn is that many other businesses simply cannot be using export licence for samples, etc or not following the correct procedures. This is drawn from the thought that surely, if they were, FedEx, DTI and HM Customs would be more au fait with the necessary procedures and should have appropriate mechanisms in place?"

We have knowledge of other instances of a very similar nature.

The current export control system is only really effective against those companies and individuals who operate within the system. For instance the DTI's website is a great depository of knowledge and guidance . . . for those who know that it is there and that export controls affect their activities, but it does little to get to those who are less well informed. The current system puts the non-compliant at a commercial advantage over the compliant. HMG must be persuaded to get its act together in export control matters. The current system, and the seemingly ad hoc and uncoordinated way in which HMC&E officers around the country implement the regulations are: undermining the role and authority of export control compliance managers within companies with their colleagues in other disciplines/departments; undermining the procedures that compliance staff are trying to put into place; wrecking the credibility of compliance staff and the regulations with their other colleagues elsewhere; and giving other staff the innate perception that export controls are just a farce. This does not help the situation or encourage compliance.

We are deeply concerned at announced proposals for staff cut backs within both the DTI and HM Customs & Excise, and how they might impact on the country's strategic export control system. At present there is a widespread perception within most of Industry that the export licensing system is actually currently working probably more efficiently and expeditiously than at any time in living memory—we would not wish to see any retrograde steps occurring as a result of Treasury-induced cuts based purely on financial considerations. Either the British Government really believes in effective strategic export controls (as it publicly states it does) or it does not, and we fear that actions (in terms of the Treasury-inspired cuts) speak louder and more eloquently on where the Government's real priorities lie than mere reassuring platitudes. If some existing staff in both organisations really are surplus to requirements at the practical working level for the existing range of export control related work that they undertake, then surely they could be effectively redeployed on "missionary"-type work to undertake the proactive seeking out of companies and individuals who currently operate outside of the system, and make them aware of their responsibilities under the UK's regulations. We believe that this would be beneficial and constructive and demonstrate a true commitment by the British Government in recognition of the vital importance of strategic export controls.

Industry is extremely keen to continue to work constructively with the Government to help it to undertake the vital task of framing and implementing a more effective regulatory system to deal with the critically important area of strategic export controls, I would reiterate that we fully support the Government's intentions to ensure that the UK has one of the most effective and comprehensive export control regimes in the World. We will happily contribute constructively in any way we can towards trying to achieve this aim.

Exports Director

Annex A

LICENSING OF EXPORTS/TRANSFERS TO THE UK MoD

INTRODUCTION

This note comments on the issue of licensing exports or transfers to MoD(UK), the Armed Services and other Government agencies:

- specifically on the points raised about weapons of mass destruction (WMD) in Recommendation 56 of the Select Committee report and the Government's observations on them;
- on technical support for H M Ships;
- on the licensing requirements of support for H M Government more generally.

WMD

Following the evidence given by industry to the Select Committee in April about the difficulties envisaged in the operation of the new WMD controls, the DTI took urgent action to mitigate them. This action included, as indicated in the Government's observations:

- a revision of the OGEL (Exports or Transfers in Support of UK Government Defence Contracts (sometimes known as the Mod Cons OGEL) intended to cover technical assistance or technology transfers related to "any relevant use" (ie WMD) subject to MoD contracts;
- as assurance that technology incorporated into hardware for delivery to the MoD was not licensable even if the contractor had reason to believe that it would in due course be used outside the European Union;
- a narrower definition of "relevant use" in relation to defensive equipment such as filtration systems or flying suits, the primary purpose of which is protection and not handling (a "relevant use").

These developments were helpful and welcome, albeit they would have been even more so had they taken place six months earlier instead of only days before the new regulations came into force. It is however important to understand their limitations:

- The Mod Cons OGEL covers only technical assistance and technology transfers in relation to programmes under contract to the MoD. It excludes pre/contract technical discussions.
- "Blue Light" emergency services are also excluded. This is more of a problem than it may sound, since many have an explicit role in emergency deployments outside the U K (which brings them within the scope of the controls). Indeed they are already involved in advice, operational, planning and technical meetings in many countries, in all of which they may have to discuss issues which involve them in transfer of technology and concept information.
- The narrowing of the scope of "relevant use" in relation to defensive equipment is less helpful than it might be since it does not apply to equipment incorporating detection papers or other NBC detection kit, as most protective suits do. We believe there is some inconsistency here between the treatment of suits and the treatment of platforms, such as ships or vehicles, which are not treated as for "relevant use" if they carry detection/identification equipment.
- Industry lawyers are unanimous in rejecting the DTI view that technology incorporated in hardware for the MoD is not licensable even if it may subsequently be deployed outside the EU. Industry also notes that Defcon 126 allows the MoD to use technical information arising from a contract in a collaborative programme with another government, which gives industry more than adequate "reason to believe" that the technology may be used outside the EU. While we intend to operate according to the DTI view of the regulations, there is always the danger that a revised legal opinion will at some point sweep a great deal more activity within the scope of the controls. (See discussion of Crown Immunity in paragraph 8 below.)
- The issue of support for allies has not yet begun to be addressed.

4. There is still much work to be done therefore to reduce the amount of bureaucracy required to support UK agencies, as well as allies, in the area of "relevant use". Apart from the more general proposals set out in paragraphs 8–10 below, industry also believes there is scope for moving further to tighten the definition

of “relevant use”, as has already been done with defensive equipment. If ways could be found to exclude equipment for the detection and identification of WMD from the definition of relevant use, many of the bureaucratic difficulties industry have described would disappear at a stroke.

SUPPORT FOR HM SHIPS

An anomaly of the licensing system is that the Mod Cons OGEL cannot be used for technical support of HM Ships (because there is no way of knowing whether they are in the territorial waters of countries covered by the Schedules of the OGEL). Industry was therefore obliged to apply for individual licences to support our own Navy.

The DTI has recently issued two new OGELs for exports to UK forces deployed in embargoed and non-embargoed destinations, respectively. These are intended to cover technical support for HM Ships, though at the cost of a somewhat Alice in Wonderland requirement for the vessel to state that it either is or is not in the territorial waters of an embargoed state.

Industry welcomes the removal of the need for individual licences in these circumstances. But we do not entirely share the confidence of the DTI’s lawyers that the communications and supply staffs of naval ships and Royal Fleet Auxiliaries will consistently comply with this opaque piece of bureaucracy when requesting spares or technical advice. This will place our own people in a dilemma about how to respond, especially if the matter is urgent. Nor is it obvious how to comply when industry issues unsolicited technical data to the fleet (updates for manuals, flight safety information etc). Other problems include the practicability of compliance when a ship is operating in and out of embargoed waters (as could quite well occur in the Gulf, for instance) and the support of allied warships especially in standing naval forces. (On this last point, the DTI have commented in a letter that “it was never the intention to provide allied warships with the same level of cover provided to the UK government”, which industry regards as a curious way to treat our allies.)

LICENSING REQUIREMENTS FOR THE SUPPORT OF H M GOVERNMENT

The Government Observations include the comment that it not a new principle that dealings with the MoD or UK armed forces in theatre may in certain circumstances be licensable. This comment is misleading. Until 2003, it was believed, both by Government and by industry, that transactions in support of HM Government, broadly defined, were covered by Crown Immunity, even if the goods concerned were not necessarily owned by the Crown.

In January 2004, however, in response (we understand) to revised legal advice, the DTI issued new guidance which confined Crown Immunity to goods owned by the Crown, rendering licensable goods or technology not owned by the Crown (including leased items) exported in support of H M Government.

Like the Select Committee, industry believes that to require licences to support our own armed forces cannot have been intended by Parliament. OGELs are a panacea, not a cure. The new legislation offered an ideal opportunity to clarify the position by including an exception for UK government agencies in the Order/indeed, industry made this proposal as soon as the Consultative Document was issued in February 2003. This opportunity was not taken by the DTI. Industry will be pressing for a reconsideration of this policy in the forthcoming review of the legislation, which in our opinion should start forthwith rather than wait for the suggested two years.

December 2004

Appendix 8: Memorandum from the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.

2. CAAT would like to make known to the members of the House of Commons Defence, Foreign Affairs, International Development and Trade and Industry Select Committees (the Quadripartite Committee) some of its recent concerns prior to the Committee’s evidence session with the Foreign Secretary.

COUNTRIES OF CONCERN

3. The Annual Report on the UK’s Strategic Export Controls for 2003, together with the two subsequently published quarterly reports, shows that, yet again, the UK arms the world’s trouble spots and that there is a lack of joined up thinking in Government.

4. The Foreign and Commonwealth Office (FCO) Strategy White Paper on “UK International Priorities” (December 2003) predicts that for the next 10 years: “Serious flashpoints are likely to remain and may intensify between India and Pakistan, in the Middle East, on the Korean peninsula and in the Taiwan Strait”. However, the 2003 Annual Report shows that these destinations are important clients of the UK arms industry.

5. In 2003 licences were issued for the export of £86.5 million of UK military equipment to India; £29.5 million to Pakistan (almost double that for 2002); £47 million to South Korea; and £24 million to Taiwan.

6. Countries of concern also received shipments of military equipment from the UK in 2003. Equipment worth £189.33 million went to Saudi Arabia; £42.37 million to Turkey and around £25 million each to the United Arab Emirates and Oman.

7. Saudi Arabia—The FCO's Human Rights Annual Report for 2004 says a European Union statement in April 2004 on Saudi Arabia summarised the UK's ongoing concerns: "Women are subject to discrimination. Prisoners suffer maltreatment and torture. Capital punishment is imposed without adequate safeguards, and often executed in a cruel way and in public. Amputations are imposed as corporal punishment. Shiite citizens suffer discrimination. We also have concerns about freedom of expression, assembly and religion."

8. Yet Saudi Arabia is the biggest recipient of UK arms, sending a message to the government there that its repressive policies are acceptable as long as it keeps paying for the military equipment provided with oil.

9. The same policy of appeasement and arms sales which contradicted any statements about his human rights abuses was used in the 1980's with regard to Saddam Hussein. The result then was disastrous. It could well be again with regards to Saudi Arabia.

10. The £1 billion insurance given to BAE Systems by the Export Credits Guarantee Department to cover its sales to Saudi Arabia (*Guardian*, 14 December 2004) is official confirmation that there are worries about the stability of the Saudi regime. It also means that the UK taxpayer is exposed to the possibility of picking up the bill for these particularly ill-advised deals.

11. Indonesia—The UK government is continuing to licence the export of equipment to the brutal Indonesian military which could easily be used for internal repression such as weapons sights, gun silencers, and components for tanks, helicopters and military aircraft. CAAT, together with TAPOL—the Indonesia Human Rights campaign, has made a separate submission to your Committee on Indonesia.

12. Israel—In the FCO's Human Rights Annual Report for 2004 concern is expressed about the civilian casualties during Israeli military incursions into the occupied territories. However, export licences continue to be granted for equipment which might assist the Israeli military with such incursions. For instance, the January to March 2004 quarterly report showed Standard Individual Export Licences (SIEL) including those for small arms ammunition and technology for the use of laser range finders whilst between April and July SIELs were issued for armoured all wheel drive vehicles.

13. China—CAAT is pleased that the European Union has decided to keep its partial arms embargo on China. However, since lifting the embargo is an EU goal, CAAT along with many human rights organisations is concerned this may happen shortly. CAAT would urge your Committee to ask the Foreign Secretary to detail precisely how he believes the human rights situation in China has changed in ways which would justify lifting the embargo in the near future.

14. Even if the EU decides to lift the embargo, there is no compulsion on the governments of the individual member states to licence military exports to China. CAAT believes that such exports would still be contrary to the Consolidated EU and National Arms Export Licensing Criteria.

15. Any lifting of the EU or UK embargo would not only send a message to the Chinese government that its human rights abuses can be overlooked in the interests of trade, but could also lead to European weapons technology being used to suppress peaceful resistance in Tibet, Inner Mongolia or elsewhere. Such technology could also end up in the hands of the North Korean, Burmese or Sudanese military which have received Chinese weaponry.

TRANSPARENCY AND CONTROL

16. CAAT welcomes the on-line Quarterly Reports as these make the information available much sooner than has been the case to date.

17. The separation of exports for incorporation in equipment for export elsewhere is also a welcome step. However, for this information to be meaningful, the reports need to state in each case what the final destination of the equipment is.

Inadequate export statistics

18. Where the Customs & Excise Tariff Codes do not distinguish between military and civil equipment such exports are included under "Additional aerospace equipment" in the Ministry of Defence's "UK Defence Statistics". The Annual Reports still do not include a figure for this. As the table below shows, the military-related "Additional aerospace equipment", as estimated by the Society for British Aerospace Companies, is usually considerably greater than the "Identified military equipment".

	<i>UK Defence Statistics</i>		
	<i>Identified military equipment— this is the only figure which also appears in the Annual Reports</i>	<i>Additional aerospace equipment</i>	<i>Total deliveries</i>
2003	992	3,256	4,248
2002	942	3,178	4,210
2001	1,533	2,683	4,216
2000	1,721	2,685	4,406
1999	980	3,270	4,250
1998	1,968	4,062	6,030
1997	3,359	3,325	6,684

Values in £ million.

19. In the 2003 Annual Report, Annex C for the first time says that where there are dual military/civil codes, information from Customs Procedure Codes and knowledge of the trade, has been used to split military and civil trade. However, this only seems to have been done for a few categories and seems to have made no difference to the proportion of exports defined as “Additional aerospace equipment”.

20. CAAT recommends that Customs & Excise be asked to produce a definitive list of Tariff Codes covering military, security and police equipment exports. Where the equipment may be either civil or military, the allocation of the Tariff Code should be determined by the nature of the end-user. Without such a step being taken, neither the Government nor the public has information about the majority of the UK’s military exports.

No systematic end-use monitoring

21. The Government only monitors where permitted armament exports end up when it believes it would “minimise the risk of diversion and where such monitoring is practical.” (Hansard, 15 September 2004, col 1603W) CAAT believes it is vital that the Government institute a system to check what equipment is exported under each licence and where it ends up.

Lack of control over military exports

22. Given that the Government knows neither what the total amount sold to each country each year is nor what equipment is shipped under each licence and where it ends up, CAAT would question the robustness of the current system and how the Government can claim it controls military exports.

F680 process

23. The Ministry of Defence-led F680 procedure allows “industry to obtain an indication from Government about the likely success of an export licence application, and can help direct marketing efforts . . . If F680 clearance is in place, any subsequent Export Licence application is likely to be processed more quickly, because much of the groundwork has already been done.” (DESO website)

24. In response to a question from Harry Cohen MP, the Government gave information on a country-by-country basis of the numbers of F680 applications granted and refused. (Hansard, 1 November 2004, col 90-98W) This information should, in future, be included in the Annual Reports on Strategic Export Controls.

25. It is unclear whether applications refused are circulated to other EU states as part of the denial notification process under the EU Code of Conduct on Arms Exports.

BRIBERY

26. Allegations of bribery surrounding several arms deals have surfaced, or resurfaced with additional evidence, in the past few months. CAAT is pleased that, in some instances at least, the Serious Fraud Office is investigating. All allegations should be investigated and the 1992 National Audit Office report into the Al Yamamah deal with Saudi Arabia should be published forthwith.

27. It is most disturbing that, after lobbying by BAE Systems and others, the Export Credits Guarantee Department weakened controls established to prevent UK companies offering bribes overseas. The companies will have to supply fewer details of their agents and commission payments than under the original rules. The payment of commission to agents is, however, exactly what has been alleged with regards to past deals, for instance that of the sale of Alvis vehicles to Suharto’s Indonesia.

Europe

28. CAAT was surprised and concerned that the EU Constitution contains a commitment to develop European military capacity, including the establishment of a European Armaments, Research and Military Capabilities Agency, now set up as the European Defence Agency. The FCO's "Guide to the European Union" states that the measures included in the Constitution: "should help encourage other European countries to spend more on defence, and to spend it better."

29. There has been little public or parliamentary debate about these developments. In many cases, as with the STAR 21 aerospace review and Group of Personalities looking into security research, committees making proposals have been dominated by the arms companies. Unsurprisingly, these reviews gave little consideration to the many non-military ways Europe might become more secure and have a positive influence on the world.

Subsidies

30. The arms trade is subsidised by several hundreds of millions of pounds, annually. Although some of the figures are difficult to acquire, CAAT estimates that UK arms exports receive a subsidy of around £890 million per year. The elements which account for the subsidies and savings are as follows, CAAT would be happy to provide information on how these figures have been arrived at should your Committee wish for this.

<i>Subsidy/saving element</i>	<i>Subsidy/saving £ million</i>
Defence Export Services Organisation	16
Use of Armed Forces	6
Embassies and Defence Attaches	24
Defence Assistance Fund	6
UK Trade and Investment	1
Official Visits	5
Missile Defence Centre	5
Direct Distortion of MoD Procurement Choices	100
ECGD	180
Research & Development	670
Overheads	- 125
Total	888

31. CAAT is not alone in concluding that arms exports are subsidised/several other studies have come to the same conclusion, even a report commissioned by the UK government from MoD economists and York University on The Economic Costs and Benefits of UK Defence Exports (2001). This concluded, firstly, that the economic costs of reducing military exports are relatively small and largely one-off, and secondly, as a consequence, that the balance of argument about military exports should depend mainly on non-economic considerations.

32. Employment arguments are frequently used by the UK government in an attempt to persuade the general public to support arms exports. However, the number of people employed in producing arms for export is less than 0.3% of the workforce/far fewer than popularly supposed. In addition, most arms export jobs are located in areas with very low unemployment and hence tight labour markets such as the South East.

33. Given the 65,000 employees estimated to be working on military exports, the subsidy amounts to over £13,000 for each job each year.

34. Voters would be happy to see Government support for arms exports removed. An opinion poll conducted by BMRB in December 2004 showed over half the sample believed that the Defence Export Services Organisation should be closed, whilst under 16% supported its work.

GOVERNMENT INDUSTRY LINKS

35. CAAT is seeking to understand why the Government should continue to justify such a harmful and unpopular industry and believes the close links between Government and the arms industry may lie at the root of this. Such links include the many advisory bodies, the "revolving door" and the increasing number of lobbying companies engaged by military manufacturers.

36. These links have led to massive support for the industry by the Government. It is time for such support to stop.

Appendix 9: Further memorandum from the Export Group for Aerospace and Defence

THE GOVERNMENT'S RESPONSE TO OUR PREVIOUS EVIDENCE

Is UK Industry is being disadvantaged in China vis-à-vis our EU competitors and is the UK's interpretation of the EU Embargo on China more strict than other EU members;

Please see the attached memo from Tim Otter, on behalf of NBC UK, and also a memo outlining some publicly available information from the latter half of 2004.

In addition, we know that one of our Member companies has given an in-depth briefing to their local MP, The Rt Hon Sir John Stanley (who, of course, sits on the Committee), about a particularly interesting and illustrative case in which they have been involved in China where they have been refused a licence for the export of a single item of limited capability dual-use equipment, whilst French and Dutch companies appear to be supplying similar equipment of even greater capability into China, including through the use of local licensed production and assembly facilities in that market. We believe that this case, alone, represents very strong "evidence in support of the claim" that we made about the UK's interpretation of the EU Embargo and the Code of Conduct being much stronger.

Are the German licence requirements for exhibitions as strict as the UK ones and does the German system allow the issuing of export licenses over the phone;

Please see the attached memo from Tim Otter, on behalf of NBC UK.¹

Are France's NBC licensing requirements in the non-military sector as strict as the UK ones;

Please see the attached memo from Tim Otter, on behalf of NBC UK.²

Is there a lack of consistency in EU Members' control lists;

Are there any examples of there being inconsistency or uncertainty in any advice that it is being given to companies by DTI

WHAT EXPORT CONTROL-RELATED INITIATIVES COULD THE BRITISH GOVERNMENT LAUNCH IN 2005?

Please find attached a copy of a memo of our thoughts on some possible ideas.

The 680 system

We believe that the Government's response to our observations (at item k on page 26 of their response to the Committee) misses the whole point of our concerns. Whilst we fully realize the status of the 680 and that it is not a licence, we would argue that a 680 refusal should be allocated the same status as an export licence refusal, in terms of the non-undercutting provisions of the EU Code of Conduct. At present this is not the case and British firms are walking away from potential business opportunities because the 680 refusals indicate that a licence would be refused, which other EU competitors are not in any way inhibited from then pursuing and supplying, without any (even slight) encumbrance upon them under the terms of the anti-undercutting provisions of the EU Code of Conduct. Whilst the Government states that "Exporters who are not seeking to release information covered by a security classification are not obliged to use the F680 procedure", in fact, under the terms of the Cabinet Office's Manual of Protective Security (MOPS)—at Supplement 9, Section 84, covering Overseas promotion and sale of defence equipment or technologies—it is a mandatory requirement that companies must ensure that they *always* have 680 clearance from DESO for *any* and *all* promotional or contract negotiation activities associated with goods and technologies on the UK's Military List.

We hope that this additional information may be of assistance to the Committee.

Exports Director

¹ Not printed.

² Not printed.

EXPORT LICENSING—TAKING, ADVANTAGE of 2005
A PAPER BY EGAD
DRAFT DATED 4 JANUARY 2005

INTRODUCTION

1. Industry were invited by the Quadripartite Select Committee to put forward some export licensing initiatives which the UK could take in 2005 in its roles of Presidency of the EU and Chairmanship of the G8. Some ideas follow of initiatives in which HMG could take the lead.

THE “CERTIFIED” OR “TRUSTED” ENTERPRISE OR ORGANISATION

2. Industry faces considerable difficulties and costs from the fact that goods and technology exports are controlled on a national basis when the supply base is increasingly international in nature.

3. One proposal widely discussed over the past few years for mitigating these difficulties is that of the “certified” or “trusted” enterprise or organisation. An enterprise or organisation which demonstrated the required standard of compliance would be permitted to move goods and technology between subsidiaries in different countries, or on to other trusted enterprises or organisations (and end-users), without a licence. A licence would only be required when the goods or technology left the “trusted” perimeter. The system would be analogous to the ISO 9000 arrangements for quality assurance. The concept of the ‘qualified’ company included in the ITAR Waiver agreement between the US and the UK offers a kind of precedent, though admittedly only on a bilateral basis.

COMMON PROCESSES AND DEFINITIONS

4. No national export control system is the same as any other. Regulations, systems, procedures and forms are all different. There is not even a common and agreed international definition of what constitutes an “export”. This weakens overall controls and creates loopholes which can be exploited by the ill intentioned, while increasing costs for companies, which have to establish export control and compliance staff in every country in which they operate.

5. There is therefore a need for the principal exporting countries to commit themselves to a more homogeneous approach. This will not be easy but at the moment it is not done at all.

6. We would also like to propose that the British Government could very usefully take the lead in the creation of a publicly available, regularly updated, centralised internet database of different countries’ export control systems and procedures, starting with the EU and G8 and building from this core, to assist organisations in seeking out export control information on the practical mechanics of different nations’ frequently highly diverse systems.

MUTUAL ACCEPTANCE OF LICENCES

7. At present, export licences are valid only for exports from the country by which they are granted. A partial exception is the EU Dual Use Regulations, where the Community General Export Authorisation (CGEA) is applicable throughout the EU and, theoretically at least, individual licences are also valid in all EU member states.

8. It would be a useful extension of the EU Code of Conduct if military export licences, at least for an agreed range of goods and destinations, granted in one country, were valid in all the EU States.

AN END TO “ARMS EXPORT TOURISM”

9. Industry strongly supports the work of the international regimes in their efforts to control proliferation of sensitive technologies. There are however four of them—Wassenaar, Missile Technology Control Régime, Australia Group, Nuclear Supplies Group—with different memberships, meeting places and methods of work. We do not believe that this represents the best use of resources or the best way of ensuring comprehensive application of the resulting controls.

10. We suggest therefore that HMG should promote a decision in principle to merge the régimes, recognising both that the practical implementation of a merger will take some time, and that the resulting structure is likely to require sub-groups covering much the same ground as the existing régimes.

AN INTERNATIONAL DATABASE OF SENSITIVE EXPORTS

11. International discussion of arms control issues increasingly emphasises information sharing. This is understandable in a world where non-state actors may be trying to develop weapons of mass destruction. There are obvious difficulties about wider distribution of intelligence information but we see no reason why this should prevent the development of an internationally accessible database of sensitive exports. We suggest that the focus should be in the first instance on materials and products of relevance to the development of WMD.

12. This would have two benefits. First and obviously, it would enable procurements from one country, in themselves possibly unexceptionable, to be linked to those of another. Secondly, it might give governments the confidence to decouple from WMD controls defensive products, such as detection and identification systems, which are necessary but not sufficient components of clandestine WMD programmes, and to reduce the amount of bureaucracy attendant on their export to legitimate users.

Public Information on Trade with China

12 JULY 2004

Primus International, a US firm, has launched a project to manufacture aircraft components, kits and assemblies as part of its strategy to take a share of China's aerospace industry. A factory will be built at a cost of \$10 million but manufacturers must now include raw materials imported from the US which are not available locally. Output will be exported to manufacturers of commercial and regional jets in the US, Japan, Brazil, S. Korea and Europe. The strategy is leading to joint ventures with the Chinese aerospace industry that will lead to domestic sales.

CITIC Offshore Helicopter Co. Ltd. said it has signed a contract with Eurocopter and Hong Kong-based Samwell Aviation Ltd to become strategic partners for the promotion, operation and maintenance of Eurocopter's helicopters in the Chinese market. The deal involves some technology transfer from Eurocopter to CITIC Offshore.

Power Projects

Also on the civil side, China's Three Gorges Project Group has signed contracts worth Rmb4.54bn (\$546m) to purchase twelve new hydropower generating units. Contracts for four units were awarded to Alstom of France, but two domestic companies, Harbin Electric Machinery (HEM) and Dongfang Electric Machinery (DEM), will supply the remaining units.

To fulfil the contract, HEM and DEM will make use of foreign technology from a technology transfer that began in 1997 when fourteen generators were purchased from foreign companies for the left bank of the project. In that purchase order, the foreign firms agreed to transfer related technology to China for a total of US\$18m. According to a country briefing from the Economist Intelligence Unit the company will look for similar cost savings when it builds the four hydropower stations planned for the Jinshajiang River, a tributary of the Yangtze.

26 JULY 2004

CHINA AGREES TECHNOLOGY TRANSFERS FOR ENERGY SECTOR

ABB will build a 1,100-kilometer-long (682 miles) 3,000-megawatt high-voltage transmission link under a \$390 million contract awarded by China's State Grid Corp. The equipment will partly be manufactured by ABB factories in Sweden and Switzerland though valves, some transformers and gas-insulated switchgear will also be assembled or produced by Chinese partners, the company said. There will also be technology transfer.

Areva, too, won two co-operation agreements with Chinese power groups. "Areva is very well positioned because we have already built four nuclear sites in co-operation with the Chinese. We have had technology transfers that have functioned well, and we are ready to continue," Areva's CEO, Anne Lauvergeon, said.

25 OCTOBER 2004

BOEING AWARDS CHINA 747 PARTS PRODUCTION CONTRACT

China's Xi'an Aircraft Industry Company will supply floor beams for Boeing's 747-400 Special Freighter, a programme to convert passenger airplanes into freighters. A Boeing spokesman told CTO that any time the company has a supplier agreement with another company Boeing considers it to be industrial co-operation. To date Boeing has placed about \$500m of work in China (since 1972) and expects that to more than double by the end of the decade.

“It would amount to a relatively small percentage of the aircraft. We have supplier agreements with five or six different organisations within China and a number of sales agreements with airlines. The sales agreements are not part of the industrial co-operation programme,” the spokesman said. Parts coming out of China have been installed on about 3,400 global Boeing airplanes, about one third of all passenger aircraft.

Jim Morris, Vice President of Supplier Management for Boeing Commercial Airplanes, said Xi’an Aircraft is a well-established Boeing supplier partner that currently builds trailing edge ribs for 747 wings and recently celebrated delivery of the 1,000th 737 vertical fin. “China has a significant role working together with Boeing, and this is one more step in increasing and strengthening our partnership,” Morris said.

China Eastern Airlines Co. and Airbus have also signed a contract for the purchase of 20 A330-300 aircraft for fleet replacement and expansion. A training and support centre which represents an \$80 million investment by Airbus is fully operational in Beijing. Five Chinese companies are already involved in producing parts for Airbus aircraft.

A protocol for the development of industrial cooperation between China Aviation Industry Corporation (CATIC) and Airbus has been agreed as well as a cooperation framework agreement on an advanced medium utility helicopter programme between CATIC and Eurocopter.

8 NOVEMBER 2004

AIRBUS BOOSTS IP WITH CHINA

Airbus has stepped up industrial participation with China by agreeing to sub-contract projects worth \$100 million to China Aviation Industry Corporation I (AVIC I). The projects will represent the first industrial participation agreement between Airbus and China on the production of A380 components. Airbus then announced plans to further increase its general procurement from China, raising this to \$120 million a year by 2010, double the target for 2007.

Five Chinese companies are already involved in making parts for Airbus aircraft, namely the Chengdu Aircraft Corporation, Shenyang Aircraft Corporation, Xi’an Aircraft Company, Hong Yuan Aviation Forging and Casting and Guizhou Aviation Industrial Group.

Airbus will also allocate A330 and A340 forward cargo door projects to Shenyang Aircraft Corporation, which is affiliated with AVIC I.

Since 1985, the total value of projects subcontracted by Airbus to Chinese manufacturers has exceeded \$500 million.

Alstom technology transfer for China:

Alstom will provide sufficient technology transfer to allow China to build 51 out of 60 locomotives from kits to be supplied under a contract worth more than \$1 billion. Alstom also won a contract worth some €380 million (US\$471 million) to deliver another 12 locomotives and provide technology to build 168 others in China, the company said.

22 NOVEMBER 2004

FRENCH AEROSPACE INDUSTRY STRENGTHENS POSITION IN CHINA

To consolidate its position further in the Chinese market, Snecma and the Ecole Centrale de Lyon engineering school have signed a training agreement with two Chinese aeronautical engineering schools: the Nanking University of Aeronautics and Astronautics, and the Polytechnic University of the Northwest, in Xi’an. This is in addition to an agreement signed two years ago with the Beijing University of Aeronautics and Astronautics, and the Jiao Tong universities of Xi’an, Chengdu and Shanghai.

The agreements appear to form part of a wider industrial co-operation policy. Snecma has also signed a research contract with Mrs Chen Haiqiu, Deputy Director of the Science and Technology department at the Beijing University of Aeronautics and Astronautics.

One out of every two Chinese jetliners is powered by CFM56 engines and China’s AVIC I plant manufactures CFM56 parts for Snecma. One out of every three Chinese jetliners is fitted with Messier-Dowty landing gear (a Snecma group company). Messier-Dowty has opened a landing gear parts production facility in Suzhou. Half of all helicopters in China are powered by Turbomeca engines (another Snecma group company). AVIC II is a long-standing Turbomeca partner.

The Chinese Ministry of Science and Technology and the French Ministry of Research are organizing a joint forum on innovation and research spin-offs. Snecma is taking advantage of this event to strengthen and consolidate its collaboration with China in research and training.

Italy/China:

Italy's Agusta and the Jiangxi Changhe Aviation Industries Company, an AviChina company, have also signed a joint venture agreement for the sale, production, marketing and local support of the A109 Power helicopter.

27 DECEMBER 2004

EADS OFFERS CHINA A350 WORKSHARE FOR AIRBUS A320 DEAL

China has agreed to purchase 23 Airbus A320 aircraft valued at about \$1.2 billion, with Chinese companies taking 5% of the work on the Airbus A350 programme.

Airbus will be offering Chinese industry a risk-sharing participation in the design and the manufacture of the A350 programme, said Gustav Humbert, the company's Chief Operating Officer and Executive Vice President Programmes. The A350 will be based on the A330, but will feature new wings and engines, and could compete strongly with Boeing's 7E7 jets.

"The potential collaboration with China on the A350 is immediate. It is a very timely stepping stone to the full risk-sharing participation of at least 10% in a long-term future programme of Airbus," he added. Airbus has also undertaken to transfer to China the technology required for manufacturing the complete wing of the A320 family aircraft, Humbert said.

The company intends to establish an engineering centre in China. From 2008, more than 200 engineers will have the opportunity to participate in Airbus developments. This will enable China to become a full industrial partner in any future Airbus aircraft developments, a press release said. The A350 programme is subject to the approval from Airbus' shareholders EADS and BAE Systems.

The Eurocopter division of EADS signed a framework contract with AVIC II in October for the joint development and production of a new multipurpose helicopter that will be available on the world market in 2010. Another contract was signed in Paris last June to set up a production line in Harbin for the EC 120 helicopter. A \$30 million investment made by EADS in the aeronautical manufacturer AviChina in October 2003, providing a 5% stake in AviChina, is understood to have opened up the way for reinforced cooperation with AVIC II in the helicopter field.

"In line with our long-term approach, we are planning to strengthen our presence in China," said CEO Rainer Hertich. "We are seeking to expand our partnership opportunities in the areas of research, development, sourcing, manufacturing and aftersales-service."

EADS Hertich: No Arms Embargo Link To China A380 Order

Dow Jones Newswire, Dec 7—China has never hinted at any link between the lifting of the EU's arms embargo and the long-awaited signing of an order for the Airbus (ABI.YY) A380 super jumbo jet, European Aeronautic Defense & Space Co. NV (5730.FR) co-Chief Executive Officer Rainer Hertich said Tuesday. Hertich said even if the embargo were to be lifted, more needs to be done within the EU to harmonize export controls for military-use products. EADS manufactures defense equipment in several EU countries and the different export control regimes continue to be a problem, he said. Even with the arms embargo still in place, EADS aircraft unit Airbus continues to book new orders from China's three major carriers. As its order book swells, Airbus has also been increasing its partnerships with contractors in China, including Chengdu Aircraft Corp., Xi'an Aircraft Co., Hong Yuan Aviation Forging & Casting and Guizhou Aviation Industrial Group. Subcontracting by Airbus in China is expected to rise to \$60 million a year by 2007 and eventually \$120 million by 2010, from about \$30 million a year in 2004. Hertich said eventually it might even be possible for the company to set up a local Airbus China unit to manufacture aircraft as it comes closer to meeting its goal of securing 50% of the country's commercial jet market.

EADS to Target China Market If EU Arms Embargo Lifted

EU Business, UK, Dec 7—Europe's largest aerospace and defense company EADS said Tuesday it would likely begin talks on potential military deals with Beijing if the European Union lifts a 15-year-old arms embargo on China. "Sure, once it happens, the embargo is lifted, we would get in touch with them (the Ministry of Defence) to try to understand what is their future demand," European Aeronautic Defense and Space Company chief executive Rainer Hertich told journalists.

However, it may all depend on how EU governments view the equipment as acknowledged by EADS . . . Hertich said that even if the embargo was lifted, other restrictions would still be in place on what could or could not be sold to China. Besides the embargo, EADS and European nations, they have their export control regimes and so definitely there will be further limitations," he said.

January 2005

Appendix 10: Further memorandum from the UK Working Group on Arms

STATUS END OCTOBER 2004

Explicit support for the ATT with public statements made—Costa Rica, Mali, Cambodia, Finland, Iceland, Kenya, UK, NZ.

Other countries with whom we are in detailed discussions and/or who are actively involved in the development of the ATT:

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PUBLIC STATEMENTS OF SUPPORT FOR ATT

Costa Rica—early 2003

Statement from Costa Rica at UN Biennial Meeting of States, New York, 8 July 2003, given by Ambassador Bruno Stagno

“The Government of Costa Rica, with a group of NGOs, Nobel Peace Laureates, and other organizations, has been dedicated to clarify which are the obligations of be States in terms of controlling the transfer of small arms and light weapons. This process has culminated in the elaboration of the Framework Convention on International Arms Transfers [aka Arms Trade Treaty]. This project, based on existing international rights constitutes a basic model for future internationally-binding agreements that establish a series of rules and procedures to regulate international arms transfers.”¹

Mali—mid 2003

Statement on HR day 2003: Amadou Toumani Touré, President of Mali said, “Mali is honoured to launch the Control Arms campaign and we fully support it. Mali will play its role in pushing for tougher international arms controls . . . across the African continent.” Contact: Mohamed Coulibaly, mocoulibaly@oxfam.org.uk

Cambodia—9 October 2003

Statement on HR day 2003: Sar Kheng, Deputy Prime Minister of Cambodia said, “As a country that has been severely affected by weapons, Cambodia will support the international Arms Trade Treaty. The Royal Government of Cambodia is committed to controlling weapons . . . which have such a great impact on humanity, society, the economy and peace”.

Finland—10 December 2003

Announcing Finland’s support on Human Rights Day, 10 December 2003, Mr Erkki Tuomioja, Finnish Minister for Foreign Affairs said, “Now is the time to proceed in creating international rules for the arms trade . . . Finland from its own part is ready to support the process towards an Arms Trade Treaty.”

Iceland—10 December 2003

“Iceland supports call for an arms trade treaty to prevent arms being exported to destinations where they are likely to be used to commit grave violations of international human rights and humanitarian law.”

Ambassador Hjálmar W Hannesson, Permanent Representative of Iceland to the UN, General Assembly Plenary, Item 48 55th anniversary of the Universal Declaration of Human Rights, 10 December 2003.

¹ Con este fin en la mira, el Gobierno de Costa Rica, junto a un grupo de organizaciones no gubernamentales, personalidades galardonadas con el premio Nobel de la Paz y calificados, se ha dedicado a esclarecer cuáles son concretamente las obligaciones de be Estados en materia de control del comercio de armas pequeñas y livianas. Este proceso ha culminado en la elaboración de un proyecto de Convención Marco sobre las Transferencias Internacionales de Armas. Este proyecto, basado en el Derecho Internacional existente, constituye un modelo para futuros acuerdos internacionalmente vinculantes que establezcan una serie de las reglas y procedimientos básicos que regulen las transferencias internacionales de armas.

Kenya—20 April 2004

Statement by Hon Stephen K Musyoka, Minister for Foreign Affairs during the official opening of the second ministerial review conference on small arms, Nairobi—20 to 21 April, 2004

“In this regard, Kenya supports the control of arms initiative to reduce the proliferation and misuse of small arms, and to convince governments across the world to introduce a legally binding arms trade treaty. Such a treaty would provide a set of common minimum standards for control of small arms transfers and a workable operative mechanism for the application of these standards, based on the existing responsibilities of states under international law.”

UK—30 September 2004

Minister of Foreign Affairs, Jack Straw, at Labour Party Conference, Brighton

In Sudan, as elsewhere, the carnage and the terror is carried out not by sophisticated high-tech weapons but by so-called small arms—rifles, revolvers, machine guns, mortars. In Europe we now have a comprehensive arms control code of practice. But this is not the same across the world.

Greater international action is therefore needed to tackle the plague of small arms in Africa and elsewhere.

I am therefore pleased to tell this conference that we will start work soon with international partners, drawing on experience from the EU, to build support for an international arms trade treaty further to extend the international rule of law.

<http://www.labour.org.uk/ac2004news?ux1newsid=acO4js>.

New Zealand—20 October 2004

Statement from NZ to the First Committee of the UN

“While much of our work on small arms continues to be focused on preventing gun violence in the Pacific, we are increasingly aware of the lack of binding international controls on small arms trade that continues to fuel armed conflict around the world. For this reason, New Zealand will be lending its full support to the initiative by Oxfam for an arms trade treaty. We commend Oxfam in taking a new approach to stopping the irresponsible transfer of small arms to countries that violate human rights and international humanitarian law.”

SOME SUPPORT FOR ATT—NEEDS FOLLOWING UP

Brazil—13 November 2003

President Lula confirmed his readiness to play a key role in pushing for an international treaty to control arms in a meeting with Irene Khan, Secretary General of Amnesty International on 13 November 2003. He committed himself to: “. . . undertake all efforts to build a network and create a positive balance in favour of arms control.”

Slovenia—12 December 2003

Made statement supporting an ATT for small arms at Dublin conference.

Similarly positive comments at Human Security Meeting meeting, Bamako, May 2005.

* * *

Macedonia—22 November 2003–8 June 2004

Boris Trajkovski, the then President, gave his support to the creation of an Arms Trade Treaty as well as signing up to the Million Faces Petition in Skopje at an NGO fair.

Boris Trajkovski was killed in a plane crash 26 February 2004.

New Macedonian president Branko Crvenkovski signed up for the Million Faces Petition on 8 June 2004.

Spain—9 July 2004

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Russia—23 September 2004

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REGIONAL/MULTILATERAL STATEMENTS

Red Cross and Red Crescent—6 December 2003

28th International Conference of the Red Cross and Red Crescent. “Protecting Human Dignity”,

The Agenda for Humanitarian Action, 6 December 2003, was agreed by 191 States party to the Geneva Conventions as well as the Red Cross and Red Crescent Societies, the Federation and ICRC.

General Objective 2—Weapons

In order to achieve the goal: Reduce the human suffering resulting from the uncontrolled availability and misuse of weapons:

2.3.1 States should make respect for international humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed. They are encouraged to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers.

* * *

HUMAN SECURITY NETWORK, 28 MAY 2004

Ministerial Meeting, Bamako, 27–29 May

Chair's Summary

Minister of Foreign Affairs, HE Mr Moctar Ouane

The Network members recognised the need for further progress on many key issues linked to the fight against the illicit proliferation and misuse of small arms and light weapons. With the 2005 Biennial Meeting of States and the 2006 Review Conference of the programme of Action approaching, Network countries welcome the Government of Mali's efforts to draw attention to such issues as the need for responsible transfers of small arms, consideration of the negative impact of transfers to non-state actors and the need to consider international humanitarian law and human rights when addressing the SALW problem. The Network took note of the initiative by Norway, the Netherlands and the UK aimed at subjecting arms brokering to adequate regulations. The Network also supported the initiative within the framework of ECOWAS to develop a regional convention on controlling trade and the illicit transfer of small arms and light weapons in West Africa.

The Network expressed its appreciation for the Government of Mali's ongoing leadership role in these issues, including hosting the launch, on October 9th 2003, in Bamako, of the world campaign on the control of weapons, aiming at the adoption of an Arms Trade Treaty. Network members emphasized the need for the international community to control the illicit transfers of weapons in order to prevent armed violence, conflicts and human rights violations. The Network committed itself as appropriate and where possible, to pursuing productive initiatives in 2004 and 2005 that would contribute to the positive outcomes of the 2006 Review Conference of the UN Programme of Action.

January 2005

Appendix 11: Further memorandum from the UK Working Group on Arms

The 77 states to which the UK has exported software, technology, equipment or components for overseas production January 2003–June 2004:

Albania; Australia; Austria; Bahrain; Barbados; Belgium; Belize; Benin; Botswana; Brazil; Brunei; Burkina Faso; Burma; Canada; Central African Republic; Chad; Channel Islands; China; Cuba; DRC; Congo Republic of; Czech Republic; Denmark; Ecuador; Finland; France; Germany; Greece; Guinea; Hungary; Iceland; India; Indonesia; Iran; Iraq; Ireland; Israel; Italy; Jamaica; Japan; Kenya; Korea South; Kuwait; Luxembourg; Madagascar; Malaysia; Mali; Mauritania; Mauritius; Netherlands; New Zealand; Niger; Norway; Oman; Pakistan; Peru; Philippines; Poland; Portugal; Romania; Russia; Saudi Arabia; Senegal; Singapore; Slovakia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Taiwan; Thailand; Togo; Turkey; USE; USA; Venezuela.

January 2005

Appendix 12: Memorandum from Quadripartite Committee Specialist Advisor, Dr Sibylle Bauer

GOVERNMENT REPORTING ON ARMS EXPORT POLICY TO PARLIAMENT

The quantity and quality of information on arms exports available to parliament and the public has increased considerably since the end of the cold war. In the European Union in particular, reporting has become the norm, rather than the exception. Information on arms export policy can be obtained either from governments and governmental agencies, or from non-governmental actors, such as companies, journalists, NGOs and research institutes that compile statistics from official and other sources. Since unofficial information does not constitute a formal basis on which to hold policy-makers to account, only official

information is considered here in response to the question of: to what extent governments have made their arms export policies transparent; what mechanisms are in place to transmit information; and which instruments and structures parliament have at their disposal to scrutinise arms export policy. To this purpose, the practices of major European arms producers other than the UK, as well as Australia, Canada and the United States are analysed. The paper also provides an overview of EU reporting in the context of the EU Code and the role of the European Parliament.

I. NATIONAL REPORTING AND THE ROLE OF PARLIAMENTS IN THE EU

EU member states' legislation on arms exports is by definition publicly available, while the same is not necessarily the case for guidelines and procedures of decision-making. The extent to which criteria for decision-making are put down in writing and made public varies throughout the EU. Procedures are usually explained in official publications, including websites, as this is important for companies applying for licences. Systematic reporting on export decisions became widespread in the EU only in the 1990s. Prior to this, information on actual exports was available in the form of trade statistics based on customs data. However, these statistics only render arms export policy transparent to a very limited extent, however, as they may be difficult to obtain, and their categories only permit limited conclusions because customs data are not compatible with control list categories.²

Ad hoc reporting has been common practice over many decades, mostly in the form of government responses to parliamentary questions. The volume, detail, and therefore usefulness of information all depend on a variety of factors, in particular the country, the government in power and domestic circumstances, such as public and media interest. In turn, the extent to which reporting leads to scrutiny depends on whether parliament uses the information to hold the government to account.

MAJOR EU ARMS EXPORTERS

France

In 2000 the French Government published its first report on arms exports. This report related back to 1998. Subsequent reports were issued between 12 and 24 months after the end of the reporting period, and the report for 2002 and 2003 was released jointly only in January 2005.³ The reporting requirement in the context of the EU Code, reinforced by domestic pressure, prompted the introduction of a reporting system.

For each recipient country, the report for 2002 and 2003 provides:

- the value and military list ratings of “agrément préalable” (agreements in advance, or negotiating licences);⁴
- the value and military list ratings of actual exports;⁵
- the value and military list ratings of orders;⁶
- the value of military assistance and sales by the Ministry of Defence; the explanatory text provides additional detail such as the model delivered, on selected contracts;
- the quantity and type of small arms and light weapons delivered and ordered between 1999 and 2003;
- the value of military equipment orders and actual exports, broken down by the categories, land, sea and air;
- the value of government-to-government transfers, broken down into SALW, other military equipment, and civilian items.

For denials, the report provides information in four separate statistics:

- the number of times each of the eight criteria was evoked;
- a breakdown of the number of denials by geographical region;

² This is because customs data are categorised based on technical characteristics, not the type of end-user, Bauer, S and Bromley, M, *The European Union Code of Conduct on Arms Exports: Improving the Annual Report*, SIPRI Policy Paper no 8, Nov 2004, URL <<http://www.sipri.org>> .

³ French Ministry of Defence, *Rapport au Parlement sur les exportations d'armement de la France en 2002 et 2003* [“Report to Parliament on France's arms exports in 2002 and 2003”] (Paris: Ministry of Defence, Jan. 2005). Reports are available in print and at URL <<http://www.defense.gouv.fr>> .

⁴ Each time a company plans to transfer equipment for trials and presentations abroad, to negotiate a contract with a customer, or to transfer licences or documentation, it must lodge a request for “agreement in advance” France's annual reports provide no data on definite export permits (“autorisations d'exportation de matériels de guerre” or “AEMG”).

⁵ These are based on industry data. When calculating the value of French exports the Ministry of Defence only includes the French share of a particular export, based on the French R&D contribution. The share manufactured by co-operating parties or subsidiaries located outside France is not included. In the case of equipment exported to a foreign manufacturer to be integrated in a system that it then exports the Ministry of Defence records the export as an export to the final destination country.

⁶ Data on orders (“prises de commandes”) are based on contracts which were signed and entered into force during the year in question. Where foreign components are used, only the French contribution is counted.

- a broad description of the types of equipment refused; and
- the number of consultations initiated and received, and the number of undercuts by France.⁷

In 2000 the first-ever parliamentary report on French arms export control policy was produced by the defence committee.⁸ It examines the French export control system,⁹ the European and international context (including other countries' policies),¹⁰ and the question of transparency. The section on transparency covers the economic viability of arms exports, legal provisions, other countries' transparency practices,¹¹ and the first government report. The report drew up specific suggestions for improving the government report,¹² all of which were followed. Other recommendations included annual briefings of the Foreign and Defence Committees by the Defence and Foreign Ministers, followed by a public debate, and the establishment of an advisory committee on arms exports. The latter would be tasked with analysing French arms export policy, in particular the annual report, and providing suggestions for improvement. Parliamentarians were not among the proposed members, who would include representatives from the defence industry, trade unions, industrial associations, NGOs, the general secretary on national defence and other individuals. Finally, the report proposes the establishment of a body to monitor arms exports to examine the economic viability of arms exports.

The National Assembly's investigative function has been applied to arms exports on several occasions, for example regarding arms exports to Rwanda.¹³

Germany

Until 2000, there was no regular reporting on arms exports. Information was provided to parliamentarians on an ad hoc basis in response to oral and written questions and thus became public. These statistics were typically limited to values of "weapons of war" exports per recipient region, and details on exports of surplus equipment. For "other armaments", the total value per broad equipment categories was indicated. On one occasion, the Government response was so comprehensive that it amounted to a report on arms exports.¹⁴

The change of government in 1998 prompted the publication of the first report on arms exports in 2000.¹⁵ The EU Code's reporting requirement therefore coincided with national drivers, possibly making the report more substantial than it would have been without the supporting role of the European transparency trend.

The fact that reports have been published almost a year after the end of the reporting period and therefore up to two years after licensing decisions were made, reduces the usefulness of information for holding decision-makers to account. In terms of substance, reports have improved over the years.

For each recipient country, the report provides:

- the number, total value and military list rating of licences granted; for selected countries the type of equipment authorised is further described;
- the number and military list rating of licences denied, together with the reasons for denials according to the EU Code criteria;
- types and quantities of small arms and light weapons licensed for export; and
- the value of actual exports for "weapons of war".

The report provides information about cases dealt with by judicial authorities. It also contains summaries and documentation of relevant national, regional and international agreements and developments.

Not all parliaments in the EU have a tradition of drafting parliamentary reports. There is no such practice in Germany. Parliamentary guidance for executive decision-making can be exercised through resolutions (*Bundestagsbeschlüsse*). *The Bundestag has adopted several resolutions on the Government's arms export*

⁷ The report for 2001 also mentioned the number of consultations which led to the revocation of the denial notification by another government due to changes in the recipient country, a license refusal, postponement of the decision, or the conclusion that the transaction was not to be interpreted as "essentially identical".

⁸ *Rapport d'information sur le contrôle des exportations d'armement*, présentée par Jean-Claude Sandrier, Christian Martin et Alain Veyret, Députés, French National Assembly doc no. 2334 (Paris, 25 Apr 2000), URL <http://www.assemblee-nationale.fr/rap-info/i2334.asp#P2370_535319>.

⁹ The legal framework, licensing procedures, competent authorities and ministries, and export control mechanisms.

¹⁰ Arms export controls systems of other countries, international control regimes, the EU Code, the adaptation of the French system to the changed environment, and the Letter of Intent process.

¹¹ Germany, the UK, Italy, Sweden and the USA.

¹² According to the parliamentary report, the government should cover small arms in detail, name recipient countries, provide the reasons for denials of export licences, and include transfers in the context of military and defence co-operation.

¹³ *Rapport d'information de MM. Pierre Brana et Bernard Cazeneuve, déposé en application de l'article 145 du Règlement par la mission d'information de la commission de la Défense, sur les opérations militaires menées par la France, d'autres pays et l'ONU au Rwanda entre 1990 et 1994*, French National Assembly document no 1271, Paris, 15 Dec 1998, URL <<http://www.assembleenationale.fr/dossiers/rwanda.asp>>.

¹⁴ The Government's 35-page response was published as *Bundestagsdrucksache* [German Parliament document] no 13/10104 of 11 Mar 1998, available at URL <<http://www.bundestag.de>>.

¹⁵ The *Military Equipment Export Report* is available in German and—with considerable delay—in English on the website of the Ministry of Economics, URL <<http://www.bmwa.bund.de>>.

reports.¹⁶ To date, the Government has only implemented some of the recommendations made. The Bundestag has also adopted resolutions on export policy, for example one in 2004 requesting the Government to uphold the arms embargo against China.

There have also been a number of parliamentary inquiries into arms exports to specific recipient countries, such as South Africa and Iraq.

There is no institutionalised notification or consultation prior to a licensing decision. Two exceptions are the information of parliamentary committees on the transfer of surplus equipment of the German armed forces, and information on military assistance provided to the Budgetary and Foreign Affairs Committees due to the parliament's budgetary powers. In the past, the Budgetary and Defence Committees were informed about surplus weapons transferred abroad, partly in advance and partly in retrospect.¹⁷

The instrument of Parliamentary Reservation confers on the Bundestag the authority to ratify international agreements. In the case of the LOI Framework Agreement, the Government decided that a parliamentary reservation did not apply. Similarly, the Parliament did not participate in the 1972 and 1983 agreements on exports of jointly produced equipment with France and the UK.¹⁸

Military assistance to other countries requires parliamentary approval, not only with regard to the recipient country, but also the financial volume per country. Agreements cannot be concluded without involvement of the Foreign Affairs and Budgetary Committees.¹⁹

Italy

Since 1990, the Italian Government has been legally required to submit an annual report on arms exports to Parliament.²⁰ The Italian law outlines elements to be included in the report (licences granted and deliveries for import, export and transit of armaments) and a deadline for annual submission, 31 March. The rather voluminous report (451 pages for 2002) consists of six parts compiled by the Ministries of Defence, Foreign Affairs, Foreign Trade, Interior and Finance, and the Treasury.²¹

The report is unusual in a number of ways. The Italian Government is the only one in the EU to break down detailed information on licences issued and deliveries by individual company. *For each company*, the Foreign and Finance Ministries provide the number, detailed description of items and value for licences granted and deliveries, although the destination is not disclosed.²² They can generally be concluded when combining the information provided in the different ministries' reports and other sources such as the EU Code report. Therefore, while many puzzle pieces are provided, assembling them is mostly left to the reader.

Information on recipient countries is contained in separate statistics detailing the total value of export authorisations, deliveries and bank transactions per recipient country. The values for the three different categories do not match, however, since not all licences are transformed into deliveries, at least not in the same year the license was granted, nor is the payment necessarily made that year.

¹⁶ The 2001 resolution on the 1999 report requested that the annual report cover dual-use goods, statistics on breaches of export control law/cases dealt with by judicial authorities, newly concluded governmental agreements on armaments co-operation, and military assistance. In addition, the Economics Committee requested to be informed, in confidence, on export credit guarantees for arms exports (the Budgetary Committee already receives this information). The resolution (*Bundestagsdrucksache* no 14/5671 of 28 Mar 2001) was adopted by the plenary on 28 June 2001. A 2004 resolution referred to the reports for 2001 and 2002. It suggested that further detail be provided on exports licensed to developing countries, and on actual exports. It also made recommendations with regard to German arms exports policy (*Bundestagsdrucksache* no 15/3597 of 14 July 2004).

¹⁷ For example, a government reply to a written question of March 1998 listed past and planned transfer of surplus equipment, broken down into type and number of armaments and recipient country (*Bundestagsdrucksache* no 13/10239 of 27 Mar. 1998). A different reply announced the export of two submarines formerly used by the German army to the United Arab Emirates, as well as military assistance and collaborative armaments projects to that destination (*Bundestagsdrucksache* no 14/3619 of 9 June 2000).

¹⁸ According to the "Agreement between the Government of the Federal Republic of Germany and the Government of the French Republic, on the Export of Jointly Developed and/or Produced Armaments to Third Countries" of 1972, the export decision lies in principle with the country of final assembly. Foreign-supplied components become an integral part of the weapon system. A similar agreement was concluded between Germany and the UK in 1983.

¹⁹ *Bundestagsdrucksache* no 13/11322 of 4 Aug 1998, p 3.

²⁰ *Relazione sulle operazioni autorizzate a svolte per il controllo dell'esportazione, importazione e transito dei materiali di armamento nonché dell'esportazione a del transito dei prodotti ad alta tecnologia*. Up until reporting year 2002, the reports were available in electronic format.

²¹ Only the Foreign, Finance and Treasury reports are considered here. The other three reports contain the following information: The Defence Ministry informs about recipients of military services, while the Foreign Trade Ministry provides statistics on dual-use exports. The Ministry of the Interior reports on temporary imports.

²² According to Mariani and Urquhart, the data was initially broken down by exporting company and recipient country, but the latter has not been included since 1993 due to pressure from industry, Mariani, B and Urquhart, A, *Transparency and accountability in European arms export controls: Towards common standards and best practice* (Saferworld: London, Dec. 2000).

Statistics on banks involved in financial transactions, provided by the Treasury, represent a unique feature of Italian reporting.²³ The report thus breaks taboos on disclosing information on financial arrangements and producing companies, which in many other countries are justified on commercial confidentiality grounds.

Spain

The Spanish Government has published reports on arms exports since 1995.²⁴ The first report, which covered the years 1991 through 1994, contained summary information.²⁵ Further detail has been added over the years. A report published in 1998 for the first time details the value of exports per recipient country, covering the years 1991 to 1996. This increase in transparency followed both a campaign initiated by Spanish NGOs to end secrecy in arms transfers (called “Killing Secrets”), and a formal request for a report by Parliament. The Spanish Parliament agreed two documents on arms export reporting, one on arms trade transparency of 18 March 1997, and one on transparency and development of export controls for small arms and light weapon (SALW) of 11 December 2001.²⁶

Statistics on exports of defence materials and dual-use goods and technologies have to be presented to Parliament every six months. The Secretary of State of Tourism and Trade presents the annual report to the Parliament’s Defence Committee. The report to Parliament must include “essential data” on countries of destination.

For each recipient country, the report for 2003 provides:

- the value actual exports;
- the military list ratings of actual exports; and
- the number and value of licences granted.

For denials under the EU Code, the report provides their number, the broad category of equipment denied, the Code criteria evoked to justify a refusal, and the number of bilateral consultations. The annex contains documentation, such as the Spanish submission in the framework of the EU Code and the intergovernmental OSCE small arms reporting system. The latter includes five categories of small arms and eight categories of light weapons exports, and export authorisations to OSCE states. The Spanish Government is considering the provision of additional information in the report for 2004.

Sweden

In 1985, the Swedish Parliament was the first in Europe to receive an annual report on arms export policy from its Government. These are submitted by early spring.²⁷ The Government added both further detail and additional types of information over time. This enhancement of transparency can be attributed to the EU Code reporting dynamic, domestic and international NGO pressure and the fact that during the 1990s, Sweden lost the leading role with regard to arms export transparency it had during the 1980s and early 1990s.

For each recipient country the report provides:

- the values and the relevant Swedish military list categories together with a summary description of the equipment for both export licences and actual exports; and
- export licences denied and criteria invoked (since reporting year 2003).

For major arms-producing companies, the value of military exports is provided. The countries in which companies obtained manufacturing rights from Sweden are also listed. The reports also provide an overview of international developments and relevant Government decisions at the national level, in the EU and in international fora.

The Parliament has several instruments at its disposal to scrutinise the Government’s implementation of the legislation in place and to expose discrepancies between stated government policy and practice.

Parliament annually holds a debate on the Government’s arms exports report. The debate is based on a Foreign Affairs Committee report, which scrutinises the annual report and puts forth motions. Debates also take place in the context of legislative procedures. The LOI Framework Agreement was the subject of in-depth parliamentary debate in advance of ratification. Numerous debates have been held on specific controversial deals, such as exports to Indonesia in the mid-1990s, often on the basis of reports by the Committee on the Constitution.

²³ For an analysis of Italian reporting on banking and financial organisations, see Terreri, F, “Banche armate: it finanziamento dell’export di armi”, *OSCAR Report*, no 17, July–Aug 1999 (IRES Toscana: Florence), pp 17–20.

²⁴ Reports are available at URL <<http://www.mcx.es>>.

²⁵ The value of licences and exports for 10 categories of military equipment and the value of licences and exports per recipient region.

²⁶ Both are reprinted in the 2003 annual report on arms exports.

²⁷ The reports are available in Swedish and English at URL <<http://www.ud.se>>, most recently *Government Communication 2003–04: 114, Strategic Export Controls in 2003—military equipment and dual-use goods* (Stockholm, Mar. 2004).

Besides the committees specialising in armaments issues (the foreign affairs and defence committees), the Standing Committee on the Constitution has a key role to play through its task to “examine the ministers’ performance of their duties and the handling of Government business”.²⁸ To this end, it has the “right to access all Government documents relating to a particular matter, even if they are classified information”.²⁹ Every year since at least 1990, the Committee of the Constitution has addressed arms trade issues and investigated arms exports to specific recipients.³⁰ Reports include evidence from Government officials. It was on recommendation of the Committee on the Constitution that the Government investigated the issue of follow-on deliveries during the second half of the 1990s.

The Parliament is involved in decision-making on foreign policy matters through the Foreign Affairs Advisory Council, FAAC, an advisory body on foreign affairs. It consists of the Speaker and nine other members, who are elected by Parliament from among its Members and is presided by the head of state, the King.³¹ Until the mid-1980s, Parliament and Government both agreed that the FAAC could fulfil the advisory function for Government on arms export policy and that the creation of a separate body was not necessary. The Parliament however recommended that “the Government continuously seek the advice of the Advisory Council on Foreign Affairs regarding the choice of countries and important matters of principle”. The Government agreed that the Advisory Council should be a consultative body and declared that it should “continuously obtain the advice of the Council on questions of the choice of countries, co-operation agreements relating to joint development and production of military equipment as well as on matters of principle, which shall also include issues which affect larger-scale exports”.³²

The idea of establishing a parliamentary committee to advise the Government on arms export matters was first put forward by a 1969 commission tasked with preparing the revision of arms export regulations. The proposal was rejected by both Government and Parliament.³³ Based on a parliamentary decision to increase transparency and accountability of decision-making on arms exports, an Advisory Board for War Material Export Questions was established in 1985. This enabled parliamentarians from different parties represented in Parliament to gain greater insight into the licensing process through privileged access to information, greater specialisation and regular dedication of time to this specific specialisation and regular dedication of time to this specific issue.³⁴ It also created an instrument for voicing objections. In 1996, the Advisory Committee was renamed Export Control Council (ECC) and linked to the licensing authority ISP.

The legal basis of the ECC is provided through a 1995 Ordinance,³⁵ which assigns an Export Control Council to the head of ISP as an “advisory council on export control questions”. The ECC comprises the head of ISP (the chair) and a maximum of 10 members. The chair is obliged to keep members informed of issues relevant to its work. If possible, the chair should consult with the advisory body before referring a decision on the export of arms or dual-use goods to the Government. At the Inspector’s discretion other relevant issues can be presented to the Council.

The current ECC consists of current and former Members of Parliament from all parties represented in Parliament. The body is informed ex post of all decisions made by the ISP. The main part of the meetings deals with specific, precedent setting cases on which a decision on a pre-notification of the applying company has not yet been taken. The ISP, not the Government decides which cases to take to the ECC. ECC discussions are on preliminary opinions in response to written inquiries as to whether an export license can be expected, not on the final licensing decision.

BEST PRACTICE OF OTHER ARMS EXPORTERS IN THE EU

Reporting

Belgium was the first EU Member State to identify the type of recipient in a given country in the annual report on arms exports.³⁶ The Danish report also identifies the type of recipient within the country (industry, defence or police). Finland identifies deliveries to United Nations forces based in countries such as Afghanistan and Pakistan.

²⁸ Swedish Parliament, *Parliamentary Control*, Swedish Riksdag, Factsheets, no. 13 (text by the Secretariat of the Chamber), Stockholm, Nov 1998.

²⁹ Swedish Parliament, *Parliamentary Control* (previous note).

³⁰ The Swedish NGO SPAS documents the Constitutional Committee reports on arms exports related issues since 1990 on its website URL <<http://www.svenska-freds.se/vapenexport/ku/>> .

³¹ URL <<http://www.riksdagen.se/english/work/foreignaffairs.aps>> .

³² Quotes are from an English translation of excerpts from the Foreign Affairs Committee report, provided by the Ministry for Foreign Affairs (unpublished), quoted hereafter as “Excerpts from Foreign Affairs Committee report 1981/82: 26”.

³³ Excerpts from Foreign Affairs Committee report 1981/82: 26, p 4.

³⁴ SIPRI Export Control and Non-proliferation Project, “The Swedish Export Control Council”, URL <<http://www.sipri.org/contents/excon1elcr.html>> .

³⁵ *Förordning med instruktion för Inspektionen för strategiska produkter* (1995:1680).

³⁶ Initially, the distinction was between “public sector” (ie, the police and the military), or “private sector” (ie, industry, personal use and “other”). As a result of the transfer of licensing competence from the Federal Government to the regional governments of Brussels, Flanders and Wallonia in 2003, these governments now provide information on arms exports to their regional parliaments. For each recipient country, the Flemish report identifies the number of licences granted for each type of end-user (government, businessman, industry, private individual and other). The first Wallonian report for 2003 does not make this distinction. Regional reports are available at URL <<http://gov.wallonie.be>> and <<http://docs.vlaanderen.be/channels/hoofdmenu/vlaanderenint/wapenexport.jsp>> . The Belgian reports from 1993 are available at URL <<http://www.grip.org>> .

Since 1991, the Belgian Government has been legally obliged to provide Parliament with an annual report on the implementation of its arms export legislation. A 2003 revision sets a time frame for the submission of the report to Parliament and sets out compulsory elements, such as specific data on licences granted and exports, steps taken to prevent the diversion and undesired re-export of Belgian arms, and the implementation of the EU Code of Conduct. This partially transfers the definition of the reporting format from the government to parliament.³⁷

In Finland, detailed information about each license can be obtained from the Defence Ministry upon request, immediately after the license was granted.³⁸ Since 2000 the Finnish Government has also posted its Code submissions on the Defence Ministry's website.³⁹ For each recipient country, the Finnish report provides:

- the military list (ML) sub-category and equipment quantity, number and total value of licences granted; and
- the military list sub-category, equipment quantity, description and value for each ML sub category for actual exports.

The Netherlands Government is the most transparent with regard to both export licences refused and granted. Since 1996, the Netherlands Government has submitted a report on arms exports to Parliament—since 1997 on a biannual basis.⁴⁰ Since 1997 it has also published an annual report on its arms export policy. For each denial, the following details are indicated:

- the intended destination;
- the recipient within the country;
- the end-use (if not identical with the recipient);
- a detailed description of the equipment (eg “turbojet engine for training aircraft, adjusted for military use”);
- the military list rating
- the reason(s) for the denial based on the Code criteria; and
- the date and number of the denial notification within the CFSP information exchange.

Since the introduction of monthly online statistics in November 2004—following requests from political parties and NGOs for more up-to-date information/the Netherlands Government published the most detailed and timely information on licences granted in the EU.⁴¹

For each recipient country, the statistics provide:

- the date of licence issuance, of licence application, and of expiry;
- the registration number and type of licence;
- the EU and national ML categories and a detailed description of the item;
- the value; and
- the country of origin, the recipient country and the destination of end-use, if applicable.⁴²

The Irish government has published monthly licences/albeit with less detail than the Netherlands/ on exports for years, but the most recent statistics available in February 2005 were from September 2003.⁴³

The Netherlands report also presents an overview of COARM and POLARM deliberations, which occasionally gives insights that go beyond the Council's consolidated report. In addition, the report includes a list of surplus equipment delivered and provides a detailed description of the equipment, the recipient country and the end-user. Parliamentary questions on arms export policy are also listed. Detailed information on arms exports can also be obtained by invoking the 1991 law on the openness of public administration.

³⁷ The relevant laws are available at URL <<http://web.sipri.org/contents/expcon/belgium.html>> .

³⁸ Åsa Carlman, *Arms Trade from the EU: Secrecy vs. Transparency* (Swedish Peace and Arbitration Society: Stockholm, Dec. 1998).

³⁹ URL <<http://www.defmin.fi/index.phtml/page—id/334/topmenu—id/75/menu—id/334/this—topmenu/75/lang/3/fs/12>> .

⁴⁰ The reports for reporting years 1997 through 2002 are available at URL <<http://www.minez.nl>> , most recently *The Netherlands Arms Export Policy in 2002*, The Hague, Sep. 2003.

⁴¹ URL <<http://www.ez.nl/content.jsp?objectid=27352>> . In February 2005, the most recently statistics referred to September 2004.

⁴² For example, for January 2004, the Netherlands reported an export to the UK to be re-exported to Oman, and a Dutch re-export of US-originating goods to Denmark.

⁴³ For each recipient country, the statistics provide military list category and number of licences issued, URL <<http://www.entemp.ie/trade/export/statistics.htm>> .

Parliamentary mechanisms

Several EU governments consult their parliaments in specific cases on an ad hoc basis. In the Netherlands, advance information and consultation of parliament is practised for a limited category of arms exports. The defence committee receives lists of surplus weapons and makes recommendations on how to dispose of such weapons, whether through export, possibly with certain restrictions, or destruction. These lists are confidential unless the Government considers that neither commercial confidentiality nor the interests of the country of final destination prohibit a publication.⁴⁴

Parliaments have also passed resolutions on specific destinations. In the Netherlands, for example, a private member's motion passed in January 2001 requested the Government to "limit the issuance of licences for the export of military goods to India and Pakistan to return shipments following repair and to shipments of spare parts for goods supplied previously and thus for the time being not to grant licences for new deliveries of military goods".⁴⁵

THE TEN NEWLY ACCEDED EU MEMBER STATES

In December 2004 the Czech Government was the first among the 10 new EU members acceded on 1 May 2004 to issue a national report on arms exports.⁴⁶

However, the majority of the ten submitted data to the Sixth Annual Report on implementation of the EU Code, although this will only be required from the Seventh Annual Report. The Czech Republic, Hungary, Malta, Poland and Slovenia submitted values of both actual exports and licences granted, while Slovakia submitted data on export licences. Estonia, Latvia and Slovakia provided information on denials. Since the revised Code is likely to include a requirement to publish an annual report on arms exports, all EU members can be expected to do so in the near future.

CONCLUSIONS

Reporting

The quality and format of EU national reports vary considerably and make different elements of arms export policy transparent. Most governments provide detailed information on licences granted, and some provide additional information on actual exports.⁴⁷ Major conventional weapons included in the UN Register are an exception, since all EU members' submissions cover deliveries of such weapons. Finland and Italy provide information on arms quantities in their national reports, and Spain, Germany and France provide this information for SALW. For major conventional weapons, quantities for EU exports can again be found in the UN Register submissions. Similarly, detailed descriptions of armaments are not included in most national reports, but are provided in Register submissions.

By 2004, all countries issuing annual reports identified recipient countries, not only recipient regions. Belgium and Denmark also provide information on the type of recipient within the country. Conditions attached to an export, in the form of clauses in the contract or separate political agreements, are largely kept secret in EU countries. These may refer to the prohibition of re-export without prior approval by the supplier country or geographical restrictions for deploying equipment.

As regards financial aspects, most countries disclose total values per country, and some by equipment category, but not the value of individual contracts, with the exception of Italy. Italy is the only country to list banks involved in transactions. No EU government provides systematic information on financing arrangements, such as offsets, direct or indirect subsidies, and export credits. Information on offsets is usually only available through the media or from companies. Few EU members refer to exporting companies. Italy lists exports of specific companies without explicitly disclosing the destination. Sweden provides a list of the major exporters.

As to reporting on exports of jointly produced equipment under the Framework Agreement, only one Global Export Licence from the UK to France has been reported in 2003. Clear reporting on country shares

⁴⁴ Dutch Ministry of Economic Affairs, "The Netherlands Arms Export Policy in 2000", URL <<http://www.ez.nl/content.jsp?objectid=24327>>.

⁴⁵ Dutch Ministry of Economic Affairs (previous note), p 12.

⁴⁶ URL <<http://www.mzv.cz/lwwo/mzv/default.asp?ido=15135&idj=2&amb=1&ikony=True&trid=1&prsl=True&poccl=8>>. For each recipient country, the report provides the number and value of licences issued, and the value of actual exports, as well as the number of denials and the criteria invoked. Each of these types of information is further broken down into eight categories of military equipment. A separate table provides additional details on exports of selected categories of military equipment, including the country of end-use and of manufacture and the number of items delivered.

⁴⁷ This is important because licences are not necessarily used, for example if a contract is not awarded, and deliveries may spread out over a number of years. Furthermore, government-to-government transfers are usually exempt from licensing requirements.

in exports of joint projects would increase the transparency of indirect exports. The lack of detailed data on deliveries by the UK and Germany precludes any conclusions as to what extent an open license has been used.⁴⁸

Only the Dutch, German and Swedish governments provide a break-down of denials by recipient country. The Netherlands provides a maximum of available information through the inclusion of the same level of detail circulated to other governments, while the majority of governments do not name countries to which export licences were refused.

Role of parliament

Parliament can assume a variety of functions in arms export policy: election/dismissal of the government, legislation, deliberation, representation, control, advice and co-decision. The form of these functions and the extent to which they are exercised differ from one country to the next. A parliament's legal powers do not necessarily translate into influence on and scrutiny of policy-making, and vice versa. Rather, tradition, interest, competence, capacities and domestic circumstances play a key role.

National parliaments in the EU use a variety of instruments to control government action in the field of arms export policy, including oral and written questions to government, committee reports and evidence-taking sessions. With the exception of the UK and Sweden, no instruments and structures specific to arms export policy have been set up to scrutinise arms export policy.

Effective parliamentary scrutiny of arms export policy requires the availability of in-depth and timely information. Only in the 1990s did regular reporting on arms exports become widespread in the EU. Most national reports are formally submitted to parliament (in Sweden, Italy, Belgium, Spain, the Netherlands, the UK, France and Germany). Finland, Portugal, Ireland and Denmark do not submit reports to parliament, but publish reports or statistics. Although timely information is the key to effective control, some reports are published over a year after the end of the reporting period. In three EU countries (Belgium, Italy and the UK), export laws oblige the government to annually submit a report on its arms export policy to parliament. The Italian and Belgian laws outline elements to be included in the report and a deadline for annual submission. Some EU governments, notably the Netherlands and the UK, have made an effort to produce more timely information through the production of monthly and quarterly reports.

Three challenges to parliamentary scrutiny of a general nature can be identified: First, unless parliamentarians obtain unsolicited information through government briefings, they first have to be aware of the documents' existence in order to exercise scrutiny. Second, while parliamentarians of relevant committees are rarely refused at least some level of access to documentation, the contents may have been censored to reduce the document to the level of classification held by the MP. And third, confidentiality requirements may not permit parliamentarians to publicly discuss issues related to these documents. One should however add that the executive is not necessarily responsible for these constraints. With few exceptions such as France, parliament has the legislative power, including the right of initiative, and therefore regulates access to information, including its own access.

Most parliaments regularly debate issues related to arms exports, usually related to specific exports or other topical questions. The Swedish, Dutch and German parliaments hold plenary debates on arms exports on the basis of the government's report.

Parliament's right to put written and oral questions to government can and has been used for the purpose of questioning the government on its arms export policy, albeit to varying extents. The utility of this instrument for effective scrutiny depends on the timeliness and quality of responses, which depend on many variables such as the country, the government in power, domestic circumstances and the international environment. Evidence-taking sessions (and therefore oral questions) can take place in specialised committees, which can either be permanent or ad hoc, that is, set up for a specific purpose and dissolved once the mandate is fulfilled. Not all parliaments in the EU have a tradition of drafting parliamentary reports.

Parliament's investigative function can be applied to arms exports. Powers vary from country to country. In some states, inquiries are conducted by individuals selected by the government.

Only in Sweden do MPs formally exercise an advisory function in arms export policy formulation and implementation. However, several EU governments consult their parliaments in specific cases on an ad hoc basis, such as exports of surplus weapons. More generally, parliaments use instruments such as resolutions and reports to provide input into policy formulation and implementation.

To conclude, the variety of instruments used by EU parliaments to influence arms export policy paints a colourful picture. In spite of substantial differences between national practices, a general strengthening of the role of parliament in this policy area can be observed, closely linked to and caused by the improvement in government reporting. The quality of government reporting, however, does not automatically translate into effective scrutiny. Nevertheless, the role of parliament extends far beyond a mere scrutinising role.

⁴⁸ Open licences, as opposed to individual licences, permit the export of an unspecified number of goods within a specified category to specific countries.

II. REPORTING ON THE EU CODE OF CONDUCT ON ARMS EXPORTS

Reporting on implementation of the EU Code of Conduct on Arms Exports since 1999 has increased the transparency of arms export policy in the EU. By the end of 2004, the EU Council had published six annual reports.⁴⁹ The reports are based on submissions from national governments on member states' arms exports and their implementation of the Code. While the EU Code reports are relevant for all 25 national parliaments, only the European Parliament appears to actively scrutinise the report and publishes its own report in response.

The reports on implementation of the Joint Action on Small Arms also include relevant information.⁵⁰ These documents do not report on export policy implementation, but contain valuable information on changes in national legislation, guidelines, and procedures. While laws and regulations are easily available to national citizens, publication in the Official Journal ensures availability in all official EU languages, and thus to interested parties from other countries.

THE COUNCIL REPORTS ON IMPLEMENTATION OF THE EU CODE OF CONDUCT ON ARMS EXPORTS

The annual Code reports document information exchanges, decisions (such as improved information and consultation mechanisms) and future priorities of the Council Ad Hoc Working Party on Conventional Arms (COARM), which includes representatives from all EU governments and the European Commission. A compendium of decisions taken over the past years has been incorporated since the Fourth Report (published in 2002), thus establishing what could be called the political equivalent of case law. At the end of 2003, a User's Guide was published on the Council website, which was updated in December 2004. While these decisions cannot be legally enforced, intergovernmental accountability through peer pressure and the threat of repercussions can serve as an effective enforcement mechanism. In addition, parliaments and the public can refer to such documented positions when they hold their governments to account.

The consolidated reports also identify issues to be addressed in future COARM meetings. Progress on these subjects is evaluated in subsequent reports, which creates a new level of accountability: the Council sets goals for itself and reports publicly on the progress made towards achieving them.

As regards the implementation of the operative provisions (information exchange and consultation mechanisms), reports include the number of denial notifications circulated and consultations over potential undercuts, but fail to indicate the results of intergovernmental consultations, and hence preclude an evaluation of the effectiveness of the mechanism, for example whether the Code has prevented undercutting.

The quantity and quality of statistical data annexed to the annual report have increased considerably over the six reporting years. Until 1999, the reports provided the total value of either licences granted or deliveries. For 2000, the numbers and values of export licences or exports were broken down by exporting country and importing region for the first time. The following report also includes a breakdown of data by exporting and importing country. The Sixth Report broke down export licences and/or exports by EU Common Military List Category, if available. As a result, whereas the First Report's table could still be fitted onto one page, the Sixth Report contains over 200 pages of figures.

As regards denials, the Sixth Report provides the total number of denials issued by each EU government and the frequency with which individual criteria were evoked. A separate column informs about the number of individual criteria evoked for each recipient country. This precludes conclusions as to whether EU countries have applied different criteria to the same recipient country, and how a government assesses the situation in a given recipient country. Only a breakdown of denials both by supplier and recipient would give some insight into the way in which the criteria are applied in different EU member states.

In spite of the exponential increase in data, the report's statistical annex still falls far short of making EU governments' export policies fully transparent. First, financial data are of limited use for a credible assessment of the way a government interprets and implements export criteria and operative provisions. To this purpose, one requires the quantity and types of weapons for which export licences were requested and/or denied and for deliveries as well as the type of end-user within the country. One would also need to consider the final destination of components and sub-systems, which are to be incorporated and re-exported to a third country.

Second, the comparability of the data submitted is limited. Different levels of transparency in Member States and the absence of standardised reporting requirements have led to inconsistencies in the EU report and rendered it difficult to compare the figures. For example, the time frame referred to is not always identical and the values provided refer to export licences for some countries and to deliveries for others.⁵¹ Moreover, substantial transfers, such as those made in the context of government-to-government agreements and open licences, have been excluded from national licensing data. And as regards actual

⁴⁹ All Annual Reports are published in the Official Journal of the European Union and are also available at URL <<http://www.sipri.org/contents/expcon/annrep.html>>.

⁵⁰ The reports are published in the Official Journal of the European Union and also available at URL <<http://www.sipri.org/contents/expcon/eujointact.html>>.

⁵¹ For a detailed analysis on national submissions, see Bauer, S and Bromley, B, *The EU Code of Conduct on Arms Exports: Improving the Annual Reports*, SIPRI Policy Paper no 8, Nov 2004, URL <<http://www.sipri.org/contents/affnstrad/PP8>>.

exports, some countries use largely unreliable customs statistics, while countries such as Finland, France, Hungary and Sweden use industry data. Reports have also contained internal discrepancies, but these have been somewhat reduced over time.

Nevertheless, the consolidated report has increasingly made national arms export policies and international cooperation in the EU more transparent to the European Parliament and national parliaments (whether they use this information to scrutinise their governments is a different matter). The Code reporting system introduced a crucial element of accountability, making intergovernmental negotiation, consultation and decision-making processes more transparent by documenting decisions, unresolved issues and future agenda items, and making them available to parliaments and the public. This makes it more difficult for governments to back down from established and documented positions, even if they are not formally included in the text of the Code.

The Code reporting system has prompted an increase in national transparency, in particular but not exclusively for countries with a tradition of secrecy. Even for Sweden, which for a long time topped the transparency hierarchy in Europe as the only country publishing a national report on arms exports, the Code led to more detailed national reporting. For all EU countries, the joint report enhanced comparability and availability, if only through provision of electronic information in all official EU languages through publication in the Official Journal and the provision of World Wide Web links for national reports. The Code also contributed to the creation of a regional transparency norm, since a routine establishes an expectation of reporting by national governments. An obligation to produce a national report may even be codified in a revised Code in 2005.

THE ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament (EP) has created no instruments specific to arms export policy. Rather, general mechanisms and structures are used, in particular those within foreign and security policy. Consequently, the role of the Parliament in matters related to arms exports has evolved in proportion to its role in broader policy areas. During European Political Co-operation, the EP's role was limited to adopting resolutions, initiating debates, and putting oral and written questions to the Presidency and the Commission. More important than the limited instruments was the fact that the policy area itself was confined to very limited discussion and co-ordination. With the expanding second-pillar dimension of arms exports through the Maastricht Treaty's establishment of the Common Foreign and Security Policy (CFSP), a wider range of scrutiny instruments became available. Moreover, the multifaceted and cross-pillar nature of arms export policy has opened up many ways for Parliament to address this issue. Arms export policy has been raised within the context of the common market, the external trade policy, human rights, development, industrial policy, CFSP and ESDP (European Security and Defence Policy).

The Parliament's rather extensive legislative powers do not extend to the CFSP. However, first-pillar legislation on dual-use goods may create a precedent for arms exports.

Already in the 1980s, the EP raised the issue of arms exports in debates and reports. During the second half the 1990s, the number of parliamentary activities increased, and the range of arms export topics widened. This occurred in parallel to, and on many occasions in direct response to, intensified Council activity in this field, in particular in the context of the EU Code of Conduct on Arms Exports of 1998.

Key instruments for monitoring and scrutinising arms export policy include oral and written questions to Council and Commission, reports and resolutions. The Parliament's oversight of Community activities was originally limited to the activities of the Commission, but has been extended to the Council of Ministers and the bodies responsible for foreign and security policies.

Developing the dialogue with the EP was listed as one of the priorities of COARM for 2004. For the first time in 2004 contact with the EP was extended beyond a Presidency briefing of the Foreign Affairs Committee. In addition to addressing the Foreign Affairs Committee's Sub-committee on Security and Disarmament on the issue of the Code review, the Netherlands Presidency invited the European Parliament's rapporteur on the EU Code of Conduct⁵² to speak at an informal meeting on the EU Code review held in The Hague in October 2004 and to brief a COARM meeting at the end of 2004. Therefore, gradually and very cautiously, a role of the Parliament in the evaluation of the Code's implementation has been established.

The committees draw up reports on and prepare opinions for other committees. Since the 1970s, the EP adopted reports that raised arms export-related issues. Since the Council has annually presented a report on implementation of the EU Code to the Parliament, the latter responds with a report, which includes a resolution detailing considerations and recommendations. The annual reports on the CFSP and on the EU's human rights policy, and reports on the defence industry have discussed selected aspects of arms export policy.

The Maastricht Treaty provided that the Parliament "may ask questions of the Council" on matters of CFSP (J.7, now Art. 21). A large number of written and oral questions have been put to the Council and the Commission by individual MEPs on arms-export-related subjects. The Maastricht Treaty established

⁵² See URL <<http://www.europarl.eu.int>> for the EP reports on the EU Code.

the right of Parliament to be consulted by the Presidency “on the main aspects and the basic choices of the common foreign and security policy.” Parliament has expressed its views and issued advice, recommendations and requests through recommendations and requests through resolutions, reports and debate. Apart from resolutions adopted in the context of parliamentary reports, a substantial number of urgency resolutions have addressed arms export-related issues.

To conclude, arms export policy cooperation within the EU created a role for the European Parliament in this policy area previously limited to national parliamentary scrutiny. The actual role of Parliament through active use of its instruments is limited by the amount, quality and timing of information available to the Parliament on the one hand, and the interest, time and competence of parliamentarians on the other. Generally, the EP has taken an active interest in the issue of arms exports and has used the instruments at its disposal. Beyond the use of existing mechanisms, the Parliament has also proactively sought to expand its influence.

III. REPORTING TO PARLIAMENT BY OTHER MAJOR ARMS EXPORTERS

AUSTRALIA

The Australian Government annually publishes a report on arms exports. The report refers to the past financial year. The report for the 3rd and 4th quarters of 2001 and 1st and 2nd quarters of 2002 was published in February 2003.⁵³ For each recipient country, the report provides the number and total value of permits issued for military and dual-use exports.⁵⁴

CANADA

Since 1990, the Canadian Government has published an annual report on its arms exports. For each recipient country, the report provides the financial value and description of exports under each military export list category, together with an indication of whether this export falls under weapon systems and munitions, support systems or parts.⁵⁵

Data on actual exports is based on information provided by companies. However, the statistics exclude exports of military equipment to the US because most of these items do not require an export licence. According to the Government’s report, arms exports to the US are estimated to account for over half of Canada’s exports of military goods and technology.

UNITED STATES⁵⁶

Since 1996, US law requires the Government to submit a report on the preceding fiscal year’s arms exports to Congress by 1 February.⁵⁷ The report consists of two parts, issued by the authorities overseeing the different types of exports. The Department of Defense informs about Foreign Military Sales (FMS), Excess Defense Articles (EDA), Drawdowns and International Military Education and Training. The Department of State reports on Direct Commercial Sales (DCS), which are negotiated directly between industry and the customer.⁵⁸

⁵³ Available at URL < <http://www.defence.gov.au/strategy/dtcc/reports.htm> >. Reports on the Internet back to financial year 1994/1995.

⁵⁴ There are separate statistics for different types of export licences.

⁵⁵ Most recently *Export of Military Goods from Canada: Annual Report 2002*, Dec. 2003, URL < http://www.dfait-maeci.gc.ca/trade/eicb/military/mi_liexportO2-en.asp >.

⁵⁶ For a detailed overview of US reporting on arms exports and the role of Congress, see Lumpe, L and Donarski, J, *The Arms Trade Revealed: A Guide for Investigators and Activists* (Federation of the American Scientists Arms Sales Project: Washington D.C., 1998), URL < <http://www.fas.org/asmp/library/publications/revealed.htm> > and the FAS website. Most of the information provided in this section is drawn from these sources and a chapter on US export controls in the forthcoming 2005 SIPRI Yearbook.

⁵⁷ According to Section 655 of the 1961 Foreign Assistance Act, as amended, each report “shall show the aggregate dollar value and quantity of defense articles (including excess defense articles), defense services, and international military education and training activities authorised by the United States and of such articles, services, and activities provided by the United States, excluding any activity that is reportable under title V of the National Security Act of 1947, to each foreign country and international organisation. The report shall specify, by category, whether such defense articles—

(1) were furnished by grant under chapter 2 or chapter 5 of part II of this Act or under any other authority of law or by sale under chapter 2 of the Arms Export Control Act;

(2) were furnished with the financial assistance of the United States Government, including through loans and guarantees; or

(3) were licensed for export under section 38 of the Arms Export Control Act and, if so, a specification of those defense articles that were exported during the fiscal year covered by the report.”

⁵⁸ The reports are available at URL < <http://fas.org/asmp/profiles/655-2003/6552003.html#FMS> >. The most recent report for Fiscal Year 2003 covers the period from 1 Oct. 2002 to 30 Sep. 2003.

For each recipient country, the Department of Defense provides:

- the quantity, value and type of arms exported under the FMS programme; for EDA, also the model;
- the financial value of Military Education and Training; and
- the financial value of Drawdown Assistance (assistance approved by the President, during 2003 for Iraq and Afghanistan).

For each recipient country, the State Department provides:

- the quantity, value and type of arms licensed for export; and
- the value and type of defence services licensed for export.

The US Congress is informed in advance of certain exports, and formally has the power to block specific sales, albeit with certain restrictions. The specifics are outlined in the Arms Export Control Act, and have been modified over time. The right of Congress to be notified and raise objections depends on both the type of export and its financial value. Congress must be notified if a proposed sale exceeds \$14 million for “major defence equipment” and \$50 million for other articles, training or services. Transfers of excess defense articles have to be notified if their value exceeds \$7 million.

Industry, NGOs and other parties have proposed a number of changes to the current system of notification over the years. As a result, the dollar-threshold for NATO countries, Australia, Japan and New Zealand was increased in 2002. Initiatives to further increase the thresholds have failed to succeed so far. The Arms Export Control Act was amended to require congressional notification for commercial sales of firearms for values of at least \$1 million.

An objection to an export requires a decision by both the House of Representatives and the Senate. This objection has to be raised within 15 days for NATO countries, Australia, Japan and New Zealand, and within 30 days for all other countries. If the President opposes the congressional veto, a two-thirds majority of Congress is required to uphold the objection. This two-thirds objection can only be overridden if the President invokes an emergency situation.

The right to block a sale is limited in a number of ways. First, the US President can override a Congressional veto. Second, sensitive or controversial exports, for example of small arms, may fall below the value threshold. Third, transfers declared particularly sensitive or confidential for national security reasons, as well as transfers by intelligence agencies are exempt from the notification procedure. Fourth, a transfer can be divided into several contracts to keep it under the value threshold. And fifth, the time frame is very short given the busy Congressional schedule, and notifications can fall into, or intentionally be made during, recess.

While no export has been formally blocked by Congress veto to date, some exports have been cancelled, delayed, or modified as a result of Congressional pressure. Congress has exerted substantial influence through raising the political costs of an export (deterrent function) and/or shaping its modalities (the quantity, level of technological sophistication, or conditions attached). In addition, Congress can restrict or prohibit exports to specified destinations by adopting legal provisions. Congress also has decisive influence over the export of surplus because it has to approve the costs of transport.

Advance information on certain arms sales is not only available to Congressional bodies, but also to the public. The Pentagon publishes information about the type, model, producer, quantity and price of proposed FMS on its Internet site⁵⁹ when it notifies Congress. Comprehensive information on the sale is also published a few days later in the Federal Register. While information on proposed DCS is also published in the Federal Register, this information is not only less detailed, but usually also published several weeks after Congress was notified. The most detailed information tends to be available on the export of surplus equipment.

To conclude, the US Congress is the only parliamentary body to have a formal role and limited veto in decision-making on arms exports, in addition to its extensive powers to scrutinise government policy.

Sibylle Bauer

February 2005

⁵⁹ URL <<http://www.defenselink.nul/>> .

Appendix 13: Further memorandum from the UK Working Group on Arms

This supplementary memorandum highlights the UK Working Group's responses to the Foreign Secretary's evidence session.

INCREASING EFFICIENCY IN THE LICENSING PROCESS

Staffing at the Export Control Organisation (ECO)

The UKWG is very concerned at the staffing cutbacks planned for the ECO. We agree with the Foreign Secretary when he said that he did "not believe that there is a level of staffing which has to be fixed" (Q88), but rather that staffing levels should be set on the basis of need. However the decision to make an arbitrary 25% cut in staff at the ECO would appear to involve exactly the opposite approach, one which is not at all responsive to need.

In addition, the UKWG understands that in response to the pressures to become more efficient, the ECO is encouraging exporters to make more use of open licences, which if true would call into question the Foreign Secretary's assertion that a reduction in staff will not lead to greater use of open licences (Q90). Furthermore, if the Foreign Secretary is concerned that there have been "hold ups in applications" because officials are "spending so much time answering [the QSC's] questions" (Q159), this too would militate against such a swingeing cut in staff at the ECO.

These proposed cuts in staff come at a time when the EGO faces an increase in licence applications following the implementation of the new control orders on brokering and intangible transfers. The UKWG believes that such a large cut in staff at the ECO will inevitably lead to less scrutiny of export licences as well as less transparency and urges the Government to reverse this decision.

Charging for licences

If financial savings have to be made a far better approach would be to charge for the licensing services provided by the ECO. Despite the Foreign Secretary's caution on this point, he did acknowledge that "there are charges for licences in many other areas" (Q92). He also noted that if charges were introduced "the level of the charge relative to the total value of any arms sale would have to be fairly low" (Q93): a charge of 0.1% of the value of the licence would go a long way toward creating a self-financing ECO.

Privatisation

Under no circumstances should the Government consider privatising any part of the export licensing process. Any such moves would have huge implications for the accountability of the system, would be highly likely to give rise to conflicts of interest, and would send exactly the wrong signal to other states in the process of improving their own export control regimes, especially in Europe, where the UK is regarded as playing a leading role on this issue.

Embargo on China

In his evidence, the Foreign Secretary referred to the December 2004 statement by the European Council that lifting the embargo should not result in either a "quantitative nor qualitative" increase in arms exports to China (Q114). The US administration and the Congress has made no secret of their opposition to the lifting of the embargo, and the UK defence industry has come out firmly against lifting the embargo due to the harm such a decision could do to its position within the US defence market and its access to US technology. Against such a background, it is unclear why the Government appears willing to risk significant potential cost when it has argued there will be no material 'benefit' from lifting the embargo.

The Foreign Secretary asserted that the EU Code appears to be a more effective tool than the embargo, however this is not necessarily supported by the fact that of the 22 now—EU member states which have published information on their military exports for 2003, 17 reported that they licensed nothing to China. This argument has also been undermined by a recent statement by the French Defence Minister, Michele Alliot-Marie, in support of increased EU arms sales to China.⁶⁰ The UKWG believes that lifting the EU embargo will inevitably result in an increase in the volume and lethality of equipment licensed to China.

The post-embargo "toolbox", currently under discussion among EU member states and mentioned by the Foreign Secretary in his evidence (Q114), while welcome, would appear to be no substitute for the embargo. Information is so far sketchy, and no provision has been made for outside interests to feed into this process (be they from parliaments, industry, or NGOs), but indications are that this will merely be an information-exchange mechanism, without provision for review or sanction in the event the licences granted for transfers to China increase. It would be helpful if the Government could set out in detail what is proposed for the toolbox, and how this would deal with concerns of an increase in the transfer of controlled goods from EU

⁶⁰ Peter Spiegel and John Thornhill, "France fuels China arms row," *The Financial Times*, 16 February 2005.

member states to China. The UKWG believes that strict guidelines urgently need to be developed for the implementation of the criteria of the EU Code of Conduct, as has been done for criterion eight (see section on EU Code below). The UK Government should make this a priority for its forthcoming EU Presidency.

ARMS TRADE TREATY (ATT)

The UKWG has welcomed the Government's strong support for an international Arms Trade Treaty (AU), and was further encouraged by the Foreign Secretary's statement to the QSC that "we have got to build up support for [an ATT] in the European Union. We have got to get the United States on board. We have got to get former CIS countries on board who are major exporters, one in particular" (Q134). However, the UKWG is concerned by other statements from the Government, including at the UN Security Council Open Debate on Small Arms in New York on 17 February—which refer to this work occurring 'in the longer term'. This is a worrying trend, diverging from Jack Straw's first announcement on the Arms Trade Treaty which declared that 'we will start work soon with international partners . . .' (emphasis added). The UKWG urges the Government to maintain its first commitment and become proactive on these issues now.

In particular, the G8 is a key opportunity to work on these themes. The G8 countries account for 90% of all arms exported and it is thus incumbent upon them to ensure the highest level of responsibility in arms exports and ensure that arms transfers are in line with existing obligations under international law. With Canada, France, Japan and Germany all in support of strong multilateral arms controls, it is not unreasonable to expect a strong statement from the G8 on international export controls. The UKWG urges the Government to make international arms export controls a priority during its Presidencies of the EU and G8 this year, to ensure Peter Spiegel and John Thornhill, "France fuels China arms row," *The Financial Times*, 16 February 2005, that the question of international arms transfers is on the EU agenda for the UN 2005 Small Arms Biennial Meeting of States, and to work for a declaration of international principles governing arms transfers based on international law at the UN Small Arms Review Conference in 2006.

For an ATT to succeed, support and indeed leadership for it must come not only from 'Northern' states, but also from the 'South'. We would therefore urge the Government to ensure that its outreach on the AU prioritises building interest and capacity to take a lead on this issue among developing countries.

TRANSPORTATION

The Government has been highly critical of arms trafficking into conflict zones, and indeed the Foreign Secretary in his evidence expressed the hope that one benefit of an AU would be a "much more intensive focus on the unofficial criminal arms dealers who make millions and millions of dollars trading in arms across Africa" (Q136). In this context it is therefore of considerable concern that the Government has on a number of occasions over the last year contracted the services of transportation companies with a reputation for involvement in unwelcome arms transfers.

For example, in response to the recent Tsunami DfID used an Avient Air DC 10 to fly its first relief flight from Gatwick, despite Avient Air's own admission that it had supplied arms to both the DRC and Zimbabwe between 1999–2002. Avient Air had previously been named by the UN Panel of Experts reporting on mineral exploitation and arms trafficking in 2001 as being responsible for organising bombing raids into the eastern DRC in 1999 and 2000 and for related arms brokering and logistics supply deals with both the Zimbabwean Government and the Kabila regime in the DRC.⁶¹ In December 2004 it was also reported that DfID had contracted a Moldovan arms trafficking company for relief flights in 2003 and that following a report in the *Evening Standard* in August 2004 DfID suspended contracts with another company that had been implicated in supplying arms to Liberia.⁶²

It is essential that the Government establish systems for contracting international transportation services that do not compromise its declared stand on the necessity to prevent irresponsible arms transfers.

EU CODE OF CONDUCT ON ARMS SALES

Elaboration of EU Code criteria

With the completion of the elaboration of criterion 8 expected during the Luxembourg Presidency, there is a clear opportunity for the UK Government to initiate a similar process during its Presidency for at least one other of the criteria. The UKWG would also encourage the Government to pursue a commitment from the European Council that such a process will then be repeated for all of the criteria. In addition, we would recommend that a formal consultation process be established whereby external actors will be given the chance to participate in the process.

⁶¹ The aircraft was filmed loading relief goods for TV news (see also <http://www.airliners.net/search/photo.search?csearch=47907/157&distinctentry=true>).

⁶² "See 'UK Aid Flights linked to arms dealer', *Sunday Times*, 26 December 2004 <http://timesonline.co.uk/article/0,,2087-1415628_1,00.html>, and 'Sudan aid flown on gun running planes' *Evening Standard* 25 August 2004 <http://www.thisislondon.co.uk/news/articles/12775278?source=Evening%20Standard>.

Criterion 8

In response to questioning on the UK's own criterion 8 guidelines, in which the point was made that the current language of "seriously undermine or hamper" (emphasis added) sets the bar for licence refusals too high, the Foreign Secretary defended this language by stating that "countries are entitled to have defence forces" (Q149). The UKWG is not challenging the right of states to have defence forces, however it is unclear how this is relevant to the principle that arms purchases should not undermine development. We maintain our position that the current language consigns sustainable development to be the poor relation of the EU Code criteria, and that the language should therefore be revised with "seriously" deleted.

In addition, we would welcome a statement from the Government explaining the implications for the UK's national guidelines on criterion 8 once the EU's elaborative guidelines have been agreed.

Information-sharing

It has long been the argument of the UKWG that EU member states should further develop the information-exchange mechanisms mandated under the EU Code. It was therefore telling that in his evidence the Foreign Secretary suggested that information on "undercutting" (ie where one state issues an export licence for an "essentially identical transaction" already refused by another member state) was circulated among the 23 member states. While the two states involved in the consultation can advise the others if they so choose, there is currently no obligation to do so. The EU Presidency would be the ideal opportunity for the UK to advocate the mandatory circulation of details of consultations. If unable to achieve consensus, the UK could send positive signals in this direction by committing publicly to always be willing to consent to circulation, and by encouraging other member states to do the same.

The question of denial notifications for potential transfers which take place outside the licensing system, for example some government-to-government transfers, gifts etc., is also in need of clarification (Q143). At the moment, if the Government were to consider such a deal, but then reject it, this would not be communicated to EU partners. So were another member state to receive a request to approve an essentially identical transaction, they would have no knowledge of the earlier decision and may hence unwittingly undercut. It would seem this is unlikely to be the intent of the EU Code denial notification system; the UKWG would therefore urge the UK Government to address this oversight during its Presidency.

Candidate Countries

The Foreign Secretary also spoke of the future accession states, such as Bulgaria and Romania, who have agreed to the 32 chapters of the *acquis* and whose membership of the EU is therefore conditional on the European Commission deciding that these states have met the legal conditions set out by the *acquis* (Q111). However, the EU Code, as a political declaration, falls outside the *acquis* and therefore the export control performance of the Candidate Countries need have no impact on their prospects for EU membership. It is therefore essential that the EU establish a timetabled framework for ensuring that the export control performance of Candidates will be up to EU standards by the date of membership, and that a process is established whereby failure to comply has negative consequences.

TRANSPARENCY

The UKWG warmly welcomes the Foreign Secretary's assertion that "transparency across Europe is absolutely essential if there is to be a consistent standard in the application of the EU Common Criteria" (Q98). However this should not be at the cost of greater transparency within the UK. The Foreign Secretary argued that to increase transparency in the UK "would be to compromise, to damage the necessary commercial interests or commercial confidentiality of the [defence] industry" (Q106). It is worth noting, however, that arguments similar to this have been heard for many years, indeed even before the UK had any public reporting on strategic export controls. The UKWG believes that the increases in transparency in the UK and EU in recent years have done nothing to damage the UK defence industry but have enabled a more informed debate on export licensing. Further improvements that are urgently needed to enhance effective scrutiny would not damage commercial confidentiality.

Upgrading software and improvements on end-use information

The UKWG has been encouraged by the progress of recent years in terms of the Government's willingness to publish more information about end-users, but frustrated by the argument that this is currently impossible due to IT and resource constraints (Q101). It would be helpful if the Government could set out precisely how much more data it is prepared to make available, and when it proposes to next upgrade its software so as to allow this to happen. Upgrading would appear to be a matter of urgency for a number of reasons. The UKWG understands that the software packages used by the different relevant departments to the export licensing process are unable to "talk" easily to each other. Moreover, more responsive and flexible

IT would in all likelihood be of great benefit in reducing officials' workload in making information available to the QSC. Care should be taken to ensure that the next generation of software is flexible enough to enable further changes to be made without requiring wholesale reconfiguration.

A RISK-BASED SYSTEM OF EXPORT CONTROL

In his closing remarks to the QSC, the Foreign Secretary asserted that, "A criticism of me is more likely to be that I have erred on the side of granting a licence rather than refusing it where . . . the judgement is very finely balanced" (Q161). The UKWG believes that for such a sensitive issue as export control, and given that the UK system is based on the calculation of risk rather than proof, it is incumbent upon the Government to apply the precautionary principle. In such cases, we would therefore expect the Government to err on the side of refusal. An important example of the need for this approach is shown by the recent UK suspension of military aid to Nepal because of the dissolution of government by the King. The UKWG has long urged restraint in exports of UK arms to Nepal precisely because of the unstable political situation and the risk that the weapons will fuel the internal conflict. It is alarming that significant quantities of UK weapons continued to flow to Nepal right up until the coup.

UK RECORD ON UNDERCUTTING

A number of statements have been made in evidence to the QSC on the UK's record on undercutting relative to its EU partners, with representatives of the defence industry suggesting that the system works to the disadvantage of UK companies.⁶³

Unfortunately, while the number of consultations is reported upon, very little evidence is available on how many undercuts are taking place and by whom. Indeed the only public-domain information of which the UKWG is aware on this subject was provided during the evidence presented to the QSC by the Foreign Secretary and his officials during February 2004. However, analysis of even this paltry amount of information throws up interesting results.

The Foreign Secretary stated that the UK Government "consulted other Member States 20 times last year and we undercut them five times" (Q23, February 2004). Based on these figures, 25% of consultations undertaken by the UK in 2003 resulted in an undercut. It was also estimated that across the whole EU there were about 15 undercuts in 2003 (Q22, February 2004), while the EU Consolidated Report stated there were 100 consultations across the EU during the same period. If the estimate presented during last year's evidence is correct, then on average 15% of all consultations across the EU resulted in an undercut, compared to the UK's rate of 25%. This would tend to indicate that, contrary to industry concerns, UK defence companies are more likely to benefit from current arrangements than to suffer. The UKWG urges the QSC to investigate the significant number of undercuts by the UK.

February 2005

Appendix 14: Letter to the Chairman from the Secretary of State for Trade and Industry

EXPORT CONTROL ORGANISATION

Thank you for your letter of 3 February about efficiency savings in the Export Control Organisation (ECO).

You asked how many jobs are to be cut and the breakdown between functions. In the financial year 2003–04, ECO had on average approximately 166 staff. ECO's contribution to the DTI's headcount reduction programme is to reduce to 136 by 31 March 2005 and to 109 by 31 March 2006. At 1 February ECO had 140 staff. ECO's functions include export control policy (UK legislation and input into EU and international export control regimes, bilateral relations, Parliamentary work); export licensing units consisting of licensing and ratings casework officers, technical officers and officers concerned with the application of intelligence to licence applications and ratings; industry outreach and compliance officers; an IT and data support team, and a continuous improvement projects team. Staff reductions have been made in all these areas except the compliance team.

You were concerned about the impact of these reductions. Industry recognised in its recent evidence to your Committee that the service provided recently by ECO has been better than ever, despite the additional burdens associated with the implementation of the Export Control Act and the fact that staff numbers have been declining since last May. This perception is borne out by the performance figures for 2004 which show that the Government overall processed 78% of SIEL applications within 20 days (and 98% within 60 days). This builds on the 76% performance in 2003. HMG has therefore been exceeding its key performance target of processing 70% of SIEL licence applications in 20 days, and the aim will be to continue to meet that performance indicator despite the pressures in ECO. It is important to keep in mind that the more cohesive relationship between DTI and the advisory Departments (FCO, MOD and DFID) should help to sustain

adequate service levels, which is not solely a function of DTI's performance. Furthermore, performance depends on the volume of licence applications, not just the number of staff. The volume appears to be steady, though it is too soon to draw conclusions about the overall trend in applications under the new legislation.

The Jewel process has brought about process efficiencies which have enabled ECO to function efficiently with a lower level of staff—as mentioned above, some 26 posts have already been lost over the last six months. ECO has also put in place a continuous improvement strategy, post Jewel, which aims to reduce caseload wherever possible (eg by encouraging exporters to use open licences whenever these are available), streamline processes (eg building on the SFE, refining the appeals process), increase exporter awareness to produce better quality applications, and improve the competence of staff (through better training, multi-skilling and better knowledge management). This will bring about further efficiencies. We have also improved the transparency of the system by moving to quarterly publication of the Annual Report data, together with information on refusal rates by destination and processing times by destination.

You asked whether ECO's programme of advice and support to industry is to be curtailed. I agree with you that activities in this area over the last year have been successful. ECO has put all its seminars onto a regional footing, and also graded them into "beginners", "intermediate" and "advanced" sessions so as to target better the audience. ECO has also produced a DVD for exporters and is developing software tools to help companies identify controlled goods and set up internal compliance programmes, including an Open General Licence selection tool. ECO has reviewed the pattern of compliance visits to ensure the most efficient deployment of resources but there are no cuts planned at present in that area.

I believe therefore that measures are in place to help maintain the levels of service to exporters. The reduction in staff is however a steep one, over a relatively short period of time. I am therefore considering whether there may be further steps we can take. I want to consider the scope for involving private sector partners, for example in processing licence applications, in delivering the IT investment which the Jewel project identified as important to future delivery, and in carrying out awareness and compliance activities. I am not in a position at this stage to reach conclusions about future options but will keep you closely informed.

Patricia Hewitt

February 2005

Appendix 15: Further memorandum from the Foreign and Commonwealth Office

PART ONE:

General questions and follow-up to the evidence session on 12 January, and the Government's responses to the Committees' report on the 2002 Report and the written questions dated September 2004.

FORMATTING AND AVAILABILITY OF INFORMATION:

1. The fact that the Government is now supplying refusals information on a quarterly basis is very helpful. Could details of end-user name and stated end-use be included in these tables in future, as it was for refusals in 2003 (see file Q.13 refusals & revocations 2003)?

The Government agrees to provide the Committee with this information in confidence.

2. The Committees have reviewed the information received regularly on a quarterly basis and wonder if, in future quarterly reports, information on incorporation SIELs to particular countries (as in Q14 of the last set of written questions) could be supplied *instead* of a list of extant OIELs. The Committees would also like to receive information on appeals quarterly if possible.

The Government agrees to provide the Committee with confidential information on incorporation SIELs to particular countries (to be decided) instead of a list of current OIELs, and also to provide information on appeals quarterly, in confidence.

3. Could the Committees automatically receive, in future, all export control-related UK submissions to international and regional organisations, for example the OSCE, and export control regimes?

The Government agrees to provide the Committee with all annual and questionnaire returns it presents to those organisations. We will be in contact with the Clerk of the Committee to identify for each organisation, what returns we make, and the best means of providing this information to the Committee.

LICENSING

The Government's written response to the Committee's September 2004 questions shows that the number of applications for SITCL licences differs significantly from that predicted in the RIA (81 between November and August, compared to 900–1500 estimated for the year). The Government notes that this is more in line with pre-consultation estimates, and this is borne out by information supplied by the Government quoted in paragraph 72 of the Committee's Report on Secondary legislation. Nevertheless it does differ significantly from the amended RIA.

4. Why does the Government think that the number of applications for SITCLs is much lower than that predicted in the post-consultation RIA? Could this mean that some people do not know about the new controls, or are evading them? Also, why does the Government think that the number of Miltech OGEL registrations is much higher than predicted in the post-consultation RIA?

It is still too early to draw any conclusions about the level of licence applications under the new controls. The figures Government provided in the post-consultation RIA reflected a balance between our earlier and industry's subsequent estimates on anticipated numbers of SITCL applications. We believe the discrepancy between the actual numbers of applications and the RIA can be explained by industry now having a better grasp of the activities that are licensable and more importantly, what activities are covered by the Open General Trade Control Licence (OGTCL), and Open Individual Trade Control Licences (OITCLs). The OGTCL gives licence coverage for many of the routine transactions which exporters feared would require an individual licence.

We believe there is a good level of awareness about the new controls. The DTI and HMCE have carried out several awareness visits to brokers to inform them of the activities that are controlled.

The Government believes that the higher than predicted number of registrations for the Miltech OGEL, is due to the success of our awareness campaign on the new controls. Companies have a better understanding now not only of what activities are controlled, but also of what the Miltech OGEL covers, and are therefore registering to use it, where previously, some were unnecessarily applying for Standard Individual Export Licences (SIELs).

5. Has the Government received any information to indicate that businesses involved in the transfer of goods or technology subject to the new controls have relocated their operations outside the UK to avoid regulation under the Export Control Act? (Q155–156)

We are not aware of any cases where businesses have relocated their operations to avoid UK controls. Naturally, in the normal course of events there will be some movement in where businesses are located, and some may relocate from the UK, but for reasons unconnected with UK export controls.

PUBLISHING END-USE INFORMATION: FOLLOW UP FROM Q101–104

6. Mr Landsman commented during the evidence session that the automatic provision of end use information would be considered "when the next generation of software is introduced" (Q102). He added that "Dates for implementation of the project will depend in part on decisions which are taken about the future restructuring of the Export Control Organisation in the DTI." Could the Committee have further information on the likely timescale of this exercise, given the uncertainties referred to above?

The Government's Command Paper response, Cm 6357, noted that the Government had looked at whether we could provide information on categories of end-user but concluded that it was not cost-effective within the limitations of our current licensing databases to extract the relevant information. Nonetheless, the issue was being considered in the longer term in the context of gradual improvements to databases. It is to this that Mr Landsman was referring during the 12 January 2005 evidence session.

As Mr Landsman noted during the evidence session, the restructuring of ECO, along with any other implications on ECO of the DTI Efficiency Review will need to be finalised before ECO can give proper consideration to introducing new databases and IT. However, there are also policy considerations that need to be resolved, concerning the level of information about end-users that can be released.

DEVELOPMENTS IN EUROPE

7. A number of important reports and initiatives are due very shortly. Could the Government give the Committees the latest state of play on:

- (1) Revision of the EU Code of Conduct: 0107: "it may be the Luxembourg Presidency. . . is able-to complete the review." (see below for further specific questions on this point)

The Code of Conduct review is now close to completion. The Government attaches, in confidence, a document with the latest state of play. We fully expect that the review of the Code will be completed during this Presidency. It should be recognised, however, that the timing of the review of the Code is being linked to the review of the EU arms embargo on China.

- (2) Review of EU torture regulations Q147: "the regulations . . . should be adopted later this year." The Committee would also be grateful for a list of equipment to be covered as mentioned in Q148.

Negotiations concerning the proposed EU Torture Regulation are ongoing. It looks likely that the Regulation will be finalised some time later in the year.

There is, at present, some debate in the EU about the composition of the Annexes. Annex II lists items whose export will be banned by the Regulation. Annex III lists items that will be licensable. The UK has been attempting to persuade other Member States to accept the same strict control on these goods that the Government applies at a national level. This is proving difficult, as a number of Member States do not currently control the export of some of the items in Annex III (particularly handcuffs). Therefore, to enable us to keep our national ban on the export of shackles, leg irons, and gang chains, the UK has asked that Member States be able to apply stricter controls at a national level. This proposal is currently under discussion, and we have made it clear that the UK cannot accept the composition of the Annexes without the inclusion of this provision.

The equipment that is to be covered by the Annexes is as follows:

ANNEX II

1. Goods designed for the execution of human beings, as follows:

1.1 Gallows and guillotines;

1.2 Electric Chairs for the purpose of execution of human beings;

1.3 Air tight vaults, made of eg steel and glass, designed for the purpose of execution of human beings by the administration of a lethal gas or substance; 1.4 Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance;

2. Goods designed for restraining human beings, as follows:

2.1 Electric-shock belts designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10,000 V.

ANNEX III

1. Goods designed for restraining human beings as follows:

1.1 Restraint chairs and shackle boards;

1.2 Leg-irons, gang-chains and shackles Note: Item 1.2 does not control 'ordinary handcuffs'. Ordinary handcuffs are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 280 mm when locked and have not been modified to cause physical pain or suffering;

1.3 Individual cuffs or shackle bracelets, designed for restraining human beings, having a minimum internal perimeter exceeding 190 mm when fully locked;

1.4.4 Thumb-cuffs and thumb-screws, including serrated thumb-cuffs;

2. Portable devices designed for the purposes of riot control or self-protection, as follows:

2.1 Portable electric shock devices, where not specified in Annex II item 2.1, having a no-load voltage exceeding 10,000 V, including but not limited to electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers) Note: This item does not cover medical-technical goods;

2.2 Portable devices for the purpose of riot control or self-protection by the administration of an incapacitating chemical substance such as tear gas, OC (oleoresin capsicum or pepper spray) and PAVA (pelargonic acid vanillylamide, synthetic pepper spray).

3. *Substances used for the purposes of self protection or riot control, as follows:*

3.1 Pelargonic acid vanillylamide (PAVA) or synthetic pepper spray;

3.2 Oleoresin capsicum (OC) or pepper spray (CAS 8023-77-6) Note: these items do not control pepper spray individually packaged for personal self-defence purposes.

(3) Review of Criterion 8 Q151: "in the Luxembourg Presidency"

We envisage that the Users Guide to Criterion 8 will be completed during the Luxembourg Presidency, as it is being considered in line with the review of the Code of Conduct.

(4) EU dual-use regulation September 2004 Written Answers page 7: "The Task Force overseeing the Peer Review process is currently working on an action-oriented final report."

On 13 December the Council agreed the Task Forces' recommendations for follow-up to the Peer Review. The recommendations cover:

- (i) transparency and awareness of legislation implementing the EU system;
- (ii) minimising significant divergence in practices amongst Member States;

- (iii) investigating possibilities for adding controls on transit and transshipment;
- (iv) providing assistance to those states that need help in recognising dual-use items that are subject to control;
- (v) improving exchanges of information on denials and consideration of the creation of a database to exchange sensitive information;
- (vi) agreement of best practices for the enforcement of controls;
- (vii) improvements in transparency to facilitate harmonisation of the implementation of controls on non-listed items (catch-all);
- (viii) enhancement of interaction with exporters;
- (ix) agreement of best practices for controlling intangible transfers of technology.

This programme of work will be pursued vigorously by Member States and the Commission during 2005 and 2006.

8. In his answer to Q93 on 12 January, the Foreign Secretary offered to supply the Committees with information about charges for licences elsewhere in the EU: "I am not aware of the level of charges and I do not know whether either of the officials here are, but we could get you information about that." The Committee would be grateful for this information.

The Government has contacted several EU Member States to discover their position in respect to charging for licenses. We have gained the following responses:

France—No charge.

Germany—No charge (Charges for ancillary services, which provide guidance and assistance).

Italy—€ 11 charge per application, plus an annual registration fee of € 258.

Netherlands—No charge.

Following this initial survey, we will now be conducting a wider study within the EU. We will provide the Committee with a copy of our findings.

9. Following up recommendation 12 of the Committees' Report on the 2002 Report, and the Government's response, does the Government intend to press for a harmonised approach to gifts and other government-to-government transfers across the EU?

The Government is studying the policy of other Member States on this issue, and will then consider further discussion at COARM in light of its findings.

10. The Committees gather that issues emerging from the SIPRI Policy Paper on improving the annual Code report and the expert meeting held (which is referred to under the Government's response to recommendation 24 of the Committee's report on the 2002 Report) included:
- The study showed that it is impossible to produce reliable figures on actual exports using customs data. What thought has HMG given to requiring industry to gather data on actual exports, rather than seeking to gather this data itself?

The data produced on the export of military goods shows an approximation of the level of trade with individual countries.

The Government publishes information on the value of exports of military equipment to named countries in the Annual Report on Strategic Export Controls. The identification of exports by HM Customs & Excise is based on the classification of goods in EU tariff codes that do not match exactly the classification of goods subject to strategic export controls. In respect of those codes that cover civil and military usage, Custom Procedure Codes, and knowledge of exporters active in the defence sector, are used to identify actual exports.

The Government does not believe it would be justified in asking industry to take on an additional record-keeping burden for this purpose, particularly given the extra work required of industry by the new export controls.

- Is the UK seeking ways to harmonise reporting on open licences with other EU countries? Neither the UK nor Germany include such licences in their total figures for value of exports licensed. While Germany could do so, it hesitates since the figure constitutes a maximum value rather than the approximate actual value. The UK does not assign a value to these licences in the first place.

The Government will consider, in discussion with other EU Member States ways to harmonise reporting on open licences in the EU Annual Report.

11. Following up the Government's response to the Committee's recommendation 22 of its report on the 2002 Report, punitive action by all EU member states if end-use conditions set by one EU government are breached would be more effective. Is the UK ready to suggest this in COARM?

The Government will look to raise this issue at COARM.

The EU Code of Conduct: Further Questions

12. Can the Government comment on whether the issue identified by the Committees on the legal status of the Code (recommendation 25 of the Committees' report on the 2002 report) will be under discussion as part of the final negotiations? (EU officials were quoted by Defense News as stating the voluntary code would not become a legally binding document in the foreseeable future—"EU to bolster arms export guidance", *Defense News*, 15 November 2004).

The Government can confirm this. The status of the Code has not been discussed in detail by officials for a number of months, but it is expected that the issue will be revisited in Brussels in the near future.

13. Can the Government give the Committees further details on the "toolbox" referred to in Mr Oakden's reply to Q108? "we are negotiating in the EU a so-called "toolbox" which would essentially set in hand this series of procedures which would involve both consultation and three-monthly mutual notification about export procedures and what each country has done over the previous three months."

WMD

14. In response to a question from Mr Colman about the G8 Global Partnership, in particular the proposal for a further parliamentary assembly (Q112), Mr Landsman said that the Government would "revert to you with some more thoughts on that in due course." Could the Committees have the Government's latest position on this?

Whilst Counter-Proliferation remains at the very top of the Government's international security agenda and is an established and important element of the G8 programme, the Committee will know that the Government has identified Africa and Climate Change as its two headline priorities for the UK's Presidency in 2005. The Government is not therefore planning a further G8 InterParliamentary Conference specifically on Counter-Proliferation issues. Instead, our focus will be to use our Presidency role to take forward work agreed at Sea Island in the G8 Action Plan on Non-Proliferation. As part of that approach, the UK is co-sponsoring with the European Commission a pilot project entitled "Reinforcing EU Cooperative Threat Reduction Programmes: Community action in support of the EU Strategy Against Proliferation of Weapons of Mass Destruction". Under part of this project, ISIS Europe, organisers of the G8 InterParliamentary Conference in 2003, plan to hold an International Conference in Brussels in November 2005. This conference will assemble experts of the European Commission, the European Parliament, the EU Member States, specialized agencies, and other international experts to present the results of the research and to make practical proposals for the reinforcement of the Community contribution to cooperative threat reduction. Full details of the project are attached.

The Speaker of the House of Commons will host a G8 Speaker's Conference in September. More details should be available from the Speakers office.

15. Industry have expressed concerns about the following points relating to WMD controls:
 - the OGEL (Exports or Transfers in Support of UK Government Defence Contracts) (sometimes known as the Mod Cons OGEL) covers only technical assistance and technology transfers in relation to programmes under contract to the MOD. It excludes pre-contract technical discussions.

The Government has made it clear that the new controls in Articles 8 & 9 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 only apply where technology is actually transferred *and* is for WMD end-use outside of the EC. For example, the controls do not apply to routine sales and marketing discussions that may have a technical element.

The activities listed in the definition of technical assistance are all qualified by the words "technical support". Therefore, if an activity is not technical support, it falls outside the definition of technical assistance. It is a misreading of the provision to say that technical support can be provided to an individual who does not possess the item for which the assistance is being provided. For example, the following activities would not be caught:

- (1) Planning how to deploy and use detection equipment in advance of its supply;
- (2) Simply describing the possible uses of a piece of NBC equipment (although some such descriptions could qualify as an Article 9 technology transfer if all the conditions for such a transfer were met, ie if technology was actually transferred);

The Government, therefore does not consider that there is a significant gap in the Exports or Transfers in Support of UK Government Defence Contracts OGEL. If there is an actual pre-contract transfer of WMD-related technology to the MOD, this can be covered by an OIEL, for the few individual companies where this may be a relatively common occurrence. Indeed a handful of such OIELs are in place. The Government is not aware of any widespread problem for companies dealings with MOD.

- Blue light emergency services are excluded, although there are emergency deployments outside the UK which brings them within the scope of the controls.

Exports of NBC equipment, or transfer of NBC technology from the UK by blue light services would be subject to normal export controls, as regards the export of goods/transfer of military or dual-use technology, insofar as the goods and technology are listed or fall under the end-use control. If blue light services are transferring NBC technology within the UK for subsequent use outside the EU, or are providing technical assistance in support of NBC equipment deployed outside the EU, then this activity will be licensable under Articles 8, 9 or 10 of the Main Order.

The Government does not consider it unreasonable that if companies provide Article 10 WMD end-use technical assistance to the UK or foreign blue light services outside the EC they should apply for a licence, given the sensitivity of the equipment/technology in question. We do not think that blue light services are suitable for inclusion in the Deployed Forces OGEL's given the diversity of these services and the rarity of these situations.

The Government would assure the Committee, however, that were an emergency to occur overseas, for example a WMD attack, which required the overseas assistance of UK blue light services, we would expect to quickly put licences in place covering any Article 8, 9 and 10 transfers, provided we were happy with the handling arrangements for any WMD detection kits.

- The narrower scope of “relevant use” does not apply to equipment incorporating detection papers or other NBC detection kit, as most protective suits do. Industry therefore consider there to be an inconsistent approach to the treatment of platforms, such as ships or vehicles, which are not treated as for relevant use if they carry detection/identification equipment.

Exports of NBC detection equipment from the UK, or transfers of NBC detection technology from the UK, require an export licence if the goods/technology are on the control lists. Where any controlled NBC item is incorporated into a larger platform, or a protective suit, an export licence will be required. A single licence would cover the entire export and should be obtained by the exporter of the platform or the suit.

It is possible that where NBC detection equipment is incorporated into a larger platform, or a protective suit, that a transfer of the NBC detection technology may take place in the UK between the NBC supplier and the platform manufacturer. This transfer is potentially caught by article 8 and 9 of the Order, insofar as the technology is for a relevant use outside the EU. However, DTI has stated that Articles 8 and 9 would *not* apply where the transfer is for the purpose or manufacture in the EC of a final product because the technology or software being transferred is not in itself for use outside the EC by the supplier of manufacturer but rather for use in the EC to construct the final product. This applies to NBC detection equipment whether incorporated into a ship, vehicle or protective suit. Article 8 and 9 *would* on the other hand apply where the NBC supplier transferred NBC detection technology to another person in the UK, knowing that that person intended to transfer that technology outside the EU for a relevant use rather than for the purpose of incorporating the NBC equipment into another product within the EC for subsequent export.

Therefore we do not consider there to be any inconsistency in our approach between these different items.

- Difficulties in interpretation surrounding transfers taking place during conversations—the definitions of technology and information are broad and imprecise.

The Export Control Organisation (ECO) has published extensive guidance on its website (www.dti.gov.uk/export.control) covering this point. In addition, ECO officials are always happy to meet with companies should they have any uncertainty about the controls on intangible technology transfers; indeed they have already had numerous discussions and meetings with industry on this issue.

- Support for HM ships, whose precise location in relation to territorial waters of countries covered by the OGEL may be unknown. Industry contend that HMG's observation that this is not a new situation is misleading because until 2003 “it was believed, both by Government and by industry, that transactions in support of HM Government, broadly defined, were covered by Crown Immunity, even if the goods concerned were not necessarily owned by the Crown.” The current position appears to be that Crown Immunity is only conferred on good owned by the Crown, and therefore a licence is required for goods and technology leased to, or exported in support of, HMG.

It is not correct, “that transactions in support of HM Government, broadly defined, were covered by Crown Immunity, even if the goods concerned were not necessarily owned by the Crown”. Crown Immunity applies in respect of the export or transfer of military goods or technology owned by the Crown. Crown Immunity does not attach to exports or transfers *to* the Crown as in these circumstances the licensable act is not carried out by the Crown.

In respect of dual-use exports and transfers there is no Crown Immunity for anything licensable under the EC Regulation.

However, where a dual-use control is properly a domestic control, then Crown Immunity would apply, ie in respect of Articles 8 and 9 (with the exception of 90)).

Where possible we have put in place new OGELs to cover those transactions where Crown Immunity does not apply, for example the Exports or Transfers in Support of UK Government Defence Contracts OGEL, the OGEL Military Goods: UK Forces Deployed in Embargoed Destinations and the OGEL Military Goods: UK Forces Deployed in Non-Embargoed Destinations.

Avient Air

16. Can the Government comment on the information supplied to the Committees regarding Avient Air? (Q157)—material sent to the Government on 20 January.

The Government advertised its requirement for an aircraft to our brokers on Boxing Day. Contrary to the assumption in the question, many operators were closed and not in a position to quote before the following day at the earliest. Of twenty operators contacted, twelve were not working over the holiday, and only three had aircraft available in the timeframe that we required.

Of the aircraft offered, one was too big for the task (AN-124), others had insufficient payloads and would have required us to apply for CAA exemption from EU noise regulations (IL-76), which would not have been possible over the Christmas holiday period. This left the Government with the option of the Avient DC-10 that would carry 60 tons of freight and was available for loading the following day (27 December).

The Government does have a system for clearing individual aircraft and operators with the Sanctions Unit of FCO. On this occasion, as a result of the Christmas holidays, DFID was unable to reach anybody on their contact lists. We now are in the process of improving our contact system, so this problem should not happen again.

DFID had no previous knowledge of the allegations against Avient. Therefore, bearing in mind the extreme urgency of booking an aircraft, and the excellent payload and availability offered, we made the decision to go ahead with the flight. The plane departed on the evening of 27 December, the day after the tsunami struck Sri Lanka.

Arms Treaty

17. Can the Government inform the Committees when and where the Foreign Secretary's speech on the International Arms Trade Treaty is going to take place? (Q132)

The Foreign Secretary will give a speech on the Arms Trade Treaty in mid-March, at an event to be held by Saferworld.

Customs

18. Industry have criticised the "seemingly ad hoc and uncoordinated way in which HMC&E officers around the country implement the regulations." Does the Government agree with this assessment? How will the Government ensure that those responsible for the merger of Customs and the Inland Revenue place sufficient emphasis on the need for a joined up approach to the export control system?

HM Customs and Excise has a duty to deploy its controls in the most efficient and cost effective way and to match resources to risk. Goods being exported outside the EU are declared to Customs together with accompanying documents such as licences. Regulatory customs controls at intra Community frontiers were abolished on completion of the single market on 1 January 1993. For those goods still requiring export licences for intra Community movements, a condition was introduced on the standard individual export licence requiring it to be presented at the local customs office for checking. Since this requirement was introduced, Customs has restructured and the number of inland offices rationalised in response to modern working practices and risk based controls. Customs are aware that the need for licences to be presented at inland offices can create practical difficulties, particularly when that office is located at some distance from the trader's premises. We therefore intend to review, with the DTI, the current arrangements for processing licences for intra Community movements with a view to reducing the burden on business and adopting a more risk based approach.

The Government assures the Committee that the new HM Revenue and Customs Department will continue to place a high priority on strategic export controls and work to ensure that operational effectiveness is maintained.

19. The Committee would be grateful for an update of the information supplied by the Government in the autumn of 2004 on action by Customs and Excise since January 2004 (see answer to written question 17 to the Government dated September 2004).

Prosecution case

On 18 February, at Southwark Crown Court, a man was convicted of 12 separate counts of being knowingly concerned in the exportation or attempted exportation of aircraft parts to Iran, via Singapore, in breach of an export prohibition or restriction. He was sentenced to 18 months imprisonment on all counts, to run concurrently, suspended for two years. The defendant was also banned from being a director or manager for 10 years. The confiscation process has been initiated.

Cases adopted by specialist investigators

Specialist investigators have adopted two new cases. This figure does not include those cases dealt with by Customs investigators that for one reason or another do not result in a criminal investigation.

Small arms and light weapons

Customs stopped the following small arms and light weapons: 12 firearms, six firearms parts, 140 rounds of ammunition, two stun guns and 6 capacitor blasting machines.

China

20. The Foreign Secretary told the Committees on 12 January that “it transpires that most of the applications for arms exports to China which have been refused in recent years have been refused under the EU Code of Conduct and not under the embargo which is narrow in its scope and, moreover, most of the refusals under the embargo would have fallen to be refused under the Code of Conduct in any event. As far as the latter is concerned, I think I am right in saying that for the UK there were only two refusals under the embargo, and those were not particularly significant, which would not have been refused under the Code of Conduct” (Q114) Can the Committee please have details of these refusals?

Mr Rammell told the House during Foreign Office questions on 25 January that “I repeat, however, that no arms sale that has been refused until now under the embargo would, to all intents and purposes, be possible under the code of conduct.” [Hansard column 160]. Is there an inconsistency here?

End-use Assurances

21. The Government did not accept the Committee’s conclusion 18 of its report on the 2002 Report, which related to end-use undertakings regarding the use made by the Indonesian authorities of British-built military equipment. In particular the Government cited “the fact that the assurances predated the introduction in 2000 of the Consolidated EU and National Arms Export Licensing Criteria.” Can the Government be more specific on this point, given that the EU Criteria were adopted in 1998, and are based on EC criteria adopted in 1991 and 1992, and UK criteria adopted in 1997?

In 2000 the Government consolidated the UK national export licensing criteria with those in the EU Code of Conduct on Arms Exports. The Government announced the original UK national export licensing criteria in July 1997. Following this, and as a result of a joint UK-French initiative, the Council of the European Union adopted the EU Code of Conduct on Arms Exports on 8 June 1998. From that date the Government assessed all licence applications against both the UK’s national criteria and those in the EU Code of Conduct. While the criteria in the EU Code of Conduct were compatible with those which the Government announced in July 1997, there was a large degree of overlap between the two sets. The consolidation which used the EU Code of Conduct as a basis, and incorporated elements from the UK’s national criteria where appropriate, continued to assess all export licence applications on a case by case basis. The Consolidated Criteria does not specifically regulate where in the importing country the equipment is to be located. Although, where the equipment is likely to be used will, however, be one factor in assessing an export licence application against the Consolidated Criteria.

In terms of the end-use undertakings that the Committee refers to, the Government of Indonesia had informed the UK that if, against expectations, they had to contemplate the use of such equipment in Aceh they would inform the Government in advance. In August 2002, the Indonesian government approached the UK government saying that they wished to deploy British-built military equipment to Aceh, which would have represented a breach of existing assurances. The Indonesian government subsequently gave a new assurance that British-built military equipment would not be used for offensive purposes, nor to infringe human rights either in Aceh or elsewhere in Indonesia. The Indonesian Government had been open in announcing their intention to deploy equipment to Aceh. We were satisfied with the substance of the new assurances, since they explicitly rule out the use of British-built military equipment offensively and for internal repression in Aceh and throughout Indonesia. Advance warnings of deployment to Aceh alone was subsumed as soon as the assurances became applicable to the whole of Indonesia.

When writing to the Committee in October 2002, the Government’s concern was to bring to Parliament’s attention the Indonesian government’s proposal to use British-built military equipment in Aceh, which would have been in breach of the assurances then in place. The letter to the Committee did make clear that all export licence applications for Indonesia would continue to be rigorously assessed on a case-by-case basis

against the Consolidated EU and National Arms Export Licensing Criteria. There was therefore no change in the policy in which export licences are assessed, and no practical change in the way in which UK controls of exports to Indonesia are implemented.

Comments by industry

22. The submission by the Export Group for Aerospace and Defence responding to the Government's comments in its response to the Committees' most recent report is attached. The Committees would like to give the Government an opportunity to respond to the points made.

The Government has already made its position clear on the majority of the issues raised in this Memorandum submitted by industry, in our September 2004 Command Paper response to the Committee, Cm 6357. We would nonetheless make the following comments:

Guidance on technical assistance

The DTI has published extensive guidance on its website (www.dti.gov.uk/export.control) covering this point. Export Control Organisation (ECO) officials are however always willing to, and indeed regularly do, talk to companies who have specific enquiries.

German licence requirements for exhibitions

Our September 2004 Command Paper response to the Committee, Cm 6357, set out the German authorities' response on this point which suggested they do not give licences over the telephone. If industry has evidence to the contrary, they should supply us with the details such as the number of the licence, the date of the call, and the name of the German official, so that we may take this up again with our German colleagues. We would however make clear that whatever the practice in Germany is, we do not consider it acceptable, from a risk management point of view, to grant licences by telephone for WMD-related kit to sensitive destinations.

French NBC licensing requirement in the non-military sector

Again, the Government would invite industry to provide it with the evidence to support their previous comments so that we may approach our French partners with it.

Inconsistent advice on the new trade controls

The Government's intention is of course to provide consistent advice on the new controls. We have looked into what we believe is the specific alleged example of inconsistency referred to in the industry memorandum. The first calls the company made were to relatively junior staff. The facts of the case in question were complex and took some time to establish. The answer to the company's enquiry was not immediately obvious to those staff. Quite quickly more senior staff became involved and gave a definitive answer, having confirmed the facts of the case with the company. This resulted in a licence being issued to the company, in time for them to exhibit at the trade fair they wished to attend. This was an instance of a complicated licensing query getting moved up the ECO management chain to an appropriately senior level, and resulted in a licence being issued. We do not accept it constitutes conflicting advice.

Initial advice on the new controls and the licensability of specific transactions is sometimes provided over the telephone in order that licensing officials can provide as helpful a service as possible to those affected by the new controls. Some enquiries however raise particularly difficult issues which require careful consideration, and exporters should always bear this in mind. The alternative is for ECO to insist on written rating enquiries in each case and not give any guidance over the telephone to exporters, but we do not believe exporters would welcome such a policy.

EU level playing field in the area of strategic export controls

The approach adopted by EU Member States to strategic export controls is broadly similar through their application of the EU Code of Conduct, the EC Dual Use Regulation, the EU Common Military List and EU Embargoes. However, Member States may introduce additional controls, such as nationally applicable embargoes and they retain the ability to reach their own decisions according to the Code of Conduct as a matter of national sovereignty. We do not believe that UK industry, that is the second largest defence exporter in the world, is treated more harshly overall, compared with their EU competitors. The system of open licensing in the UK gives them a significant advantage compared with most of their competitors.

Harmonisation of controls on tangible and intangible technology exchange

EU member States are committed to the EU Common Military List and to apply the EU Code of Conduct. The EC Dual-Use Regulation 1334/2000, as amended, sets out EU-wide controls on goods and technology exports and transfers. There is a Joint Action on technical assistance to WMD programmes and proposals are currently under consideration to broaden the EU Code of Conduct to include wording on Intangible Technology Transfers. Together this creates an environment where the scope and application of the controls is already pretty well harmonised across the EU.

The new WMD end-use controls in Articles 8 and 9 of the Main Order go further than is required by the EU Dual-Use Regulation reflecting the UK's commitment to prevent WMD proliferation. However, we have specifically sought to address any unnecessary burdens in this area by putting in place a number of new OGELs to cover technical assistance eg OGEL Exports or Transfers in Support of UK Government Defence Contracts, OGEL Military Goods: UK Forces Deployed in Embargoed Destinations and OGEL Military Goods: UK Forces Deployed in Non-Embargoed Destinations and wide ranging OIELs precisely for the purpose of facilitating the pursuit of legitimate new business and co-operation with overseas partners.

Cases Four, Five and Six

The Government will approach its counterparts regarding these allegations.

Case Seven—licensing of samples

The Government will approach its main EU exporting counterparts to seek clarification on how they licence the export of samples. We would make clear however, that in the WMD context, samples can be significant.

Case Eight—delays in licensing personal body armour to a British private security company/British personnel operating in Iraq

The Government is well aware of the situation in Iraq and the need to expedite legitimate applications. Equally, however, we need to assure ourselves that any exports are genuine and are not going to end being diverted to terrorists.

Government officials have been proactively looking at how to speed up the process of certification by the Iraqi authorities (a legal requirement under the UN Sanctions Order) so that these licences can be processed as quickly as possible, with the proper checks. It is hoped that these measures will result in a significant reduction in the turnaround times for applications over the next few months. In addition, the Government has introduced an Iraq OGEL covering *pre-export* activity, which takes place, either within the UK or overseas, where the end-user of the intended goods will be the Government of Iraq or the Multinational Force (this includes bodies contracted to either) and those goods are to be supplied from the United Kingdom.

Discussions with MOD

The Government would reiterate, as noted in our September 2004 Command Paper response to the Committee, Cm 6357, that a licence is only required under Articles 8 and 9 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 where it is proposed to transfer in the UK, software or technology which has a "relevant use" (ie is WMD-related) and where the transferor has reason to believe the technology or software may be used outside the EU. While this could apply in certain circumstances to transfers of technology to the MOD if they intend to use that technology outside the EU, this will only be the case where technology is actually transferred. It does not apply to routine sales and marketing discussions which may have a technical element, for example if the MOD discusses with a supplier the general capabilities of particular types of equipment, contractual arrangements. Also, discussions prior or subsequent to a transfer are not in themselves licensable and so would not need to be recorded. In addition, a licence would not be required for the transfer in the UK if the subsequent use outside of the EU by MOD is of hardware which incorporates that technology/software (eg NBC detection equipment), rather than of the technology per se. The Government still maintains that the number of situations which are licensable are in practice relatively few.

In respect of Article 10 of the Order which requires a licence for the provision of technical assistance related to anything with a "relevant use" outside the EU. In certain circumstances this could catch the provision of technical assistance to UK Armed Forces, eg where a UK supplier is providing assistance directly from the UK by telephone or e-mail. However, the Government has put in place an Open General Licence to cover all such assistance (and indeed exports) to UK Forces on deployment which has facilitated this assistance without the need for individual licences.

The low numbers of export licence applications the Government has received for such discussions with the MOD since the new controls came into force supports this conclusion.

DEFCON 126

The Government agrees that the DEFCON 126 allows MOD to issue information supplied under a contract for the purpose of promoting the establishment of an International Collaboration Agreement. It introduces a presumption that MOD may provide such information outside the UK and that a UK export licence may be required. The DEFCON also contains a release clause that if enacted for controlled information would require an export licence if transferred by a company. We do not see that this conflicts with export control regulations.

Exemption for the supply of equipment and technology to UK Armed Forces

The Government maintains its position that to introduce exemptions into the legislation would risk creating loopholes and would be difficult to draft. Instead, tailoring OGELs and OIELs for specific purposes provides a much more flexible approach, while maintaining legislative control over the activities.

Case Nine

The Government has introduced OGELs to specifically address this issue.

User-friendliness of HM Customs & Excise

HM Customs and Excise are responsible for administering a wide range of national and EU taxes, duties and reliefs as well as enforcing a wide range of prohibitions and restrictions on the import and export of goods. Customs' enforcement priority in export controls is to seek out those deliberately attempting to breach the controls, rather than to place excessive regulatory burdens on compliant trade. We aim to prevent the export of dual-use goods to countries of WMD concern, and the export of military goods to destinations subject to arms embargoes. Customs have had much success in disrupting attempts to supply sensitive goods to countries of concern, though this activity is not always visible as it does not result in a criminal prosecution or the seizure of goods. Customs are always willing to consider positively, suggestions from exporters as to how customs controls can be made more effective or how the burden on compliant trade can be reduced.

Staff from the posts cut in ECO under the Efficiency Review should be redeployed into compliance

The function of compliance and awareness is of significant importance, and the Government considers great progress has been made over the last year in this area, not least due to the tremendous support of the DMA in holding regional roadshows on the new Act. While there are no plans currently to cut the number of compliance officers, equally it is unlikely that the posts to be cut from elsewhere in the ECO could be redeployed in a compliance role as this would defeat the purpose of the headcount reduction.

PART TWO: SPECIFIC LICENSING DECISIONS 2003 AND FIRST TWO QUARTERS 2004

All except the last question in this section are follow-ups to answers in the memorandum and disc supplied to the Committees in the autumn of 2004. The file references are taken from the disc supplied to the Committees. The Committees appreciate that these questions may take longer to answer than those in Part one.

February 2005