



House of Commons

Business, Innovation and Skills,
Defence, Foreign Affairs, and
International Development
Committees

**Scrutiny of Arms Export Controls
(2010): UK Strategic Export Controls
Annual Report 2008, Quarterly
Reports for 2009, licensing policy and
review of export control legislation**

First Joint Report of Session 2009–10

Seventh Report from the Business, Innovation and Skills Committee of Session 2009–10

Ninth Report from the Defence Committee of Session 2009–10

Fourth Report from the Foreign Affairs Committee of Session 2009–10

Fifth Report from the International Development Committee of Session 2009–10

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

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The Committees on Arms Export Controls

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

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§ Chair of a participating Committee

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Conclusions and recommendations

Relations between the Committees and the Government

1. Whilst we recognise the additional strain on Government's resources as a result of our requests for information, we recommend that Government informs our successor Committees of any delay in providing information requested by the due date. (Paragraph 8)
2. We recommend that the Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees continue their work as the Committees on Arms Export Controls in the new Parliament. (Paragraph 11)

Extra-territorial controls

3. We conclude that it is disappointing that the Government chose to reject the joint proposal prepared by industry and NGOs on the extension of extra-territorial controls on the trade of strategic exports. However, we welcome the steps that the Government is taking to investigate where it is appropriate to extend extra-territorial controls. We recommend that the Government reports back to our successor Committees on progress on this work by the end of October 2010. At the same time we adhere to our previous recommendation that extra-territorial controls should be extended to all items on the Military List. We conclude that we see no justification for allowing a UK person to conduct arms exports overseas that would be prohibited if made from the UK. (Paragraph 23)
4. We conclude that the Government should be commended for listening to the concerns of industry and non-governmental organisations and then adding anti-vehicle landmines to the list of Category B goods. We recommend that the Government inform the Committees in its Response to this Report when it intends to introduce the necessary changes to legislation to bring this into effect. (Paragraph 26)

Transport and ancillary services, transit and transshipment

5. We conclude that it is welcome that the Government is reviewing the existing guidance for the transport of goods through and from the UK. We recommend that the Government inform our successor Committees of the outcome of this review and of any further work that has been undertaken to raise awareness of the export control regulations among transport providers and parties to shipments. (Paragraph 35)

Pre-licensing registration of brokers

6. We repeat our previous conclusion that the justification remains for the need for an additional element of vetting, whether through a separate system, or by some modification of the electronic export licence processing system. We repeat our recommendation made previously that the Government establish a pre-licensing

register of brokers in order to reduce the possibility of undesirable entities trading in arms overseas. (Paragraph 42)

7. We conclude that it is of great concern that brass plate companies registered in the UK are able to trade in controlled goods without the necessary licence as the UK authorities have no meaningful way of taking enforcement action against them. We recognise that the problem of regulating brass plate companies is not confined to strategic exports control. We recommend that the Government explore ways in which it would be possible to take enforcement action against brass plate companies, including consulting enforcement agencies in other countries on their approach to this problem. (Paragraph 47)
8. We conclude that preventing undesirable entities, for example brass plate companies, from joining a pre-licensing register of brokers, and encouraging overseas governments to only license UK brokers registered on the UK list would complement the existing controls on UK brokers. (Paragraph 51)

End-Use Controls

9. We conclude that it is welcome that the Government continues to discuss the proposal for an amended EU Military End-Use Control behind the scenes. However, it has been over eighteen months since the Government announced that it intended to seek an expansion of the control. We recommend that the Government report back to our successor Committees by October 2010 on the proposal for an amended Control that has been agreed within Government and with an update on discussions with industry and EU partners. (Paragraph 59)
10. We recommend that the Government provide the Committees in its Response to this Report with an update on its progress in pursuing an amendment to the existing EU Torture Regulation. (Paragraph 65)

No re-export clauses

11. We welcome the Minister's decision to introduce a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export. Whilst this falls short of the no re-export clause that we have previously recommended, we conclude that the Government has accepted that it is useful to send a message that the UK considers re-export of goods to certain countries unacceptable. We recommend that our successor Committees monitor the effectiveness of the measure introduced by the Government as a deterrent against re-export in contravention of a UN, OSCE or EU embargo, to assess whether no-re-export clauses remain desirable. (Paragraph 74)

Research

12. We conclude that the Government's decision to act on our recommendation to conduct a survey into dual-use non-compliance is welcome. We recommend that the Government takes note of the concerns raised by both industry and NGOs about the methodology of the survey, and ensure that more robust data gathering

measures are deployed in any future studies. We conclude that simply asking companies whether they are compliant seems a poor way of measuring whether the system is being followed, as some organisations may be non-compliant through ignorance and deliberately non-compliant entities would have no reason to admit to failing to comply with regulations. (Paragraph 83)

13. Whilst we remain supportive of SPIRE, we conclude that more needs to be done to raise awareness of both SPIRE and the wealth of information that is available to the strategic export industry, including producers of dual-use items, through the Export Control Organisation website and the events that the Organisation holds around the country. (Paragraph 86)
14. We welcome the decision that the Export Control Organisation pages of the Department of Business, Innovation and Skills website will converge with Business Link in March 2010. We recommend that the Department for Business, Innovation and Skills should continue to explore ways in which it can increase awareness amongst businesses of the dual-use system. (Paragraph 91)

Annual Report on United Kingdom Strategic Exports

15. We conclude that the provision of information on enforcement actions taken by HM Revenue and Customs, seizures and misuses of open licences was a welcome addition to the 2008 Annual Report on United Kingdom Strategic Export Controls and we recommend that this information be included in future reports. (Paragraph 92)

Civil penalties

16. We recommend that the Government provide in its Response to this Report an update on progress towards primary legislation to bring in civil penalties for the breach of strategic export controls in addition to prosecution through the criminal law. (Paragraph 96)

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

17. We repeat our recommendation that the Government aim to publish its 2009 Annual Report on UK Strategic Export Controls by the end of May 2010. (Paragraph 97)
18. We recommend that the 2009 Annual Report on United Kingdom Strategic Export Controls include a further breakdown of the information on the resources for consideration of export licence applications, showing the resources allocated to the Ministry of Defence. (Paragraph 100)

Tackling bribery through the licensing process

19. We adhere to the recommendations on bribery and corruption made in our 2008 Report and we recommend that the Government consider them further with a view

to implementing the recommendations or explaining why there is no need to do so. (Paragraph 111)

20. We conclude that the introduction of a Government strategy on UK Foreign Bribery is a welcome development. We recommend that the Government in its Response to this Report provide information on how the strategic export control system is working to support the new strategy. (Paragraph 113)

Progress towards an international Arms Trade Treaty

21. We repeat our previous conclusion that the Government is to be commended for its continuing commitment to an international Arms Trade Treaty (ATT) and we recommend again that the Government continue to seek an ATT that is as strong as possible. We conclude that while consensus should be sought and strived for, a very small minority of dissenting States should not be allowed to endanger such an important international treaty. We further recommend that the Government ensure that the UK negotiating team has sufficient resources and expertise to meet the tight timetable for agreeing the Treaty for the Diplomatic Conference in 2012. (Paragraph 122)

EU Arms Embargo on China

22. We conclude that the arms embargo against China is of political importance in that it provides a strong message in relation to the inadequate protection and promotion of human rights in China. We recommend that the arms embargo against China continues to be maintained whilst its human rights performance remains so poor. (Paragraph 132)

Israel

23. We repeat our conclusion that it is regrettable that arms exports to Israel were almost certainly used in Operation Cast Lead. This is in direct contravention to the UK Government's policy that UK arms exports to Israel should not be used in the Occupied Territories. We further conclude that the revoking of five UK arms exports licences to Israel since Cast Lead is welcome, but that broader lessons must be learned from the post conflict review to ensure that UK arms exports to Israel are not used in the Occupied Territories in future. (Paragraph 141)
24. We recommend that the Government, in its Response to this Report, set out clearly the longer term lessons learnt post Operation Cast Lead and how they will impact in practice on the issuing of future licences for arms exports to Israel. (Paragraph 142)

Sri Lanka

25. We conclude that the review and subsequent revocation of nine extant licences for exports to Sri Lanka is to be welcomed. We further conclude that the Government should take a longer term view about unstable countries, and further appraisal is required where the peace is fragile. UK arms exports have ended up in places that

were contrary to UK policy in the case of Israel, and in the case of Sri Lanka, arms were exported during ceasefire periods, which, in retrospect was regrettable. While we do not question the criteria or the goodwill of those who apply the criteria, it is the outcome of where weapons end up and the use that is made of them that is important. (Paragraph 150)

26. We recommend, that in order to minimize the risks of UK arms exports ending up in places contrary to UK policy, and to maximise the benefit of lessons learned, that the Government review the efficacy of the criteria in assessing the suitability of exports to less stable countries and regions. (Paragraph 151)

Sustainable Development

27. We conclude that in its Response to this Report the Government should provide our successor Committees with the result of discussions on the use of Criterion 8 amongst EU Member States. (Paragraph 160)

1 Introduction

1. Since 1999 the Business, Innovation and Skills,¹ Defence, Foreign Affairs and International Development Committees have worked together to examine the Government's strategic export control system and policies. This arrangement, which is known as the "Committees on Arms Export Controls",² enables the House of Commons to conduct ongoing scrutiny of a complex and controversial area of government policy.

2. This is our fifth, and last, Report this Parliament. As in previous years, we have reviewed the policy, enforcement and the annual and quarterly reports on strategic export controls published since our last Report. Even though it is only seven months since our last Report in July 2009, we are able to provide an update with significant developments on issues that we have examined in detail over previous years.

3. As well as the process of taking oral and written evidence on policy and the operation of strategic controls legislation, since our last Report we have continued to scrutinise issues raised by particular licences; we have, for example, assessed whether there has been any inconsistency in the issuing and refusal of licences to a particular country and whether other licence approvals or refusals for which the rationale is not obvious have been determined in accordance with the consolidated EU and National arms export licensing criteria.³ This process is detailed and, necessarily, confidential. We have drawn on the information received to make points on policy issues, and will keep certain cases under review.

4. Our main focus this Parliament has been on the Government's post-legislative scrutiny of the orders and regulations made under the Export Control Act 2002. As we have reported in our last four reports, the Government launched a public consultation document, *2007 Review of Export Control Legislation*, and invited responses on the impact and effectiveness of the controls and on a number of options for change.⁴ The outcome of the 2007 Review of Export Controls consisted of three tranches of legislation: Export Control (Security and Para-military Goods) Order 2008; Trade in Goods (Categories of Controlled Goods) Order 2008; and Export Control Order 2008. We sent our comments on all three tranches to the Government.

5. In this Parliament we also examined in detail the question of bribery and corruption in arms exports, on which our predecessor Committees first reported in the previous

1 On 5 June 2009 the Prime Minister announced that the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills would become the Department for Business, Innovation and Skills. On 25 June 2009 the House of Commons Standing Orders governing the committee structure were amended to allow the Business, Enterprise Committee to be renamed in order to reflect this change (Votes and Proceedings, 25 June 2009). The Committee was renamed on 1 October 2009 with the same membership as the previous Business and Enterprise Committee which was formed on 6 November 2007 and replaced the Trade and Industry Committee.

2 Until March 2008 the arrangement was known as the "Quadripartite Committee", a name which arose from the fact that *four* select committees are involved in the work.

3 HC Deb, 26 Oct 2000, col 200W

4 Business and Enterprise, Defence, Foreign Affairs and International Development Committees, First Joint Report of Session 2008–09, *Scrutiny of Arms Export Controls (2009)*, *UK Strategic Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*, HC 178, paras 23–24

Parliament.⁵ Increasingly in this Parliament our attention has turned to the negotiations for an international Arms Trade Treaty (ATT). We have consistently commended the Government for its efforts in supporting the work towards an ATT and we examine the latest developments on the ATT in Part Six of this Report.⁶

6. In the course of the preparation of this Report, we held two evidence sessions: firstly, with the UK Working Group on Arms⁷ and the Export Group on Aerospace and Defence;⁸ and, secondly, with the Minister of State, Foreign and Commonwealth Office and officials. We also received written evidence from the Campaign against Arms Trade and various submissions from Government. Continuing the practice we adopted in previous years, we have also made available on the internet the written evidence we had received by February 2010, to assist those with an interest in our inquiry. We are extremely grateful to all those who gave oral and written evidence, and to the staff of our four Committees and our adviser Dr Sibylle Bauer who helped us evaluate that evidence.

5 Business and Enterprise, Defence, Foreign Affairs and International Development Committees, *First Joint Report of Session 2007–08, Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation*, HC 254, paras 112–117

6 HC (2008–09) 178, para 122 and HC (2007–08) 254, para 137

7 The UK Working Group on Arms comprises Amnesty UK, Omega Research Foundation, Oxfam GB and Saferworld.

8 Representatives of the defence industries.

2 The work of the Committees

Relations between the Committees and the Government

7. Over the course of the Parliament relations between the Committees and Government has remained constructive and cooperative. In the most recent debate on Arms Export Controls in Westminster Hall, Ian Lucas MP, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills, stated that the subject matter was:

[...] clearly an area that benefits from continued dialogue between the Government and the Committee [...] The arguments that the Committee has made in the past have been taken on board and, under this Government, there has been huge progress in ensuring transparency in export control, which I am particularly proud of. I am keen to continue to engage with the Committee.⁹

8. As in previous years, we sought and received replies from the Government on a wide range of matters. We are grateful to the Government for its replies and for keeping us informed of developments relevant to our inquiry. However, the Government has not always been able to provide information to us to meet either its own deadlines or ours.¹⁰ For example, the Government response to our last Report stated that it would respond to a joint industry/NGO proposal on one issue (on the further extension of extra territorial controls) by the end of October 2009,¹¹ and on two issues to us (the latest discussions and timetable for an amended EU Military Control and the timetable for primary legislation for civil penalties) by the end of 2009.¹² This it failed to do. We have also commented in the past that the Government produces its annual report on *United Kingdom Strategic Export Controls* too late for us to scrutinise it until the following year. For example, the Government published its 2008 Annual Report in August 2009.¹³ In its response to our latest Report, the Government said it would endeavour to produce its next Annual Report by May 2010.¹⁴ **Whilst we recognise the additional strain on Government's resources as a result of our requests for information, we recommend that Government informs our successor Committees of any delay in providing information requested by the due date.**

9 HC Deb, 5 November 2009, col 348WH

10 Ev 29, 45 and 62

11 Ministry of Defence, Foreign and Commonwealth Office, Department for International Development and the Department for Business, Innovation and Skills, *Reports from the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, Strategic Export Control Session 2008–09: Her Majesty's Government's Annual Report for 2007, Quarterly Reports for 2008, Licensing Policy and Parliamentary Scrutiny, Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Business, Innovation and Skills*, October 2009, Cm 7698, p 3

12 Cm 7698, pp 7–8

13 Foreign and Commonwealth Office, Department for International Development, Ministry of Defence and the Department for Business, Innovation and Skills, *United Kingdom Strategic Export Controls: Annual Report 2008*, Cm 7662, August 2009

14 Cm 7698, p 8

Visit to HM Revenue and Customs

9. We carried out one visit in 2009–10. In January 2010 we visited HM Revenue and Customs (HMRC) at its London Head Office and met officials from the Counter Proliferation Department of HMRC and from the Strategic Exports team at the UK Border Agency. We found the discussion with officials on the administration and enforcement of strategic export controls, and on the outreach undertaken by the department, most useful. We were given a presentation on the recent investigation and successful prosecution of three men for conspiracy to export controlled goods to Iran.¹⁵ We had also received further information on this case upon request from HMRC which is published with this Report.¹⁶ We put on record our thanks to those who arranged the visit and answered our questions.

Future of the Committees

10. In this Parliament our membership has increased to 16 Members, four from each Committee. Our quorum arrangements are complicated and have, at times, made it difficult for us to meet and take evidence. In our view, six is too large a quorum for the purpose of taking evidence and we have written to the Chairman of the Liaison Committee to request that it propose to the House that its Standing Orders should be changed to allow the Committees on Arms Export Controls to operate with fewer Members in the next Parliament.¹⁷

11. We welcome the recognition by the Government of the importance of the Committees' work, and we agree that our sustained examination of the UK system of strategic exports control has illuminated the debate between NGOs, industry and Government by providing a transparency of the system which otherwise would not be there, and benefited the joint work between the interested parties as a result. **We recommend that the Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees continue their work as the Committees on Arms Export Controls in the new Parliament.**

15 "Three men jailed for breaching UK arms embargo to Iran", Department for Business, Innovation and Skills, Notice to Exporters 2009/13, 5 June 2009

16 Ev 28

17 Liaison Committee, Second Report of Session 2009–10, *The Work of Committees in Session 2008–09*, HC 426, para 85

3 Review of export control legislation

Introduction

12. As detailed in the Introduction to this Report, the outcome of the Government's Review of export control legislation has been the production of three tranches of secondary legislation. In previous years we commented on early drafts of the Export Control (Security and Para-military Goods) Order 2008 and the Trade in Goods (Categories of Controlled Goods) Order 2008. The latter Order restructured Trade Controls into a new three tier system of Categories A, B and C with the aim of aligning them more effectively with the relative risks of the items they controlled:

- Category A goods include torture equipment, cluster munitions and certain missiles, the supply of which is considered inherently undesirable. Any person within the United Kingdom or a United Kingdom person anywhere in the world is prohibited from supplying or delivering, or doing any act calculated to promote the supply or delivery of, Category A goods without a licence from the Secretary of State.¹⁸
- Category B goods include small arms, light weapons, man portable air defence systems (MANPADS) and other goods in respect of which there is legitimate trade, but which on the basis of international consensus, have been identified as being of heightened concern. Any person in the United Kingdom, or a United Kingdom person anywhere in the world, is prohibited from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of Category B goods without a licence from the Secretary of State. Financing, insuring, advertising and promotion for Category B goods will not be controlled, but active or targeted promotional activities aimed at securing a particular business deal will be.¹⁹
- Category C goods includes any item on the Military List but which are not Category A or B goods. Trading between two countries in Category C goods is only controlled if carried out from within the UK.

13. The third Export Control Order 2008 covered aspects of transport, transit and transshipment as well as trade controls on light weapons and missiles.²⁰ Our previous Reports made specific recommendations on brokering, trafficking, extra-territoriality, transport and ancillary services, and torture end-use control.²¹

18 Trade in Goods (Categories of Controlled Goods) Order 2008 (SI 2008/1805)

19 Department for Business, Enterprise and Regulatory Reform, *Export Control Act: Review of Export Control Legislation (2007)* — *Government's End of Year Response*, December 2008, pp 4–5

20 Export Control Order 2008 (SI 2008/3231)

21 HC (2007–08) 254, paras 24–29

Extra-territorial controls

14. In our 2007 and 2008 Reports we concluded that the Government should bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List. In addition, we recommended that all residents in the UK and British citizens overseas should obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List.²² The reason for our view was that we considered it desirable to bring within the ambit of the law activities, which if they had been carried out in the UK without a licence, would be criminal activity.²³ We also recommended the use of general licences for categories of trade between specified countries, or in certain activities such as advertising, to cover British citizens working overseas for reputable organisations so as not to undermine their employment prospects.²⁴

15. Whilst we welcomed the creation of Category B, and UK control over extra-territorial transactions of people based in the UK and of British citizens overseas carrying out legitimate brokering in arms, we have previously concluded that the restriction of Category B to trading on items causing “heightened concern” was problematic, as the subjective definition was likely to throw up inconsistencies.²⁵

16. Our previous recommendation that trade in all goods on the Military List should be brought within Category B was not accepted by the Government.²⁶ However, in its Response to our 2008 Report, the Government stated that the further extension of trade controls on activities by UK persons anywhere in the world to cover other weapons currently in Category C was being considered by NGO and industry stakeholders, with the aim of making a joint proposal for Government to consider further, with the possibility of implementing the proposals in further legislation at a later stage.²⁷ We recommended in our 2009 Report that the Government report back to us on progress made on the joint proposal by the end of October 2009.²⁸

17. The Government response to our Report stated that it had received a proposal from NGOs and industry on the future extension of extra-territorial controls.²⁹ We understand that the joint proposal, the outcome of four meetings between NGOs and industry, was submitted to the Government on 21 April 2009.³⁰ However, it was not until 14 December that we received a letter from the Minister for Business and Regulatory Reform with an

22 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2006–07, *Strategic Export Controls: 2007 Review*, HC 117, para 76, and HC (2007–08) 254, para 31

23 HC (2007–08) 254, para 28

24 HC (2007–08) 254, para 31

25 HC (2007–08) 254, para 31

26 HC (2008–09) 178, para 29

27 Cm 7485, p 4

28 HC 178, para 36

29 Cm 7698, p 3

30 Ev 33

update on the joint industry/NGO proposal.³¹ The Minister stated that the joint proposal had two main strands:

- To extend extra-territoriality to cover all items in Category C. Therefore, any UK persons trading in any items on the Military List would require a trade control licence, no matter where in the world they were located; and
- To create a “Concessionary Authority to Broker.” Where anyone who passed a “probity test” would not have to apply for licences to conduct trade activities where either the source or the destination was on a list of “friendly” countries. This would apply to trade activities taking place in the UK and overseas. There would be no obligation to keep records.³²

18. The Minister informed us that the Government had decided to reject the proposal for the following reasons:

- There was not enough evidence of trading activities of concern involving UK persons overseas and Category C goods to warrant the extension of trade controls to the whole Military List.
- The “Concessionary Authority to Broker” represented a significant relaxation of existing controls and was considered to be potentially a serious proliferation risk.
- HMRC expressed strong concerns about either being able to enforce controls on activities taking place wholly outside the UK and questioned whether it had the necessary resources to conduct investigations overseas.
- The lack of a requirement to keep records would mean that BIS would not be able to carry out compliance audits as is the case with current Open Licences or easily investigate alleged breaches. BIS would rely on the media or NGOs to provide evidence of wrongdoing.³³

19. The Government would prefer an approach which would consider “targeted extensions to the extra-territorial controls where that is justified by evidence”. It would also prefer to engage with industry and NGOs on specific measures to reduce burdens on exporters where appropriate.³⁴

20. In evidence to the Committees in December, the NGOs raised various issues in relation to the Government’s rejection of the joint proposal. Firstly, they told us that their position on record keeping was different to how it had been presented by the Minister in his letter of 14 December. Roy Isbister of Saferworld said:

[...] part of the probity test would have been to check that the company concerned had the kind of systems in place for things like tax records, inventory control, shipping documents, et cetera, which would mean that if the Government had

31 Ev 45

32 Ev 45

33 Ev 46

34 Ev 46

concerns about what they might be involved in, it was reasonable to assume there would be an effective audit trail so that the Government could go in and investigate that company's operations. It was not simply that there would be no record-keeping obligations at all.³⁵

21. Secondly, the NGOs argued that, contrary to the Minister's view, they believed that there was sufficient evidence to suggest that Category C goods were part of international arms brokering.³⁶ Oliver Sprague, of Amnesty International, gave the following example:

John Knight,³⁷ an imprisoned, convicted arms broker, first entered the radar by trying to broker armoured fighting vehicles and Antonov aircraft to the Sudan. There were small arms and light weapons invoices in the manifest, but the big ticket items were armoured fighting vehicles.³⁸

Mr Sprague also gave other examples of international arms brokering, with links to the UK, involving Category C goods which he believed illustrated that there were trading activities of concern involving UK persons overseas and Category C goods: "I think there are lots and lots of international brokering activities involving non small arms and light weapons that would cause serious concern. An attack helicopter in the wrong place is just as dangerous as an assault rifle".³⁹

22. We wrote to the Minister for Business and Regulatory Reform, asking for more information on the Government's preferred approach to extending extra-territorial controls. The Minister wrote to us on 11 February with information on the work being undertaken in this area by officials. A meeting was held on 2 February at which officials discussed various matters with NGO representatives, including extending extra-territorial controls:

As a first step, the NGOs have agreed to consider whether there are any particular goods that ought to be moved from Category C to Category B, based on the risks associated with trade in those specific items; and to consider whether there are particular countries of concern such that trading Category C goods to those destinations ought to be subject to extra-territorial control. We will of course need to be sure that any proposal is workable, based on evidence of risk, and enforceable.⁴⁰

The Minister stated that a further meeting between officials and representatives from industry and NGOs would take place on 15 February.

23. We conclude that it is disappointing that the Government chose to reject the joint proposal prepared by industry and NGOs on the extension of extra-territorial controls on the trade of strategic exports. However, we welcome the steps that the Government is taking to investigate where it is appropriate to extend extra-territorial controls. We

35 Q 44 [Roy Isbister]

36 Q 44 [Oliver Sprague]

37 "Arms dealer jailed for four years", BERR press release, 26 November 2007

38 Q 44 [Oliver Sprague]

39 Q 44 [Oliver Sprague]

40 Ev 63

recommend that the Government reports back to our successor Committees on progress on this work by the end of October 2010. At the same time we adhere to our previous recommendation that extra-territorial controls should be extended to all items on the Military List. We conclude that we see no justification for allowing a UK person to conduct arms exports overseas that would be prohibited if made from the UK.

Anti-vehicle landmines

24. As we have previously reported, the UK Working Group on Arms questioned why anti-vehicle landmines (AVMs) had been omitted from Category B when there were “compelling humanitarian and security arguments” for stricter controls on brokering and transport.⁴¹ The Export Group for Aerospace and Defence stated that it supported the NGOs’ stance on the possible inclusion of AVMs in Category B of the UK’s trade controls. It also stated that the impact on UK industry would be minimal and therefore EGAD would have no objections to the subject being re-examined by the Export Control Organisation.⁴² Therefore, we recommended that the Government extend Category B to include anti-vehicle land mines as a matter of priority.⁴³

25. In its response to our 2009 Report, the Government said that it would look again at this matter.⁴⁴ In his letter of 11 February on the subject of extension of extra-territorial controls, the Minister for Business and Regulatory Reform confirmed that the Government had decided to add AVMs to Category B so that “trading in these items by UK persons will be controlled no matter where in the world the activity takes place.”⁴⁵

26. We conclude that the Government should be commended for listening to the concerns of industry and non-governmental organisations and then adding anti-vehicle landmines to the list of Category B goods. We recommend that the Government inform the Committees in its Response to this Report when it intends to introduce the necessary changes to legislation to bring this into effect.

Transport and ancillary services, transit and transshipment

27. Our previous Reports have examined the extra-territorial controls on transport and ancillary services, and the controls on transit and transshipment of Category A and B goods, and the changes to those controls which were incorporated into the Export Control Order 2008.⁴⁶

28. Our last Report recommended that the Government provide us with additional information on the exclusion from the Export Control Order 2008 of the control of UK

41 HC (2008–09) 178, Ev 72

42 HC (2008–09) 178, Ev 109

43 HC (2008–09) 178, para 41

44 Cm 7698, p 3

45 Ev 63

46 HC (2007–08) 254, para 33

sub-contractors to a UK concern that provides transport services.⁴⁷ There is no exemption for transport providers for Category A goods, and there are no controls on someone whose sole involvement in the trade of Category C goods is the provision of transport services (unless the goods are going to an embargoed destination).⁴⁸ In its Response to our Report, the Government stated that where a UK entity trades in Category B goods and then sub-contracts the actual transport of the goods to another UK entity, the Government did not consider it an appropriate response to the risk to also make the transport provider subject to control as it would in effect have been licensing the same activity twice.⁴⁹

29. The Government Response also provided information on the existing powers under the Customs and Excise Management Act 1979 given to HM Revenue and Customs to seize goods in transit which did not fall within the specified categories A, B and C. However, despite our request,⁵⁰ the Government did not specify how often these powers had been used.⁵¹

30. As described in our last Report, the NGOs had raised a concern over the complicated nature of the controls on transit and transshipment. We recommended that the Government provide us with information on what practical steps it was taking to simplify transit across various jurisdictions and to ensure that transport providers, and parties to shipments, were aware of the relevant regulations.⁵²

31. In its response to our 2009 Report, the Government stated that it had engaged with the transport sector when drafting the new controls and accompanying guidance. As well as a seminar hosted by the Export Control Organisation on the new export controls, a letter had been sent to the British International Freight Association highlighting the changes to controls introduced by the Export Control Order 2008 and offering the assistance of the Export Group for Aerospace and Defence in raising awareness.⁵³ The Government stated that it was also reviewing existing guidance for the transport industry to assess whether it could be simplified and improved. It also stated that Directive 2009/43/EC of the European Parliament and of the Council would simplify terms and conditions of transfers of defence-related products within the Community when it is implemented by Member States.⁵⁴

32. As the recast dual-use Regulation which introduced EU-wide brokering and transit controls for dual-use items (Council Regulation (EC) No. 428/2009) has been in force since 27 August 2009, we asked the Minister for Business and Regulatory Reform to provide us with an update on the implementation of the Regulation. The revised Regulation provides a legal basis for Member States to prohibit transfer of non-Community listed dual use

47 HC (2008–09) 254, para 46

48 Cm 7698, pp 3–4

49 Cm 7698, p 4

50 HC (2008–09) 254, para 46

51 Cm 7698, p 4

52 HC (2008–09) 254, para 47

53 Cm 7698, p 5

54 Cm 7698, p 5

items in the case of a serious risk of diversion to a WMD programme and for controls on brokering of listed dual use items for the same purpose.⁵⁵

33. In his letter of 11 February, the Minister explained that the provisions for licensing, enforcement and penalties, together with national options provided for by the Regulation, had to be implemented by national legislation. The Export Control (Amendment) (No. 3) Order 2009 brought this into effect in the UK on 27 August. The Export Control Organisation website has displayed publicity and guidance material advising exporters of the new controls and has included details of the new Regulation in its awareness programmes to exporters held around the country.⁵⁶

34. The Minister also stated that issues arising from the implementation of the Regulation are discussed at the Council Working Group on Dual Use goods, and the Commission Chaired Co-ordination group, which the UK attends on a regular basis. The Commission is also arranging a number of “Peer Review” visits to discuss implementation and operation of the Regulation. The first will take place in the UK in March 2010 at which national general authorisations and the Community General Export Authorisation will be discussed.⁵⁷

35. We conclude that it is welcome that the Government is reviewing the existing guidance for the transport of goods through and from the UK. We recommend that the Government inform our successor Committees of the outcome of this review and of any further work that has been undertaken to raise awareness of the export control regulations among transport providers and parties to shipments.

36. As licences would always be required for Category B goods being in transit or transhipped through the UK to destinations of concern, in our last Report we also recommended that the Government specify whether, and how often, the list of destinations of concern would change and whether that list of destinations referred to the final destination of the shipment, or all the intermediate destinations along the route.⁵⁸ The Government told us in its Response that the list of destinations in Schedule 4 of the Export Control Order 2008 would be reviewed and amended where necessary to reflect any changes in the situations of countries. It also confirmed that the list only applied to the final destination of the shipment, and not to countries that it passed through.⁵⁹

Pre-licensing registration of brokers

37. For several years we have concluded that the EU Common Position on the control of arms brokering adopted on 23 June 2003 provided best practice and we have recommended that the Government establish a pre-licensing register of arms brokers.⁶⁰ The UK currently does not maintain a register, rather it has a *de facto* list of all those who

55 Cm 7698, p 9

56 Ev 64

57 Ev 65

58 HC (2008–09) 254, para 47

59 Cm 7698, p 5

60 HC (2007–08) 254, para 36, HC (2008–09) 254, para 51

have been granted arms trading licences on the Government's electronic system for processing export licences—SPIRE. In its Response to the Committees' 2009 Report, the Government repeated its view that it was "not opposed in principle to the idea of a pre-licensing registration system under which traders can be vetted before they can be registered." However, it intended to look the issue of whether to introduce a register after it had assessed the effectiveness of other initiatives such as focussing awareness activity on traders and clamping down on those who misuse open licences.⁶¹

38. UKWG provided us with examples of EU countries that had introduced their own brokering registration requirements:

- In Bulgaria, individuals and legal persons must be registered before they can engage in arms brokering. Registration is carried out by the Interdepartmental Council and is valid for three years. Bulgaria maintains a public arms brokering register;
- The Czech Republic Licensing Authority includes brokers in the list of registered holders of permission to trade in military and defence materials, and no special criteria or conditions are applied to them. All individual trade in military material, including brokering, needs individual licensing;
- Estonia has established a register of brokers. An applicant should not have committed a crime in the five years prior to the application. The registering authority will usually also organise a meeting with the applicants to determine their plans, their relationships with business partners and their understanding of the law;
- The register of brokers in Lithuania was established in 2003 by Government Resolution, implementing Common Position 2003/468/CFSP;
- Portugal has introduced a system where brokers had to register in order to be eligible for an export licence, unless they were already registered within their own national jurisdiction;
- In Romania, legislation on arms exports control demands that all exporters, importers and brokers are subject to registration—only a registered legal person has the right to submit a licence application;
- The legal requirements contained in the Common Position on arms brokering were implemented in Spain in Law 53/2007 on the control of foreign trade of defence material and dual-use and in Royal Decree 2061/2008, which established the Special Register of Foreign Trade Operators Defence Material and Dual-Use (REOCE) and the arms brokering registration procedure.⁶²

39. In evidence to us on 27 January 2009, Ivan Lewis MP, Minister of State, Foreign and Commonwealth Office, told us that the view of Government was unchanged since its review in 2007: pre-licensing registration was considered unnecessary as the current licensing system examined each application on a case-by-case basis which included an

61 Cm 7698, p 5

62 Ev 56–59

examination of the nature of the broker.⁶³ Although the Minister said that he was not “closed-mind” to the idea, it would have to be proved that pre-licensing registration would add value to the system and not just red tape.⁶⁴

40. In oral evidence to us on 16 December, David Hayes of EGAD said that any additional registration system would place a burden on the departments responsible for administering it. However, EGAD acknowledged that registration of brokers had been part of the joint proposal from NGOs and industry for the extension of extra-territorial controls.⁶⁵ Mr Hayes also questioned how a UK system would work in practice alongside other EU member states systems: “What we mean by ‘arms’ and what we mean by ‘broker’ and what we mean by ‘brokering’ are different under all of those systems. In the absence of any commonality, I do not necessarily see it working, no.”⁶⁶ However, the Portuguese system requires either registration of brokers in Portugal or in their home country. Mr Hayes acknowledged that for those wishing to trade in countries like Portugal which demanded registration, a UK register would be useful.⁶⁷

41. In the Westminster Hall debate on strategic exports on 5 November 2009, the Minister for Business and Regulatory Reform, reiterated the Government’s position and said: “The issue is whether, if one produced a register, one would, in those circumstances, apply criteria to enable individuals to go on it. It is not simply about having a list, but about the importance of the list indicating, perhaps, some measure of respectability.”⁶⁸ In its supplementary memorandum to us, the UK Working Group on Arms (UKWG) suggested criteria that might be applied by the UK authorities when deciding whether or not to approve registration applications. UKWG believed that these could mirror criteria used by the FSA and Security Industry Authority in their registration systems and checks used by the Criminal Records Bureau and Childcare Register to verify the backgrounds of people.⁶⁹

42. We repeat our previous conclusion that the justification remains for the need for an additional element of vetting, whether through a separate system, or by some modification of the electronic export licence processing system. We repeat our recommendation made previously that the Government establish a pre-licensing register of brokers in order to reduce the possibility of undesirable entities trading in arms overseas.

Brass plate companies operating in the UK

43. As described in our last Report, during our visit to Ukraine in May 2009, the Ukrainian Deputy Minister for Foreign Affairs gave us a document which we subsequently had translated into English.⁷⁰ The document contained a list of UK-registered brokers to whom

63 Q 76

64 Q 76–78

65 Q 24 [Brinley Salzmann]

66 Q 25 [David Hayes]

67 Q 25 [David Hayes]

68 HC Deb, 5 November 2009, col 342WH

69 Ev 59–60

70 HC (2008–09) 254, paras 17–22

the Ukrainian State Service for Export Control had granted licences for strategic exports. We were alarmed to see that the end users on the list included countries for which there had been FCO policy restrictions on the export of strategic goods. We passed the list onto the FCO, Export Control Organisation and HM Revenue and Customs and asked the Government to investigate the companies on the list to ensure that they had obtained any necessary licences from the Export Control Organisation and breached no UK legislation in the course of their business in Ukraine.⁷¹

44. We have been informed by BIS that, following investigations by HM Revenue and Customs, of the 12 companies on the list given to us by the Ukrainian Deputy Foreign Minister, eight were legitimate companies with the appropriate licences from the Export Control Organisation. Four of the companies were “brass plate” companies, but HMRC was unable, under legal requirements, to identify these companies to us or tell us whether the companies would be prosecuted for any breach of UK strategic export control legislation.⁷²

45. Oliver Sprague of Amnesty told the Committees that in the past couple of years the NGOs had become aware of the use of foreign companies using UK company registrations to broker weapons. He gave the following example:

One was a company registered in Cornwall that in September 2008 was brokering small arms components to Rwanda [...] That appears to have happened without a trade control licence. The company itself was owned by two Ukrainians based in Kyiv, and the only connection to Britain was a brass-plate in Truro.⁷³

Mr Sprague questioned whether it was right that companies could spend £110 to register a company in the UK and then be able to arrange weapons shipments to countries like Sudan and Rwanda.⁷⁴ UKWG hoped that a vetting process for pre-licensing registration of brokers would weed out brass plate companies.⁷⁵

46. However, in his letter to us of 11 February, the Minister for Business and Regulatory Reform argued that brass plate companies registered in the UK had no real presence here and that most of their business was conducted overseas. Unless the company had traded in Category A or B goods or brokered the supply of military equipment to an embargoed destination without the appropriate licence, they would have not done anything to breach controls and therefore no action could be taken against them.⁷⁶ The Minister did not believe that a pre-licensing registration system for brokers would change this situation, as it was unlikely that a company that did not already apply for a licence to operate would comply with registration on a list of brokers. If that entity was a brass plate company then no meaningful enforcement action could be taken against them—and that realistically,

71 HC (2008–09) 254, para 22

72 Ev 62–63

73 Q 39

74 Q 39

75 Ev 36

76 Ev 63

rejection or revocation of a registration would not prevent a determined entity from trading. The Minister stated:

There may be benefits to be gained such as increased opportunities for promoting awareness of the regulations. However, a register is not a “cure all” for perceived problems associated with arms brokering and there would be considerable costs, both for business and Government, in setting up and administering a register.⁷⁷

47. We conclude that is of great concern that brass plate companies registered in the UK are able to trade in controlled goods without the necessary licence as the UK authorities have no meaningful way of taking enforcement action against them. We recognise that the problem of regulating brass plate companies is not confined to strategic exports control. We recommend that the Government explore ways in which it would be possible to take enforcement action against brass plate companies, including consulting enforcement agencies in other countries on their approach to this problem.

Overseas posts and embassies

48. In our last Report, we recommended that the FCO should ensure that its embassies and diplomatic posts engage more effectively with the national export control organisations to obtain information on UK arms should licensed by overseas states.⁷⁸ This was to ensure that the UK authorities were aware of the activities of UK brokers, particularly those trading in major arms exporting countries such as Ukraine.

49. In its latest written evidence to us, the UK Working Group on Arms (UKWG) believed that a pre-licensing register of brokers, combined with an active outreach programme, could alert the authorities in the exporting state of the need to exercise extreme caution where any UK broker was not registered in the UK. This would, it was hoped, lead to further dialogue between the UK and the country of proposed export and the tighter control being brought upon “problematic actors”.⁷⁹

50. In its Response to the Committees’ 2009 Report, the Government acknowledged that “the Committees are right to question how the Government is to publicise the new controls introduced in April, and how to obtain the cooperation of foreign governments in ensuring that HMG can police the system effectively.” It said that the relevant departments were “in discussion about how this can be achieved” and that this might involve the use of diplomatic posts overseas.⁸⁰ However, in his letter dated 11 February, the Minister for Business and Regulatory Reform argued that information on entities that had applied for an Individual Trade Control Licence or an Open General Trade Control Licence was already known to the UK authorities and a register was unlikely to “tell us anything that we don’t already know”.⁸¹ In addition the Minister stated that:

77 Ev 63

78 HC (2008–09) 178, para 22

79 Ev 36

80 Cm 7698, p 2

81 Ev 63

A more proactive engagement with foreign governments on brokering policy and practice would have significant resource implications, in particular for the FCO and on diplomatic posts overseas.⁸²

51. We are not convinced by the Government's argument that a register of brokers, together with an active outreach programme would not tell the UK authorities anything that they did not already know. Whilst it would not be feasible for overseas posts and embassies to embark on more proactive engagement generally with overseas governments on their strategic exports, there are certain countries which it would be prudent to target. **We conclude that preventing undesirable entities, for example brass plate companies, from joining a pre-licensing register of brokers, and encouraging overseas governments to only license UK brokers registered on the UK list would complement the existing controls on UK brokers.**

End-use controls

Introduction

52. Exports, brokering and transit of dual use items are controlled at European Community level by Council Regulation (EC) No.428/2009.⁸³ The Regulation is aimed at facilitating legitimate trade and allowing resources to be concentrated on the control of sensitive exports, transfers, brokering and transit of dual use items, and the combat of fraud.⁸⁴ This is the re-cast regulation which was adopted in May 2009 and is directly applicable in all Member States. End-use controls already operate in relation to items or technology:

- for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;
- for military end-use in an embargoed destination;
- as parts or components of an illegally exported military item.

EU Military End-Use Control

53. The Military End-Use Control is a so-called "catch-all" control. Even if the items which an entity intends to export are not listed on the current UK Military List, it might still require an export licence under this control.⁸⁵ There are two "military" end-use controls.

82 Ev 63

83 Dual-Use items are goods, software or technology (documents, diagrams etc) which can be used for both civil and military applications. See www.businesslink.gov.uk

84 See guidance on the European Council website, www.consilium.europa.eu/showPage.aspx?id=408&lang=En

85 See "Overview of export control legislation" on the Business Link website, www.businesslink.gov.uk

- The first applies in respect of dual-use items not otherwise subject to control where the exporter has been informed, that they are or may be intended for incorporation into military equipment, or for the development, production or maintenance of such equipment, or for use in a plant for production of such equipment in an embargoed destination.
- The second only applies in respect of dual-use items not otherwise subject to control where the exporter has been informed that they are intended for use as parts or components of “illegally obtained” (from the UK) military goods irrespective of destination.⁸⁶

54. However, the current EU Military End-Use Control does not control complete items that, whilst not strategically controlled, could nevertheless be of significant use to the military in an embargoed destination; neither does it control any exports to non-embargoed destinations, some of which might be of considerable concern.⁸⁷ The Committees’ 2008 Report recommended that the Government bring forward proposals for a systematic military end-use control regime.⁸⁸ The Government’s Response repeated the announcement that it had made in 2008, following its Review of Export Control Legislation in 2007,⁸⁹ that it was seeking an expansion of the current EU Military End-Use Control which would require licences for goods:

[...] which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.⁹⁰

55. The latest memorandum from the UK Working Group on Arms (UKWG), like its previous memorandum to the Committees, welcomed the Government’s announcement that it intended to seek an expansion of the EU Military End-Use Control.⁹¹ The NGOs believe that it is important to place the focus on the use of the equipment, not just its technical specifications. However, the NGOs have expressed their concern that little or no progress appears to be been made in developing EU policy in this area since 2007.⁹² In addition, the Government intends to implement a system based on lists of goods and UKWG is concerned that the Government does not propose extending the expansion to components or unfinished vehicle kits. This is something we have heard about in the past. UKWG previously provided examples of cases where it believed that uncontrolled UK-made parts and components for military and security equipment was being used in regions of instability: Land Rover vehicles used by Azeri military and UK traders allegedly involved

86 See “Overview of export control legislation” on the Business Link website, www.businesslink.gov.uk

87 Cm 7485, p 8

88 HC (2007–08) 254, para 46

89 BERR, *Review of Export Control Legislation 2007 Government’s Further Response to the Public Consultation*, 21 July 2008, p 7

90 Cm 7485, pp 8–9

91 Ev 36

92 Ev 36

in transfer of electronic components for Improvised Explosive Devices (IEDs) in Iraq.⁹³ In its latest memorandum, UKWG has provided an example of where an unfinished vehicle kit may have been used for internal repression. It believed that “David” internal security vehicles, originally Land Rover-based kits, were used in Operation Cast Lead by IDF forces. It believes that these were supplied as non-military utility vehicles and then adapted into armoured vehicles and used in Gaza.⁹⁴

56. In its response to the Committees’ 2008 Report, the Government stated that it intended to hold further consultation with industry and NGOs on the wording of the proposed new control, including whether it would be workable in practice, with the intention of the UK negotiating changes at EU level.⁹⁵ The Committees’ 2009 Report expressed concern at the apparent lack of progress that had been made on this matter and recommended that the Government report back to the Committees by the end of 2009 with further detail on the discussions that had taken place with industry and provide the Committees with a timetable for introduction of the Government’s proposals for an amended EU Military End-Use Control.⁹⁶

57. The Minister of State at the Foreign and Commonwealth Office, told us on 27 January that “there is a lively and full and frank debate taking place in Government about what changes we may propose [...] we have not yet reached a consensual government position on what changes might be”.⁹⁷ David Vincent, Head of the Arms Trade Unit, Counter Proliferation Department of the FCO, told us that the issue had proved to be far more complex than previously thought.⁹⁸

58. The Minister for Business and Regulatory Reform wrote to the Committees on 11 February 2010, and confirmed that the proposal continued to be the subject of discussions within Government and informally with some of the UK’s EU partners. The Minister explained that reason for the time it was taking was that it was important to get the proposal right as it would need the support of all Member States. He said that discussions had not yet been held with industry, but it was hoped that they would take place soon. After those discussions, the UK would consult more formally with all EU Member States and the Commission, which would be responsible for introducing a formal proposal. Until then, the Government could not provide the Committees with a timescale for the introduction of an enhanced Military End-Use Control.⁹⁹

59. We conclude that it is welcome that the Government continues to discuss the proposal for an amended EU Military End-Use Control behind the scenes. However, it has been over eighteen months since the Government announced that it intended to seek an expansion of the control. We recommend that the Government report back to our successor Committees by October 2010 on the proposal for an amended Control

93 HC (2008–09) 178, para 69

94 Ev 37

95 Cm 7485, p 9

96 HC (2008–09) 178, para 71

97 Q 86

98 Q 89 [David Vincent]

99 Ev 62

that has been agreed within Government and with an update on discussions with industry and EU partners.

Torture end-use control

60. We have previously welcomed the Government's pursuit of an amendment to the existing EU Torture Regulation (EC) No. 1236/2005. This would seek to introduce an end-use control on equipment used for torture, or to inflict inhuman or degrading treatment, through the EU, in order to ensure that controls on torture equipment were also implemented across the EU and so that UK exporters could not circumvent the control simply by temporarily exporting from other nearby EU countries. However, the Committees concluded that if it was not possible to achieve end-use controls through the EU, the UK should introduce them unilaterally.¹⁰⁰ The Government has accepted that it might be necessary to do this.¹⁰¹

61. In its *End of Year Response* published in December 2008, the Government stated that it would be meeting the European Commission in early 2009 to discuss the introduction of a control whereby the exporter would be required to submit an export licence application where they had reason to believe, or had been informed, that the items could be used for capital punishment, torture or other cruel, inhuman or degrading treatment. This control would supplement the current list of items already controlled by (EC) No. 1236/2005.¹⁰² In our last Report we asked the Government to provide an update on its progress.¹⁰³

62. In its October 2009 Response, the Government stated that it had sent a draft amendment to the existing Torture Regulation (EC) No. 1236/2005 to the Commission. The Government believed that "it is not unreasonable to hope that work will be completed in the course of 2010".¹⁰⁴

63. In evidence to the Committees in December 2009, Oliver Sprague of Amnesty International said that the UK Working Group on Arms applauded the UK Government for its commitment in pursuing torture end-use control. However, he insisted that the Government should be held to its word to introduce controls unilaterally if no progress was made.¹⁰⁵

64. The Minister of State at the Foreign and Commonwealth Office wrote to us on 8 February 2010 with more information on the progress of the proposed amendment. The proposal was with the EU Commission Legal Services for their comments. As the last substantive discussions between UK officials and Commission representatives had been in September 2009, the FCO had made contact with the Commission and asked for a progress update. The Government said that once it had established the Commission's views it would seek to agree a timetable for adoption of the amended regulation. This would necessitate

100 HC (2007–08) 254, para 38

101 Cm 7485, p 7

102 BERR, *Export Control Act 2002, Review of Export Control Legislation (2007)*—*Government's End of Year Response*, December 2008, p 6

103 HC (2008–09) 178, para 54

104 Cm 7698, p 6

105 Q 43

agreement at EU working group level, and submission to the European Parliament before it could be adopted by adoption of a Council Decision.¹⁰⁶ The Minister acknowledged that there had been a delay in achieving an amendment to the Regulation:

We are aware that progress has been slow on this issue, but our clear preference is for an EU wide control and indications are that there is significant support for our proposal among EU Member States. We will continue to actively engage all the relevant stakeholders and my officials will report back progress to the CAEC, in March.¹⁰⁷

65. We recommend that the Government provide the Committees in its Response to this Report with an update on its progress in pursuing an amendment to the existing EU Torture Regulation.

No re-export clauses

66. In previous Reports we have recommended that it be a standard licensing requirement that export contracts for goods on the Military List contain a clause preventing re-export of the goods to a destination subject to UN or EU embargo.¹⁰⁸ In addition we recommended that the contracts included a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in the British or Foreign courts.¹⁰⁹

67. The Government has been resistant to the idea of no re-export clauses as it argued that the existing licensing process was efficient in preventing undesirable re-export of goods as it included an assessment of the risk of re-export by the recipient country. The Government has also claimed repeatedly that it would be difficult to enforce no re-export clauses.¹¹⁰ However, despite this, the Government's Response to the Committees' 2009 Report, said that it would "look again at whether non re-export clauses could be used to good effect in the licensing process."¹¹¹

68. We have noted in the past that several other EU countries (Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Poland, Romania, Spain and Sweden) use re-export controls to some degree. A recent report on Post-Export Controls on Arms Transfers, published by the Brussels-based Group for Research and Information on Peace and Security (GRIP), examined the use of non re-export guarantees in Europe.¹¹² It gave details of member states which included a no re-export clause in End-Use Certificates, and sometimes in licences:

- In Belgium, material sold will not be permitted to be re-exported without prior authorisation from Belgium. An export or transit licence application will be refused

¹⁰⁶ Ev 61

¹⁰⁷ Ev 61

¹⁰⁸ HC (2008–09) 178, para 64, HC (2006-07) 117, para 217

¹⁰⁹ HC (2007–08) 254, paras 39–40

¹¹⁰ Cm 7485, p 7, Cm 7698, p 6

¹¹¹ Cm 7698, p 6

¹¹² GRIP, "Post-Export Controls on Arms Transfers", Belgium, 2009/4, www.grip.org

if the country of destination has shown that it does not respect non re-export clauses. (However the implementation of this varies from region to region within Belgium; in Belgium, the licensing competence was transferred to the three regional governments.)

- In Germany a clause on “non re-export without the written agreement of the German Government” is imposed in an End-Use Certificate, but this depends on the nature of the material exported and the destination. In principle, a country that breached a non re-export clause, or failed to ensure that the clause was respected, would be denied future exports.¹¹³

69. The Government told us that, in France, for exports to non-EU and Community General Export Authorisation (CGEA) countries, foreign importers and end users are required to certify that:

[...] the goods are for the stated end use, and that they will not otherwise be sold, gifted, lent or otherwise transferred, and not to re-export goods incorporating the goods without the prior written consent of the French Government; and that they require the receiving government to certify that they will not authorise re-export, resale, gifting, lending or transfer of the goods outside its territory without the prior written consent of the French Government.¹¹⁴

70. The NGOs strongly support post-export controls, including re-export clauses, and criticise the Government’s position that its pre-export checks are in themselves adequate to prevent unwelcome retransfers. In their latest memorandum to us, the NGOs acknowledge that whilst non re-export clauses “will not alter recipient behaviour in all cases, there are any number of customers that do take their contractual obligations seriously and will honour them”.¹¹⁵ In evidence to the Committees in December 2009, Roy Isbister of Saferworld said that EU officials from member states which use non re-export clauses “argued very strongly in favour” of them and said that they do make a difference.¹¹⁶

71. In the Westminster Hall Debate of 5 November 2009, the Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills continued the Government’s argument against non re-export clauses:

We do not favour making export licences for supply to licensed production facilities subject to the condition that the underlying supplying contract has a clause preventing re-export without the permission of the UK authorities. That would impose an administrative burden on both us and the exporter and, because both the goods and the re-exporting entity are outside the UK, it would be difficult to enforce in practice [...] There would not be an effective clause in the contract that could be activated by the UK Government. The UK Government would not be in a position to take legal action against the company from abroad, for example, under the terms of the contract.

113 *Post-Export Controls on Arms Transfers*, pp 16–17

114 Ev 50

115 Ev 38

116 Q 36

[...] it would mean that the detail of every contract made between an applicant and a purchaser would have to be made known to the UK Government. The clause would have to be produced to the UK Government to evidence the further action.¹¹⁷

When asked whether a non re-export clause would deter countries from sending goods on to embargoed countries, the Minister responded:

The only disadvantage is that although that might send a clear signal, it would suggest a legally enforceable basis for the proceeding [...] I am reluctant to incorporate a clause simply to send a message—a message that implies some sort of legal basis but does not provide the foundation for any action.¹¹⁸

The Minister promised to return to the Committees by the end of the year with a decision on whether or not the Government was going to consider the matter further.

72. The Minister wrote to us on 16 December to announce that, although the Government had not changed its view that it should not make export licences subject to the condition that the underlying supplying contract has a no re-export clause, it acknowledged that such a requirement would send a clear message that re-export to certain countries was unacceptable. The Government had decided to add a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export.¹¹⁹ The Minister stated that:

Exporters already have to obtain undertakings that the exports will not be used for any WMD purposes, nor be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes. In the future, exporters will have to obtain a more general end user undertaking that the exports will not be re-exported or otherwise sold or transferred if they are intended for use in contravention of a UN, OSCE or EU embargo.¹²⁰

73. The exporter would not be liable for the actions of the end user which are beyond the exporter's control. However, if the licensing authorities had evidence that the exporter had colluded in the break of the end user undertaking, the exporter's actions would be taken into account in assessing any future licence application from that exporter. Similarly, the breach of the undertaking by the end user would affect any future risk assessment of either that end user or the country concerned by the licensing authorities.

74. We welcome the Minister's decision to introduce a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export. Whilst this falls short of the no re-export clause that we have previously recommended, we conclude that the Government has accepted that it is useful to send a message that the UK considers re-export of goods to certain countries unacceptable. We recommend that our successor Committees monitor the effectiveness of the measure introduced by

117 HC Deb, 5 November 2009, col 342 WH

118 HC Deb, 5 November 2009, col 344 WH

119 Ev 50

120 Ev 50

the Government as a deterrent against re-export in contravention of a UN, OSCE or EU embargo, to assess whether no-re export clauses remain desirable.

Licensed production overseas

75. In previous Reports we have concluded that existing controls over licensed production overseas were inadequate and needed to be extended. We had considered the option that Government had set out in its 2007 Consultation Document that export licences for supplies to licensed production facilities or subsidiaries could be made subject to conditions relating to the relevant commercial contracts.¹²¹ We also recommended that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo.¹²²

76. The Government rejected the case for enhancing controls on the export of controlled goods in relation to licensed production.¹²³ In its Response to our 2009 Report, the Government explained that it considered enhanced controls unnecessary as the export of controlled goods to overseas Licensed Production Facilities already required an export licence, and exporters applying for a licence were asked to declare whether the export was for the overseas production.¹²⁴ However, the Government acknowledged that there was a stronger case for enhancing controls on the export of non-controlled goods:

The cases of overseas production where issues have arisen have all related to goods for military end use in embargoed or other destinations of concern, where the goods were not controlled when exported from the UK. The Government, therefore, considers that the most effective way of tightening controls on the export of non-controlled goods would be through an enhanced Military End-Use Control.¹²⁵

77. We note the Government's response and as stated in paragraph 59 have requested that the Government report back to the Committees by October 2010 on the proposal for an amended control that has been agreed within Government and with an update on discussions with industry and EU partners.

Research

78. For several years we have recommended that the Government should commission independent research into the effectiveness of the export control system, including a review of compliance in the dual-use sector.¹²⁶ In its response to our 2009 Report, the Government announced that it would commission an independent study into compliance levels in the dual-use sector which would be conducted in 2009.¹²⁷

121 HC (2006–07) 117, para 238

122 HC (2007–08) 254, para 42

123 Cm 7485, pp 7–8

124 Cm 7698, pp 6–7

125 Cm 7698, p 7

126 For example: HC (2008–09) 178, paras 74–77

127 Cm 7698, p 7

79. The survey was conducted in March and April of 2009, during this period 503 companies, individuals and academics were interviewed over the telephone. The interviews were carried out in complete confidence with the Export Control Organisation having no access to the individual attributed response, or even the names of individuals or companies who responded.¹²⁸ The study's findings included:

- 91% of interviewees said that their export licensing was fully compliant with dual-use controls;
- 4% of those respondents who said they were less than 100% compliant said that non-compliance was due to it not being taken seriously within the company or because the company was deliberately non-compliant;
- Other reasons for non-compliance were: poor awareness of the legislation within the organisation; need for training/information; a perception of too much bureaucracy involved; and the complexity of the legislation;
- 30% of respondents who currently hold dual-use export licences said that processing time was more than they would expect;
- Of the respondents, 59% said that lack of understanding of the requirements of the legislation was a significant barrier to obtaining dual-use licences. 19% said that difficulty of using SPIRE was a barrier;
- Only 53% of respondents were aware of SPIRE and only 32% were aware of ECO Awareness events. 46% were aware of the ECO website and only 27% were aware of the EU Dual-Use website. However, 70% were aware of the Business Link website, and
- 87% of those who expressed an opinion said that they had favourable opinions of ECO.

80. Ian Lucas MP, Minister for Business and Regulatory Reform, in his letter informing us of the result of this survey, said that the results were consistent with the Export Control Organisation's (ECO) own compliance audits and recent HMRC surveys which suggested that there was not a high level of non-compliance. He stated that the Awareness and Compliance Units with ECO would use the findings of the study to "develop their communications and implementation strategies to further increase awareness and compliance with strategic export controls".¹²⁹

81. However when we discussed the survey with witnesses, both business groups and NGOs, they questioned the accuracy of some of the figures in the study, particularly the self-reported compliance figures. While 91% of respondents replied that they felt that they were fully compliant with the dual-use controls Mr Hayes, Chairman of the Export Group

128 Ev 34

129 Ev 34

for Aerospace and Defence, noted that only 42% reported using the SPIRE system which is the only means of obtaining an export licence.¹³⁰ He said that:

This report in itself is anecdotal evidence. It actually has little or no objectivity [...] in the sense of adding any objective evidence to the debate, I do not think it adds a lot.¹³¹

NGO groups raised similar concerns about the accuracy of the figures. Roy Isbister of Saferworld noted that there was “nothing in there to check the facts”, and no questions which explored what companies meant when they claimed to be compliant.¹³² In his letter to the Committees of 11 February, the Minister for Business and Regulatory Reform argued that the questions were asked in the specific context of UK export controls and the meaning of compliance “should have been self-evident.”¹³³

82. We put these concerns to Ivan Lewis MP, Minister of State, Foreign and Commonwealth Office; he replied that while it was important to be “honest about the limitations of the study” he felt that the methodology and the conclusions were “robust”.¹³⁴ He also highlighted that the results were consistent with other information on compliance levels:

We just do not accept that there is a large body of evidence that suggests that this is a major problem.¹³⁵

83. We conclude that the Government’s decision to act on our recommendation to conduct a survey into dual-use non-compliance is welcome. We recommend that the Government takes note of the concerns raised by both industry and NGOs about the methodology of the survey, and ensure that more robust data gathering measures are deployed in any future studies. We conclude that simply asking companies whether they are compliant seems a poor way of measuring whether the system is being followed, as some organisations may be non-compliant through ignorance and deliberately non-compliant entities would have no reason to admit to failing to comply with regulations.

84. On the specific issue of the apparent low level of awareness of SPIRE (only 53% of respondents were aware of ECO’s online database) the Minister of State for the FCO argued that this could be accounted for by the fact that the survey had been designed to capture both deliberate non-compliance and cases where exporters were not aware of the legal requirements. Therefore a decision had been taken that 70% of those surveyed would be exporters who had never previously applied for an arms export licence, to ensure cases where businesses were likely to be unaware of their obligations were included in the sample.¹³⁶ The Minister for Business and Regulatory Reform, in his letter of 11 February,

130 Q 3

131 Q 2

132 Q 55

133 Ev 64

134 Q 137

135 Q 138

136 Q 139

also argued that although all respondents produced or supplied dual-use goods, it would not be unreasonable for the randomly selected companies not to have heard of SPIRE if they had not applied for a licence since September 2007 when the licensing system had been introduced.¹³⁷

85. In our last Report, we welcomed the launch of SPIRE and recommended that the Government publicise more widely the facility both nationally and internationally with the aim of influencing other countries to follow the UK's example.¹³⁸ In his letter of 11 February, the Minister for Business and Regulatory Reform listed events organised by the Export Control Organisation (ECO) to raise awareness of, and promote the use of SPIRE and other online resources amongst companies and organisations. He stated that ECO had also launched a user satisfaction survey for SPIRE users to establish how to improve the system further.¹³⁹ However, despite the Minister's statement, the survey had found that only 32% were aware of ECO awareness events, only 46% were aware of the ECO website and a very low 27% were aware of the EU Dual-Use website.¹⁴⁰

86. Whilst we remain supportive of SPIRE, we conclude that more needs to be done to raise awareness of both SPIRE and the wealth of information that is available to the strategic export industry, including producers of dual-use items, through the Export Control Organisation website and the events that the Organisation holds around the country.

87. The study also highlighted several barriers which companies reported were either preventing or making it more difficult for them to comply with the dual-use system. These included:

- Lack of available information and/or lack of resource to gather information;
- Poor knowledge of the detail of the controls;
- Reliance on third parties, and
- The complexity of the legislation.¹⁴¹

88. David Hayes, Chairman of the Export Group for Aerospace and Defence, believed that a lack of understanding of the dual-use control system was the most significant barrier to compliance. This concurred with the dual-use study which found that the most common reason given by non-compliant firms was a lack of awareness or understanding.¹⁴²

Quite commonly we come across companies who are not compliant. Very, very, very rarely do we come across companies who are deliberately, knowingly non-compliant.

137 Ev 64

138 HC (2008–09) para 90

139 Ev 64

140 BIS, "Export Control Organisation Dual-use Compliance Study: Summary of Results and Key Findings", November 2009, www.bis.gov.uk, p 11

141 *Export Control Organisation Dual-use Compliance Study: Summary of Results and Key Findings*, p 8

142 *Export Control Organisation Dual-use Compliance Study: Summary of Results and Key Findings*, p 7

I do not think actual deliberate criminality is the issue. Awareness and ignorance of the rules is certainly an issue [...]¹⁴³

Mr Hayes felt that Government could be more proactive in identifying companies that were likely to need to apply for an export licence:

On the Internet it is very, very easy to identify companies from websites who are identifying goods which prima facie would appear to us to be export controlled. It is not a particularly difficult task to then look at those companies and compare them with the list of those companies who are registered for licences.¹⁴⁴

89. The study also found that awareness of SPIRE and the ECO websites (53% and 46% respectively), was much lower than awareness of the Business Link website, which 70% of businesses were aware of. Business Link is intended to be a single source of information for businesses. One suggestion from a respondent to the survey to solve the lack of knowledge about the export control regime was to provide clearer, easier to find guidance on the Business Link website.¹⁴⁵

90. We put this suggestion to the Minister of State for the FCO, who was open to the possibility of providing more information about the regime use Business Link:

I think that is definitely a reasonable proposal. We will feed it through to our colleagues in BIS.¹⁴⁶

He also informed us that as part of its work BIS was proactive in engaging with businesses that it believed might need to apply for a dual-use licence. However he did argue that not all the onus should be on the government, arguing that businesses needed to “speak for themselves”.¹⁴⁷ The Minister for Business and Regulatory Reform, stated in his letter to the Committees of 11 February that the ECO pages of the BIS website would converge with the Business Link website on 1 March 2010 with the key aim of “providing easier access to cross-government information and more efficient ways to interact with government via transactional sites such as SPIRE. Export Control policy and Notices to Exporters will remain on the BIS website”.¹⁴⁸ We now understand that this convergence will take place on 15 March 2010.¹⁴⁹

91. We welcome the decision that the Export Control Organisation pages of the Department of Business, Innovation and Skills website will converge with Business Link in March 2010. We recommend that the Department for Business, Innovation and Skills should continue to explore ways in which it can increase awareness amongst businesses of the dual-use system.

143 Q 4

144 Q 8

145 *Export Control Organisation Dual-use Compliance Study: Summary of Results and Key Findings*, p 12

146 Q 140

147 Q 143

148 Ev 64

149 Information provided by the Department for Business, Innovation and Skills to the Clerk of the Committees.

4 Enforcement

Annual Report on United Kingdom Strategic Exports

92. We have previously made recommendations concerning the provision of information in annual reports on strategic controls; specifically the number of seizures by HM Revenue and Customs and the trend and type of misuses of open licences.¹⁵⁰ The Government agreed to provide additional commentary on the number of seizures and information on the misuse of open general licences in its next Annual Report.¹⁵¹ Due to the late publication of the 2008 Annual Report on United Kingdom Strategic Export Controls, we were unable to comment before now on whether or not this information has been included. **We conclude that the provision of information on enforcement actions taken by HM Revenue and Customs, seizures and misuses of open licences was a welcome addition to the 2008 Annual Report on United Kingdom Strategic Export Controls and we recommend that this information be included in future reports.**

Civil penalties

93. We have previously concluded that the use of civil penalties, in addition to prosecution through the criminal law, for the breach of export controls appeared to offer a method of strengthening the UK's export controls.¹⁵²

94. As reported by us last year, in February 2009, the Committees received a joint memorandum from Rt Hon Stephen Timms MP, Financial Secretary to HM Treasury, and Ian Pearson MP, the then Economic and Business Minister. The memorandum stated that BERR and HM Revenue and Customs had concluded that there was a clear case for introducing civil penalties to supplement existing measures.¹⁵³ The memorandum stated that primary legislation would be needed to introduce civil penalties and, after that, an independent tribunal would have to be established to deal with appeals. It was estimated that it would take approximately a year after the introduction of primary legislation to establish the tribunal. The memorandum promised a further update in 2009 with details of potential implementation timescales.

95. In our last Report we recommended that the Government inform us by the end of 2009 of the timetable for primary legislation necessary to bring in civil penalties.¹⁵⁴ The Minister for Business and Regulatory Reform wrote on 11 February 2010 to inform the Committees that the Government was still not able to provide an update on progress on the drafting of primary legislation to bring in civil penalties.¹⁵⁵

150 HC (2007–08) 254, paras 50 and 57

151 Cm 7485, p 10

152 HC (2007–08) 254, paras 60–63

153 HC (2008–09) 178, Ev 66

154 HC (2008–09) 178, para 85

155 Ev 62

96. We recommend that the Government provide in its Response to this Report an update on progress towards primary legislation to bring in civil penalties for the breach of strategic export controls in addition to prosecution through the criminal law.

5 Organisational and operational issues

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

97. We have expressed dissatisfaction in our previous Reports at the timing of the publication of the annual reports on strategic export controls.¹⁵⁶ The Government has stated that as the final annual collation of data from across Government did not take place until April, it would not be possible to publish its annual report before April each year.¹⁵⁷ Therefore, we are disappointed that the 2008 Annual Report was not published until August 2009. **We repeat our recommendation that the Government aim to publish its 2009 Annual Report on UK Strategic Export Controls by the end of May 2010.**

Form and content of annual reports on strategic export controls

98. In previous Reports we have recommended that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls.¹⁵⁸ As we stated in our last Report, this was because we considered the information necessary for the scrutiny of the management and enforcement of export controls.¹⁵⁹ We need to know what resources are going into export control and particularly whether the resources are increasing or decreasing year on year.

99. The Government provided a table in its 2008 Annual Report showing the allocation of resources for consideration of export licence applications.¹⁶⁰ This is reproduced below in Table One.

Table One: Government resources

HMRC/RCPO/UKBA Resources	£3,087,500
ECO	£4,011,000
FCO	£450,000
DfID	£100,000

Source: *United Kingdom Strategic Export Controls: Annual Report 2008*

100. We noted that the table did not include reference to the MOD, despite that department acting in a policy advisory capacity alongside FCO and DfID which were represented in the table. **We recommend that the 2009 Annual Report on United Kingdom Strategic Export Controls include a further breakdown of the information on the resources for consideration of export licence applications, showing the resources allocated to the Ministry of Defence.**

156 HC (2007–08) 254, para 80

157 Cm 7485, p 14

158 HC (2007–08) 254, para 83

159 HC (2008–09) 178, para 88

160 *United Kingdom Strategic Export Controls: Annual Report 2008*, Cm 7662, p 4

6 Challenging bribery and corruption

Introduction

101. In our 2008 Report we held an examination of allegations of corruption in defence contracts in the 1970s, and the challenges of bribery and corruption in the present day. As we have previously reported, bribery remains a major problem globally. According to the World Bank approximately US\$1 trillion (£5,000 million) is paid in bribes each year, representing 10% extra on the cost of doing business and up to 25% on procurement contracts in developing countries.¹⁶¹ Transparency International gave evidence to us in 2008 and told us that the arms sector was one of the top three sectors in which bribes are paid.¹⁶²

102. The UK now ranks 17th of the least corrupt countries in the world according to Transparency International's annual corruption perceptions index.¹⁶³ Transparency International's 2009 Progress Report on *Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* found that there were great disparities in levels of enforcement among the largest exporting countries. The UK was one of the countries with a "moderate" level of enforcement that was not considered enough to provide effective deterrence against foreign bribery.¹⁶⁴ As reported by Transparency International, four foreign bribery cases were concluded in the past year in the UK, two of them major and with sanctions imposed, and about 20 investigations were currently underway.¹⁶⁵

103. The UK's decision to halt the investigation into Al Yamamah defence contracts with Saudi Arabia was described as a "grave blow" to the OECD Convention. This was because the UK's claim that national security concerns overrode the commitment to stop foreign bribery was considered to have opened up a loophole for other governments to exploit.¹⁶⁶

104. We note that it was recently announced that the Serious Fraud Office (SFO) had reached an agreement with BAE Systems that the company would plead guilty in the Crown Court to an offence under section 221 of the Companies Act 1985 of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania. The company will pay £30 million comprising a financial order to be determined by a Crown Court judge with the balance paid as an ex gratia payment for the benefit of the people of Tanzania. No further prosecutions will be brought against BAE Systems in relation to the

161 Ministry of Justice, *Impact Assessment of draft bill on reform of the law on bribery*, February 2009, p 3; "New draft Bribery Bill to support international fair trade", Department for International Development press release, 26 March 2009, www.dfid.gov.uk/news

162 HC (2007-08) 254, Q 104

163 See the annual perceptions of corruption index published by Transparency International, available at www.transparency.org

164 Transparency International, *Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 23 June 2009, www.transparency.org, pp 8 and 51

165 *Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, p 51

166 *Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, p 8

matters that have been under investigation by the SFO.¹⁶⁷ The company will also plead guilty to one charge of conspiring to make false statements to the U.S. Government in connection with certain regulatory filings and undertakings. The Company will pay a fine of \$400 million to the US Department of Justice and make additional commitments concerning its ongoing compliance.¹⁶⁸

105. The responsibility for anti-corruption has moved in recent years from the FCO to BERR and DfID respectively and, since October 2008, to the Ministry of Justice, where the Secretary of State for Justice was appointed the Government's Anti-Corruption Champion.¹⁶⁹ In our last Report we concluded that this shifting of responsibility for anti-corruption from one Department to another raised questions over whether there was a sufficiently vigorous anti-corruption culture across Whitehall.¹⁷⁰

Tackling bribery through the licensing process

106. In our 2008 Report we acknowledged that the Export Control Organisation (ECO) did not have the expertise to investigate bribery and corruption at present without distorting its focus on the potential risk presented by the export. However, we made a series of recommendations relating to: the application of the Criterion 8 methodology to test whether the contract behind a licence application is free from bribery and corruption; the creation of a requirement for those seeking export licences to produce a declaration that the export contract has not been obtained through bribery or corruption; the revocation of licences where an exporter had been convicted of corruption; and the amendment of the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence.¹⁷¹

107. The Government Response to our 2008 Report stated that it would not consider our recommendations further until the defence sector's Common Industry Standards Initiative had been introduced and the report of the Export Credits Guarantee Department (ECGD) on its anti-bribery and corruption procedures had been published.¹⁷²

108. Lord Davies of Abersoch, Minister for Trade, Investment and Small Business, UK Trade and Investment, wrote to us on 3 December to inform us of the publication of the anti-bribery policies and procedures review by ECGD.¹⁷³ This review had taken our 2008 Report into account.¹⁷⁴

167 "BAE Systems Plc", Serious Fraud Office Press Notice, 5 February 2010, www.sfo.gov.uk

168 "BAE Systems PLC announces global settlement with United States Department of Justice and United Kingdom Serious Fraud Office", BAE Systems Plc Press Release 014/2010, 5 February 2010, www.baesystems.com

169 Department for Business, Enterprise and Regulatory Reform, *Corporate Responsibility Report*, February 2009, www.berr.gov.uk; "Anti corruption champion", Ministry of Justice press release, 15 October 2008, www.justice.gov.uk

170 HC (2008-09) 178, para 97

171 HC (2007-08) 254, paras 112–117

172 Cm 7485, p 18

173 Letter not printed.

174 Export Credit Guarantee Department, *Review of ECGD's anti-bribery and corruption procedures*, 3 December 2009, www.ecgd.gov.uk, para 6

109. The Secretary of State for Justice published his *UK Foreign Bribery Strategy* on 19 January 2010.¹⁷⁵ It has four objectives: strengthening the law; supporting ethical business; enforcing the law; and international cooperation and capacity building. The strategy, the result of collaboration across Whitehall, industry, civil society and international partners, including the OECD Working Group on Bribery and the UN Global Compact, states that it aims to set out how the Government will:

[...] address and manage the evolving challenges and establish a clear legal, regulatory and policy framework for action against foreign bribery. Law reform through the new Bribery Bill will be the keystone of this approach but the strategy also reinforces links to the wider international anti-corruption agenda—reflecting our commitment to focus on the causal drivers of foreign bribery and deepen our collaboration with international partners.¹⁷⁶

110. As part of its objective to support ethical business, the Government states that it “supports business anti-corruption initiatives and the development of industry sector codes of conduct.” It provided the following example of this support:

[...] the Government has encouraged all UK aerospace and defence companies to participate in the Common Industry Standards, an anti-corruption code of conduct for the Aerospace and Defence Industries Association of Europe (ASD). The Common Industry Standards were initially developed through Chatham House discussions in London chaired by Lord Robertson and have led to an agreement between UK and US aerospace and defence leaders, the Global Principles of Business Ethics, which was formally launched on 13 January 2010.¹⁷⁷

111. The review of the anti-bribery policies and procedures of Export Credits Guarantee Department has now been published and the *Global Principles of Business Ethics* for the Aerospace and Defence Industry were launched on 13 January 2010. **We adhere to the recommendations on bribery and corruption made in our 2008 Report and we recommend that the Government consider them further with a view to implementing the recommendations or explaining why there is no need to do so.**

112. Key to the Government’s UK Foreign Bribery Strategy is reform of bribery law. As noted in our last Report, the existing law of bribery, has been criticised both domestically and internationally since at least 1976 when the Royal Commission, chaired by Lord Salmon, recommended changes to the law relating to bribery.¹⁷⁸ At the time of publication of our last Report, pre-legislative scrutiny of the draft Bribery Bill was being conducted by a Joint Committee.¹⁷⁹ The primary aim of the draft Bill was to modernise and simplify the existing law of bribery and provide for a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom and abroad.¹⁸⁰ The Joint Committee supported

175 Ministry of Justice, *UK Foreign Bribery Strategy*, Cm 7791, January 2010

176 *UK Foreign Bribery Strategy*, para 1.4

177 *UK Foreign Bribery Strategy*, para 3.1

178 Royal Commission on Standards in Public Life, Cm 6524, 1976

179 Joint Committee on the Draft Bribery Bill, First Report of Session 2008–09, *Draft Bribery Bill*, HC 430 and HL Paper 115

180 Explanatory Notes to the Bribery Bill [*Lords*] [Bill 69 (2008–09)–EN]

the draft Bill in principle and made a number of recommendations, many of which were reflected in the Bribery Bill as introduced in the House of Lords in November 2009. At the time of agreement of this Report, the Bill had been referred to a Public Bill Committee in the House of Commons.

113. We conclude that the introduction of a Government strategy on UK Foreign Bribery is a welcome development. We recommend that the Government in its Response to this Report provide information on how the strategic export control system is working to support the new strategy.

7 The EU and the international perspective

Introduction

114. The focus of the Committees this session has been on progress towards an international Arms Trade Treaty. We have also followed up our previous inquiries on exports of arms to China, Sri Lanka and Israel. The NGOs raised with us the subject of interpretation of Criterion 8 of the consolidated EU and National Criteria. We report on the evidence we have received so far.

Progress towards an international Arms Trade Treaty

115. We have previously commended the Government's support for an international Arms Trade Treaty (ATT)¹⁸¹ and during this parliamentary session we have continued to monitor the progress of negotiations. The Foreign Secretary wrote to the Chairman of the Committees on 16 October 2009 and 23 November 2009 to update the Committees on the FCO's work towards an ATT.¹⁸² On 30 October, the UN First Committee voted in favour of the draft resolution and timetable to negotiate the treaty, with 153 states voting in favour, 19 abstentions and only Zimbabwe voting against. It was agreed that there will be a series of Preparatory Committees (PrepComs) in 2010 and 2011, with the final Diplomatic Conference in 2012.¹⁸³ At the PrepComs member states will debate proposals for actual treaty text.

116. The UN General Assembly voted on the ATT Resolution on 2 December. 151 states voted in favour of the resolution to negotiate a "strong and robust" Arms Trade Treaty (ATT). This transformed the First Committee Resolution into a General Assembly Resolution.¹⁸⁴ 20 countries abstained, one more than during the First Committee in October, with Bolivia changing its "yes" vote to abstain.¹⁸⁵ Zimbabwe remained the only "no" vote. Ivan Lewis MP, Minister of State for the FCO, emphasised the significance of this resolution:

I think that this is a potentially historic step forward and is something that I think we can be proud of, that the British Parliament, the British Government, has promoted and pushed for. The situation is that the UN has now approved the Arms Trade Treaty resolution. That, for the first time, sets out a clear timetable for negotiation of a treaty. [...] I think it is important to note—and this is very significant—that the United States supported the ATT resolution and all of our contacts with the

181 HC (2008-09) 178, para 122

182 Ev 31 and 32

183 Ev 32

184 United National Resolution A/RES/64/48, 64/48 *The Arms Trade Treaty*, adopted by the General Assembly on 2 December 2009, www.un.org

185 "On recommendation of First Committee, General Assembly adopts 54 texts, sets aside four weeks in 2012 to hammer out legally binding Arms Trade Treaty", United Nations General Assembly press release GA/10898, 2 December 2009

Americans, all of our discussions with them, demonstrate that they are fully committed now to working to achieve the treaty.¹⁸⁶

117. While progress has clearly been made in the last year, there remain several concerns regarding the agreement of the Arms Trade Treaty that were highlighted to us in evidence to the Committees. Both industry and NGOs feared that finding a consensus would prove difficult.¹⁸⁷ Katherine Nightingale from Oxfam GB commented:

I think it would be very hard and a very hard job for the UK to lead on to get a strong and robust treaty that has the consensus of 192 Member States of the United Nations, partly for the very reasons that we know, that there are already a substantial number of abstainers that may have concerns and that, although you might have 153, a phenomenal majority of states within the United Nations in favour of the treaty, in many respects those 153 states may not get the kind of treaty they want because of the few and, indeed, possibly because of one.¹⁸⁸

Oliver Sprague of Amnesty UK warned that previous attempts to achieve consensus on arms issues had failed:

An overwhelming striving to achieve consensus led to the collapse of the 2006 Review Conference on Small Arms and Light Weapons and you could say that the marking and tracing agreement was significantly weakened because there was an overwhelming sense of a striving for consensus and the progressive governments folded far too easily on their red lines, and the minority of sceptical governments were much, much tougher.¹⁸⁹

118. The Minister recognised that building consensus would be challenging, but believed that “consensus” did not mean unanimity:

[...] at the Diplomatic Conference that will take place towards the end of the process, prior to the UN General Assembly vote in 2012, the objective is to ensure that meeting ends with all of the countries agreeing on a consensus. That may mean the vast majority of countries vote yes and a very tiny number abstain. We know that Zimbabwe, as ever, under this leadership, decided to vote against. Of course, we hope that by 2012, even they may be in a rather different position. I think the important point to make, though, is the final ratifying decision-making body is the UN General Assembly. [...] at that body a majority, particularly a significant majority, for a treaty is sufficient.¹⁹⁰

119. While he noted that any majority would be sufficient for the motion to be passed, and that Zimbabwe alone could not veto the treaty, he stated that “for it to have credibility, authority and legitimacy, I think you would want an overwhelming majority”.¹⁹¹ He also

186 Q 57

187 Q 21

188 Q 31

189 Q 34

190 Q 58

191 Q 58

acknowledged that there was work to be done to convince abstaining states such as China, Pakistan, India and Russia,¹⁹² echoing the comments of the Brinley Salzman of EGAD, who told the Committees that the UK had a “hearts and minds campaign to try and launch with the abstaining nations”.¹⁹³

120. Giving oral evidence to the Committees in December, the NGOs reiterated past concerns on as to whether adequate time would be given to negotiations at the preparatory stage: there would be four weeks of preparatory meetings in 2010 and 2011, followed by the four week conference in 2012. Mr Roy Isbister of Saferworld compared this timescale with that of the Convention on Organised Crime (11 weeks over two years) and the Rome Statute for the International Criminal Court (17 weeks over three years), which he believed attempted to achieve comparable agreements. He noted that such a tight deadline would demand greater resources to achieve a desirable outcome.¹⁹⁴ However, the Minister believed that the time allowed would be sufficient:

In my view, four weeks for formal engagement and negotiation at that level is more than enough. You have to remember that most of the business is done outside of those formal meetings.¹⁹⁵

121. The NGOs also expressed concerns that discussions in the UN had been led by diplomats, rather than arms transfer control experts, which had resulted in some participants of the UN Open-Ended Working Group on the ATT this year not properly understanding the issues being discussed.¹⁹⁶ The Minister stressed that there would be access to such experts for the Conference, and acknowledged that “we cannot proceed and be successful with this without that expertise as part of the team”.¹⁹⁷ In a letter to the Committees dated 8 February, the Minister confirmed that representatives from NGOs and industry would be an important part of the UK team:

During a recent meeting with NGOs and Industry we agreed to establish two separate working groups on ATT which will include officials, NGOs and industry representatives: one would focus on technical ATT issues and the other on strategic aspects of an ATT. The first technical meeting has already taken place and a second meeting will take place in the last two weeks of February. The next strategy meeting will take place towards the end of this month.¹⁹⁸

122. We repeat our previous conclusion that the Government is to be commended for its continuing commitment to an international Arms Trade Treaty (ATT) and we recommend again that the Government continue to seek an ATT that is as strong as possible. We conclude that while consensus should be sought and strived for, a very small minority of dissenting States should not be allowed to endanger such an

192 Q 66

193 Q 22

194 Q 35

195 Q 73

196 Ev 40

197 Q 75

198 Ev 62

important international treaty. We further recommend that the Government ensure that the UK negotiating team has sufficient resources and expertise to meet the tight timetable for agreeing the Treaty for the Diplomatic Conference in 2012.

EU Arms Embargo on China

123. China has been subject to an EU arms embargo since 1989. The embargo was adopted by the European Council on 27 June 1989 in the form of a European Council Declaration in response to the events in Tiananmen Square in June 1989.¹⁹⁹ The embargo is not legally binding, as it was adopted prior to the creation of the EU's Common Foreign Security Policy (CFSP). The USA also maintains an arms embargo on China. However, while its legal status remains unclear, the embargo has considerable moral and political weight, and is considered an important symbol of the EU's position in relation to China's human rights record.

124. In our first Joint Report of Session 2007–08 we noted that, despite the embargo, the quarterly reports indicated that the value of standard individual exports licences (SIELs) issued for exports to China increased from £85 million in 2006 to £227 million in 2007.²⁰⁰ The Campaign Against Arms Trade noted that according to the Export Control Organisation, licences were issued for the export to China of military and dual use goods to the value of £214 million in 2008 and £278 million for the first two quarters in 2009. The licences include airborne and ground based radar, military aerospace components, range finders, surveillance equipment, laser sighting and targeting equipment, military electronics, communications and navigation equipment.²⁰¹

125. We have previously raised the question of whether, in practice, the embargo has any economic or commercial effect on China. In evidence to us in June 2008, the Government said that:

The EU embargo on China was imposed after the Chinese suppression of the Tiananmen square pro-democracy demonstrations in 1989 and its scope covers lethal weapons that could be used for internal repression. It is important to note that it is not a “full scope” embargo. The export of some controlled goods to China was always envisaged and thus, increases in the volume of exports for controlled goods that are not covered by the terms of the embargo should not be seen as a barometer of the effectiveness of the embargo.²⁰²

126. In oral evidence to us in January 2010, the Minister of State for the FCO said that in “practical terms” the effect on China was “minimal”, but added that “in political terms it is quite a significant issue [...] It casts aspersions on China's honour, if you like”. He added “they [China] really do not like it and they really want it to change”.²⁰³

199 “EU Arms and Dual Use Exports Policy and EU Embargo on China”, EU Council Background Note CHINA/00, February 2005, www.consilium.europa.eu

200 HC (2007–08) 254, para 141

201 Ev 44

202 HC (2007–08) 254, Ev 90

203 Q 109

127. We have previously concluded that the British Government and the EU should maintain their arms embargo on China.²⁰⁴ We also asked that the Government should provide us with updates on its assessment of the human rights situation in China and of the adequacy of the current arms embargo in place.²⁰⁵ In its Response to our 2009 Report, the Government stated that while the EU Council of Ministers had concluded that the arms embargo on China should remain in place, it would “be kept under regular review”:

The embargo is defined by most major European exporters to cover lethal weapons only, preventing the sale and export of weapons; ammunition; military aircraft and helicopters; vessels of war; armoured fighting vehicles; and any equipment that might be used for internal repression from EU member states to China. The *EU Common Position on “Common Rules Governing Control of Exports of Military Technology and Equipment”* is the EU’s primary means of controlling arms sales to all destinations, including China, and covers the types of equipment and materials that fall outside the scope of the arms embargo.²⁰⁶

128. In relation to the human rights situation in China, the Government stated that while there has been some progress on social and economic rights, there has been little improvement on civil and political rights. There was no sign that China intended to ratify the International Covenant on Civil and Political Rights (ICCPR), abolish its systems of administrative detention or provide transparent statistics on the use of the death penalty. The Government stated that it continued to have regular dialogue with China on human rights issues. It has also allocated over £1 million to human rights projects over the current CSR period (2009–2011).²⁰⁷ In November 2009, Members of the Committees met informally a Chinese delegation of arms trade experts, including Chinese Government officials, academics and representatives from think tanks, to discuss the UK system of arms controls. The delegation was arranged by Saferworld as part of a Government-sponsored project.

129. We were told on 27 January 2010 by the FCO that there were no plans, at either UK or EU level, to hold a formal review of the embargo at present.²⁰⁸ In general terms the arms embargo on China has been under review since 2003. In 2004 the European Council concluded that:

It is looking forward to further progress in all areas of the relationship as referred to in the EU-China Joint Statement, in particular, the ratification of the International Covenant on Civil and Political Rights. In this context the European 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

204 HC (2007–08) 254, para 146 and HC (2008–09) 178, para 116

205 HC (2008–09) 178, para 116

206 Cm 7698, p 9

207 Cm 7698, p 9–10

208 Q 114, Ev 61

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.²⁰⁹

130. The Minister of State for the FCO told us that he was “not aware” of a review within the EU of the arms embargo at this stage.²¹⁰

131. However, following a meeting of EU Foreign Ministers in Brussels on 26 January 2010, Spanish Foreign Minister Miguel Angel Moratinos, said that the Spain was “weighing the pros and cons” of lifting the arms embargo.²¹¹ While France has been a vocal supporter of ending the ban, other EU Member States, including the United Kingdom, have traditionally indicated that China’s record on human rights did not merit an end to the EU embargo. The Minister confirmed that the Government are currently undertaking a review of Chinese progress on human rights, due to be published in March 2010. He emphasised, however, that this was a UK review, not an EU review, and that the review “does not link at all to the embargo”.²¹²

132. We conclude that the arms embargo against China is of political importance in that it provides a strong message in relation to the inadequate protection and promotion of human rights in China. We recommend that the arms embargo against China continues to be maintained whilst its human rights performance remains so poor.

Israel

133. In our last Report, in response to the escalating violence in Gaza, we focused on arms exports to Israel. In parallel, the Foreign Affairs Committee reported on these issues in its Report into *Global Security: Israel and the Occupied Palestinian Territories*.²¹³

134. The Campaign Against Arms Trade (CAAT) has identified over recent years that the UK Government has licensed arms exports worth between £10 million and £30 million a year for export directly to Israel. During 2008, licences for goods worth over £27.5 million were approved. In addition, the UK has supplied components for incorporation in weapons exported to Israel by US suppliers.²¹⁴ The UK, however, provides less than 1% of all arms exported to Israel.²¹⁵

135. The UK Government’s policy is that UK arms exports to Israel should not be used in the Occupied Territories.²¹⁶ In our 2009 Report, we focused on the technical issues relating

209 Ev 61

210 Q 110

211 “EU Presidency reconsidering China arms embargo”, euobserver.com, 27 January 2010

212 Q 110

213 Foreign Affairs Committee, Fifth Report of Session 2008–09, *Israel and the Occupied Palestinian Territories*, HC 261

214 Ev 44

215 Q 120

216 HC Deb, 15 April 2002, col 720W, Departments of Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry, *Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry*, Cm 5629, October 2002, p 4, and First Joint Report from the

to whether or not components supplied under licence from the UK (particularly incorporated in products assembled in a third intermediary country) were used by the Israeli Defence Forces (IDF) in Gaza during Operation Cast Lead which began on 27 December 2008.²¹⁷

136. Bill Rammell MP, then Minister of State, FCO, told us in April 2009, that the Government had not authorised any exports relating to F-16s, helicopters or armoured personnel carriers for Israel, including for incorporation in a third country, since the conflict in Lebanon in 2006, and that “all of these export decisions were in accordance with the criteria on that information that we had available at the time”.²¹⁸ In a memorandum to the Committees, the FCO outlined instances where licences were refused for the supply of components for F16s for use by the Israeli Air Force on the basis of Criteria 2, 3, 4 and 6 of the consolidated criteria.²¹⁹ Ian Pearson MP, then Minister at BERR, told us that: “Israel regularly features in three destinations with the highest number of refusals” and that the Government continues “to assess such applications on a case-by-case basis”.²²⁰

137. As reported in our last Report, the Foreign Secretary made a Written Ministerial Statement on 21 April, in which he said that the F-16s and Apache helicopters used by Israeli forces during Operation Cast Lead “almost certainly” contained British-supplied components incorporated in this way.²²¹ The Government stated it would take the conflict in Gaza into account in assessing all future licence applications. We previously concluded that it was correct for the Government to assess licences to Israel on a case-by-case basis, and asked that the Government inform the Committees of the outcome of its review of extant licences relating to Israel and whether the revocation of licences has implications for the UK’s defence relationships with the USA or Israel or the operational capabilities of the UK’s armed forces.²²²

138. The Government wrote to the Committees in July 2009 with an update on the review of 182 extant licences to Israel. It decided to revoke five licences for equipment to the Israeli Navy.²²³ It stated that there was no evidence that the decision to revoke those licences has had any impact on the UK’s defence relationship with either the USA or Israel.²²⁴

139. Despite the commitment to review export licences on a case by case basis and in the light of the conflict in Gaza, CAAT stated that it was virtually impossible to guarantee that any military equipment supplied to the Israeli government will not be used in the Occupied Territories. It concluded that “the only effective action would be the immediate imposition

Defence, Foreign Affairs, International Development and Trade and Industry Committee of Session 2005–06, *Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny*, HC 873, Qq 269–280

217 HC (2008–09) 178, paras 127–130

218 HC (2008–09) 178, Qq 122, 126

219 HC (2008–09) 178, Ev 108

220 HC (2008–09) 178, Q 13

221 HC Deb, 21 April 2009, col 8WS

222 HC (2008–09) 178, para 132

223 Ev 29

224 Cm 7698, p 11

of embargo on arms and components going to Israel, whether directly or through incorporation into weaponry produced in third countries”.²²⁵

140. In evidence to the Committees in January 2010, the Minister of State, FCO stated clearly that there would “not be any arms embargo against Israel” as the UK Government were “firmly of the view that Israel faces real threats”.²²⁶ However, he added that Israel was subject to the same review process as any other state in conflict situations, so as well as case by case consideration, there was also a review in the post conflict context.²²⁷ When pressed as to the nature of that review process, he said that post Operation Cast Lead, there was evidence in terms of specific actions taken during that Operation, which would be taken into account when considering applications on a case by case basis.²²⁸ He added that the whole point of the review process was to look at the lessons learned from a particular conflict and to use those lessons as an additional safeguard to the consolidated criteria.²²⁹

141. We repeat our conclusion that it is regrettable that arms exports to Israel were almost certainly used in Operation Cast Lead. This is in direct contravention to the UK Government’s policy that UK arms exports to Israel should not be used in the Occupied Territories. We further conclude that the revoking of five UK arms exports licences to Israel since Cast Lead is welcome, but that broader lessons must be learned from the post conflict review to ensure that UK arms exports to Israel are not used in the Occupied Territories in future.

142. We recommend that the Government, in its Response to this Report, set out clearly the longer term lessons learnt post Operation Cast Lead and how they will impact in practice on the issuing of future licences for arms exports to Israel.

Sri Lanka

143. In our last Report, following the escalation of hostilities in Sri Lanka, we examined licences for arms exports to that country. In April 2009, Bill Rammell MP, then Minister of State, Foreign and Commonwealth Office, told us that the FCO’s judgment was that an embargo, or the threat of one, was not the best vehicle for trying to secure a ceasefire in Sri Lanka. The Minister told us that few licences had been granted for exports to Sri Lanka since the beginning of 2007 which he cited as evidence of procedures being effective.²³⁰ In our 2009 Report, we noted that in the period 1 April 2008 to 31 March 2009, 34 licences were issued for export to Sri Lanka, and said that we would be keeping a keen eye on all future exports.²³¹ We subsequently concluded that it was appropriate for the Government to assess licences to Sri Lanka on a case-by-case basis, but we recommended that the Government review all extant licences to Sri Lanka and provide the Committees with an

225 Ev 44

226 Q 117

227 Q 117

228 Q 118

229 Q 127

230 HC (2008–09) 178, Qq 152–153

231 HC (2008–09) 178, para 125

assessment of what UK supplied weapons, ammunition, parts and components were used by the Sri Lankan armed forces against the Tamil Tigers.²³²

144. Ivan Lewis MP, Minister of State, FCO wrote to us in October 2009 with details of the outcome of the FCO review of extant licences to Sri Lanka. The Government revoked a number of extant export licences “in the light of changed circumstances”; these were for replacement components for military utility helicopters and military telecommunications equipment.²³³ The Minister also referred to media speculation that certain licences approved in September 2006 had been in breach of the Consolidated EU and National Arms Control Criteria. These licences had been for armoured vehicles, machine gun components and semi-automatic pistols. The Government stated that these licences had been approved whilst a ceasefire was in place and were not in breach of the Criteria.²³⁴ The Government stressed that it only issued licences for Sri Lanka that would not provoke or prolong the conflict or be used for internal repression.

145. In a Westminster Hall debate on strategic arms exports on 5 November 2009, further clarification was sought from Ian Lucas MP, the Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills, as to whether the UK-supplied helicopters or their components, or telecoms equipment or its components, supplied under the licences subsequently revoked, were used by the Sri Lankan armed forces in the conflict with the Tamil Tigers. In his written response of 31 December 2009 to the Chairman of the Foreign Affairs Committee in follow-up to the Westminster Hall debate, the Minister confirmed that all licences, dating back to 2004 had been reviewed and the Government had not supplied any helicopters or airframes to the Sri Lankan Air Force. The Minister stated that the UK had supplied helicopter components for transport helicopters to Sri Lanka and that these components had been safety, maintenance or countermeasure related. He added that: “due to the lack of access and information surrounding the final stages of the conflict collection information on how helicopters were used in the conflict has been challenging” and that based on the information available “we can say the helicopters were used for medical evacuation, logistical support, re-supply and ad hoc search and rescue operations and to transport VIPs including foreign delegations up to the northern region. They were used to much lesser extent moving troops themselves to forward areas [...]”²³⁵

146. The Minister for Business and Regulatory Reform confirmed that the Sri Lankan armed forces have been supplied with UK military communications for a number of years. However, again due to lack of information, he indicated that it was not “possible to confirm the extent to which communications equipment was used in the conflict, so we cannot state categorically that it was not”. He concluded that due to this uncertainty and the escalation of the conflict, the licence for military communications equipment was refused and all extant licences of a similar nature were revoked.

232 HC (2008–09) 178, para 126

233 Ev 30

234 Ev 30–31

235 Written evidence to the Chairman of the Foreign Affairs Committee from Ian Lucas MP, Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills [MISC 106], dated 31 December 2009, published on the Foreign Affairs Committee website, www.parliament.uk/parliamentary_committees/foreign_affairs_committee

147. In response to the question as to why the licences for military helicopters and telecoms equipment were revoked, the Minister responded that it was “standard practice” to review extant licences to determine whether a different decision would be reached in the light of the change in circumstances in Sri Lanka. He noted that the final offensive raised “grave concerns” for human rights and on review, the thresholds under Criterion 2 and 3 may have been reached. The licences were subsequently revoked. Export licences granted in February and September 2006 for semi-automatic pistols, armoured vehicles and machine gun components had expired before the conflict began.²³⁶

148. In evidence to us in January 2010, the Minister of State for the FCO said that the Government had been concerned about the Sri Lankan situation “for quite a long period of time”,²³⁷ and, as such have been “very cautious”.²³⁸ Although the evidence and information from Sri Lanka was “very patchy”,²³⁹ The Minister explained that the nine licences revoked during July and August 2009, were a consequence of the review undertaken by the Government, and an example of lessons learnt following consideration of the conflict situation in Sri Lanka.²⁴⁰ Mr David Hall, Deputy Head, Counter Proliferation Department, FCO, confirmed that the evidence of what has happened in the past was taken into account in the risk assessments that are made in the future.²⁴¹

149. In our last Report we accepted the Government’s policy of assessing licence applications on a case by case basis as appropriate as the criteria are transparent and the Government has been forthcoming in providing us with the necessary information in a regular and timely fashion.²⁴² However, we raised the issue of the difficulties in assessing how exported arms might be used by a destination country at a future date, particularly if the political situation at the time of the licence application appears stable.²⁴³ The revocation of licences post conflict in both Israel and Sri Lanka does raise again the question about the robustness and adequacy of the criteria in conflict situations or in countries where peace is fragile. The Minister of State for the FCO told us that:

[...] if there is a weakness or a flaw in the criteria we apply to Israel and to the other countries, then that is the debate that we should have. If the Committee feels that our system of case by case review in the aftermath of a conflict is insufficiently robust, then I think the debate needs to be about whether the criteria and the review process need to be changed.²⁴⁴

150. We conclude that the review and subsequent revocation of nine extant licences for exports to Sri Lanka is to be welcomed. We further conclude that the Government should take a longer term view about unstable countries, and further appraisal is

236 Written evidence to the Chairman of the Foreign Affairs Committee from Ian Lucas MP, 31 December 2009

237 Q 126

238 *Ibid.*

239 *Ibid.*

240 Q 128

241 Q 136

242 HC (2008–09) 178, para 126

243 HC (2008–09) 178, para 125

244 Q 123

required where the peace is fragile. UK arms exports have ended up in places that were contrary to UK policy in the case of Israel, and in the case of Sri Lanka, arms were exported during ceasefire periods, which, in retrospect was regrettable. While we do not question the criteria or the goodwill of those who apply the criteria, it is the outcome of where weapons end up and the use that is made of them that is important.

151. We recommend, that in order to minimize the risks of UK arms exports ending up in places contrary to UK policy, and to maximise the benefit of lessons learned, that the Government review the efficacy of the criteria in assessing the suitability of exports to less stable countries and regions.

Sustainable Development

152. The Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment was adopted on 8 December 2008 and applies to all exports by EU Member States of military technology or equipment included in the EU Common Military List, and to dual use items specified in Article 6 of the Common Position.²⁴⁵ Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria is:

Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.²⁴⁶

The UK Government has stated that:

[I]t will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.²⁴⁷

153. In its written evidence to us the UK Working group on Arms (UKWG) raised the issue of how Criterion 8 is applied by the UK Government when assessing licence applications. The UKWG believed that the Government should ensure that it is:

[...] including a full assessment of the risk of unaccountable spending as well as corruption as part of their arms export controls and application of Criterion 8. This assessment should take place on a case-by-case basis but should also consider the cumulative impact of a series of transfers and should not be restricted to only least developed countries.²⁴⁸

245 *United Kingdom Strategic Export Controls: Annual Report 2008*, p 69

246 European Council, "Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment", *Official Journal of the European Union*, 13 December 2008, L335/99–103, eur-lex.europa.eu

247 HC Deb, 26 October 2000, col 202W

248 Ev 42

[...] under the current policy, arms transfers may be approved that do not involve accountable and transparent defence procurement procedures in the importing country, or because the true costs of the transfer are not clear, and are therefore at risk of draining resources without being accountable to the parliament or citizens of the recipient country.²⁴⁹

154. UKWG cited the examples of Turkey and South Africa where the negative impact of arms transfer costs could be seen on these countries' attempts to achieve poverty reduction and development goals.²⁵⁰ In its supplementary memorandum, Oxfam GB provided the additional examples of Indonesia and Nigeria. It also cited India as an example of a country which had taken major steps to tackle corruption in its arms procurement processes.²⁵¹

155. In addition, UKWG noted that certain EU Member States were looking again at how they apply criteria, including the criterion on Sustainable Development, in a clear and consistent way. UKWG believes that the UK Government should seek to encourage strategies within the EU for universal, clear and consistent application of Criterion 8, and should spearhead discussions on how to assess the risk of corruption as part of that assessment.²⁵²

156. Katherine Nightingale, Policy Adviser on Arms and Development at Oxfam GB, when giving evidence to us about the consistency of application of Criterion 8 by EU countries, stated that there was a "lack of clear, consistent application of [the] criteria."²⁵³ Some Member States were using Criterion 8 for other purposes than that which it defined and had used the Criterion for a range of denials and other States had never used the Criterion at all. The UK has only denied one application under Criterion 8 in the last 9 years.²⁵⁴ Ms Nightingale said that some States used the EU guidelines, the practical guide and the EU Code of Conduct, while other states did not use these but used their own national controls.²⁵⁵ In its supplementary memorandum to the Committees, Oxfam GB provided information on how other EU Member States applied Criterion 8.²⁵⁶

157. The Minister of State for the FCO, agreed in evidence that "some other member States [...] have more Criterion 8 refusals than we do".²⁵⁷ Since 2006, there have been 68 refusals among EU Member States using Criterion 8 on its own or with other Criteria (63 by France, 3 by Germany and 1 by the Netherlands in 2007, and 1 by Bulgaria in 2009). In

249 Ev 41

250 Ev 41–42

251 Ev 51–52

252 Ev 42

253 Q 47

254 See HM Government's Strategic Export Controls Annual Reports 2000–2008, *United Kingdom Strategic Export Controls Annual Report 2000*, p 15, *United Kingdom Strategic Export Controls Annual Report 2001*, p 14, *United Kingdom Strategic Export Controls Annual Report 2002*, Cm 5819, p 14, *United Kingdom Strategic Export Controls Annual Report 2003*, Cm 6173, p 15, *United Kingdom Strategic Export Controls Annual Report 2004*, Cm 6646, p 13, *United Kingdom Strategic Export Controls Annual Report 2005*, Cm 6882, p 26, *United Kingdom Strategic Export Controls Annual Report 2006*, Annex of Data, *United Kingdom Strategic Export Controls Annual Report 2007*, Cm 7451, p 27, *United Kingdom Strategic Export Controls Annual Report 2008*, Cm 7662, p 23, www.fco.gov.uk

255 Q 47

256 Ev 46–50

257 Q 104

2009 DFID examined 219 licence applications, but did not reject any against Criterion 8.²⁵⁸ The Minister told us that France is the other EU Member State that routinely takes into account Criterion 8 considerations into their assessment of export licence application.²⁵⁹

158. The Minister said that even though standard criteria existed the application of those criteria can vary. There may be good reasons for the variation in application, such as legal systems and statutory regimes. The Minister also noted that there may be different capacity in Member States in making judgments and decisions. He said that regular EU meetings take place where attempts are made to co-ordinate and to get “maximum synergy in terms of decision-making”, but there would be no guarantee of complete consistency.²⁶⁰ When pressed further on the subject of consistency of application he said that “there is a lot of work being done to try and get maximum consistency and to get Criterion 8 taken incredibly seriously.”²⁶¹

159. The Minister wrote to us after the evidence session on the issue of consistency of application of the Consolidated Criteria in general. He stated that the Common Position allows EU Member States to operate more restrictive national policies should they choose to do so and therefore refuse a licence when the Common Position would otherwise allow Member States to issue a licence.²⁶² Perceived inconsistencies in the interpretation of the Common Position by Member States are pursued through COARM (the EU Working Group in Brussels responsible for the implementation of the Code of Conduct) or bilaterally with the relevant Member States. The Minister believed that the *User’s Guide on the Code of Conduct* and the consultation process between Member States on export licence applications that have been denied has helped to reduce the number of such inconsistencies. The Minister stated that the Government would give more thought to “how the consultation mechanism could be used more proactively to encourage greater convergence between EU Member States”.²⁶³ Officials would also discuss with Dutch, French and German counterparts other ways in which the Governments could raise awareness and use of Criterion 8 amongst EU Member States, and the Government would report back to the Committees on this.

160. We conclude that in its Response to this Report the Government should provide our successor Committees with the result of discussions on the use of Criterion 8 amongst EU Member States.

258 Ev 62

259 Ev 62

260 Q 104

261 Q 105

262 Ev 61

263 Ev 62

Annex 1: Visit to HMRC

In January 2010, we made an informal visit to HMRC offices in Whitehall. This followed up a previous visit to the Port of Southampton in May 2008 where the Committees had examined the detection and enforcement operations in place at the UK border.

Members participating in the visit:

<i>Business, Innovations and Skills Committee</i>	<i>Foreign Affairs Committee</i>	<i>International Development Committee</i>
Roger Berry (Chairman)	Mike Gapes Sir John Stanley	John Battle Andrew Stunell

Officials attending visit:

Aaron Dunne	Head of Counter Proliferation, HMRC
Vivian O'Horo	Senior Policy Advisor, HMRC
Chris Berry	Senior Investigation Officer, HMRC
John Richardson	Senior Investigation Officer, HMRC
Lee Barham	Senior Policy Advisor, HMRC
Peter Milroy	Assistant Director Operations, HMRC
John Isaac	Assistant Director, UKBA

Annex 2: Letter from the Chair of the Committees to the Minister for Business and Regulatory Reform

I am writing on behalf of the Committees on Arms Export Controls to seek further information in connection with the recent Notice to Exporters 2010/03 dated 26 January 2010 and the recent report in the *Independent*, “Head of bomb detector company arrested in fraud investigation: Government announces ban on export of devices to Iraq and Afghanistan”. This report claims that “hundreds of people have been killed in horrific bombings in Iraq after a British company supplied ‘bogus’ equipment which failed to detect explosive devices.”

I would be grateful if you could provide the Committees with the following information:

- Why were electro-statically powered explosive detectors not previously added to the list of dual-use goods subject to UK export control for strategic purposes?
- Why will the controlled detectors only require a licence to be exported if they are being exported to Afghanistan or Iraq?
- What other countries are these items currently being exported to?
- What is your assessment of the damage that has been caused to persons and property by the Iraqi military’s use of these detectors?

8 February 2010

Formal Minutes

Wednesday 10 March 2010

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

Members present:

Business, Innovation and Skills Committee

Roger Berry (in the Chair)
Mr Michael Clapham
Lembit Öpik

Foreign Affairs Committee

Mr Mike Gapes
Mr Fabian Hamilton
Mr David Heathcoat-Amory
Sir John Stanley

International Development Committee

John Battle
Richard Burden
Andrew Stunell

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

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

Draft Report: Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation

Draft Report (*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

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

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

Paragraphs 1 to 160 read and agreed to.

Annexes agreed to.

BUSINESS, INNOVATION AND SKILLS COMMITTEE

The Foreign Affairs and International Development Committees withdrew.

In the absence of the Chair, Roger Berry was called to the Chair

Mr Michael Clapham

Lembit Öpik

Draft Report (*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

Resolved, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Seventh Report of the Committee to the House.

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

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 19 November, 16 December, 27 January and 3 March: Department for Business, Innovation and Skills (March 2010).

[Adjourned till Tuesday 16 March at 10 a.m.]

FOREIGN AFFAIRS COMMITTEE

The Business, Innovation and Skills and International Development Committees withdrew.

Mike Gapes, in the Chair

Mr Fabian Hamilton

Sir John Stanley

Mr David Heathcoat-Amory

Draft Report (*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

Resolved, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Fourth Report of the Committee to the House.

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

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 19 November, 16 December, 27 January and 3 March: Department for Business, Innovation and Skills (March 2010).

[Adjourned till this day at 2 p.m.]

INTERNATIONAL DEVELOPMENT COMMITTEE

The Business, Innovation and Skills and Foreign Affairs Committees withdrew.

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

Richard Burden

Andrew Stunell

Draft Report (*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

Resolved, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Fifth Report of the Committee to the House.

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

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 19 November, 16 December, 27 January and 3 March: Department for Business, Innovation and Skills (March 2010).

[Adjourned till Tuesday 16 March at 10 a.m.]

Wednesday 16 March 2010

DEFENCE COMMITTEE

Mr James Arbuthnot, in the Chair

Linda Gilroy
Mr David Hamilton
Mr Dai Havard
Mr Bernard Jenkin

Mr Brian Jenkins
Robert Key
Richard Younger-Ross

Draft Report (*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

Resolved, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Ninth Report of the Committee to the House.

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

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

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

Ordered, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 19 November, 16 December, 27 January and 3 March: Department for Business, Innovation and Skills (March 2010).

[Adjourned till Tuesday 30 March at 10 a.m.]

Witnesses

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Mr David Hayes, David Hayes Export Controls, Chairman of the Export Group for Aerospace and Defence (EGAD), **Mr Brinley Salzmänn** AeroSpace, Defence and Security Group (ADS), Secretary of EGAD, **Mrs Susan Griffiths**, MBDA Missile Systems and **Mr Barry Fletcher**, Fletcher International Export Consultancy Ev 1

Mr Oliver Sprague, Amnesty UK, **MS Katherine Nightingale**, Oxfam GB, **Mr Roy Isbister**, Saferworld Ev 5

Wednesday 27 January 2010

Mr Ivan Lewis MP, Minister of State, Foreign and Commonwealth Office; **Mr David Hall**, Deputy Head, Counter Proliferation Department (Strategic Export Controls); and **Mr David Vincent**, Head of the Arms Trade Unit, Counter Proliferation Department Ev 14

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3	Export Group for Aerospace & Defence (EGAD)	Ev 32; Ev 33
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List of Reports from the Committee during the current Parliament

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

Session 2008–09

First Joint Report	Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation	HC 178 (Cm 7698)
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Session 2007–08

First Joint Report	Strategic Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation	HC 254 (Cm 7485)
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Session 2006–07

First Joint Report	Strategic Export Controls: 2007 Review	HC 117 (Cm 7260)
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Session 2005–06

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

Taken before the Committees on Arms Export Controls on Wednesday 16 December 2009

Members present

Malcolm Bruce, in the Chair

John Battle
Roger Berry
Mr David S Borrow
Mike Gapes

Mr Bernard Jenkin
Peter Luff
Mr Malcolm Moss
Sir John Stanley

Witnesses: **Mr David Hayes**, David Hayes Export Controls, Chairman of the Export Group for Aerospace and Defence (EGAD), **Mr Brinley Salzmann**, AeroSpace, Defence and Security Group (ADS), Secretary of EGAD, **Mrs Susan Griffiths**, MBDA Missile Systems, and **Mr Barry Fletcher**, Fletcher International Export Consultancy, gave evidence.

Q1 Chairman: Good morning lady and gentlemen. My apologies for the late starting of the Committee. We had an administrative difficulty which we have now resolved. I do apologise for that. I wonder if you could introduce yourselves for the record so that we can then crack on.

Mr Fletcher: Good morning. Barry Fletcher; I am an independent export consultant.

Mrs Griffiths: Susan Griffiths; I am the Export Control Manager for MBDA Systems.

Mr Hayes: David Hayes; I am a director of David Hayes Export Controls and Chairman of EGAD.

Mr Salzmann: Brinley Salzmann, I am the Director of Overseas and Exports for ADS and also Secretary of EGAD.

Q2 Chairman: Thank you very much for coming in. If we could cut straight to the chase, in a sense this Committee was set up because of dual usage and confusion, so perhaps it is a good place to start. We had a commitment from the Minister to carry out some kind of survey on the effectiveness and awareness of dual-use regulations, which they did by telephone. They recently published the findings of that study. From your point of view, were there any surprises or omissions from that study that you would like to comment on or draw to our attention?

Mr Hayes: As opinion polls go, it made for interesting reading, but one of the criticisms levelled at industry at the moment by this Committee was the fact that when we were asserting in the past that there were issues with dual-use compliance the evidence that was being put forward was anecdotal until we came up with the figures for licences from the annual report which are objective evidence of at least a *prima facie* issue in the area. This report in itself is anecdotal evidence. It actually has little or no objectivity, but it is an internal assessment of compliance within companies made by people within those companies with no baseline against which to judge their knowledge, apart from that which they are talking, reported by a company with no doubt specialisms in its own area but its own area is not export control. To that extent, I think it adds something to the debate, but in the sense of adding

any objective evidence to the debate, I do not think it adds a lot. One example I would pick out is 89% of the companies interviewed claim that their understanding of export controls is either quite good or extremely good, and bearing in mind that this is targeted at the dual-use sector, only 42% of the sample used the dual-use list which will be the basis for assessing—

Q3 Chairman: 91% said they were fully compliant, but they would say that, would they not?

Mr Hayes: But 42% use SPIRE, which is the only means of obtaining an export licence, yet they are compliant.

Q4 Chairman: That is part of the answer to the other question. What, then, do you think, having said that, is the main barrier? Is it ignorance or is it enforcement? Indeed, what can you do to make them more aware of the compliance requirements?

Mr Hayes: The problem to a great extent is intractable. I do not think that it is knowing and deliberate non-compliance—very, very rarely. Two of us sitting at the table today are independent consultants who go out and advise companies. Quite commonly we come across companies who are not compliant. Very, very, very rarely do we come across companies who are deliberately, knowingly non-compliant. I do not think actual deliberate criminality is the issue. Awareness and ignorance of the rules is certainly an issue, particularly in relation to technology transfers rather than actual exports of products or goods, but to some degree we should be more concerned about the technology transfer than we are about the goods themselves. If a non-compliant nation gets its hands on the goods, fine, they have got a physical example of a product; they have also got the problem of reverse engineering that product to the extent that that is possible, and we know in a lot of areas that is far from easy. If they get their hands on the technology, the production development technology, they have short-cut that process. So we should be more concerned about technology transfers.

16 December 2009 Mr David Hayes, Mr Brinley Salzmänn, Mrs Susan Griffiths and Mr Barry Fletcher

Q5 Sir John Stanley: I would like to ask you a wider question which I tend to ask at this particular point each year when you come in front of us. The question is this, for EGAD. You are a trade representational body representing a very, very significant industry made up of what we hope are properly conducted companies acting very carefully within the law. The question I want to put to you is are there any points of existing government legislation, either primary or secondary, or, indeed, points of present government policy which, in your view, are unreasonably impacting on your ability to carry out your trade on a legitimate basis?

Mr Hayes: It is interesting that you should use the word trade. We have made no secret of the fact that EGAD does not support extra-territorial trade control legislation. It does impose a significant burden on industry and we question the value of the extra-territorial legislation.

Q6 Sir John Stanley: Okay. For trade substitute business.

Mr Hayes: The argument still remains that the extra-territorial legislation does impose a burden on business which we would question the value of compared to the risk. In terms of the legislation more broadly, the legislation itself, particularly in the dual-use arena, is complex, but it is complex for the best of reasons. Probably my colleague, Mr Fletcher, would be better placed to comment on this having been involved directly in the Wassenaar Arrangement, but the aim is to top-slice, for want of a better description, a given technology and only control that technology which is at the cutting edge, so to speak. In order to do that, you have to use technical parameters to define where that technology falls.

Mr Fletcher: Thank you, David. Yes, I find that where most companies who are involved in dual-use goods fall foul of the controls is the fact that they look through the controls and they find an entry which looks as if it covers their goods and, with a sigh of relief, they say, "Oh good, we are not controlled." What then happens is they do not look any further in the controls. If they did they might find the first control was a Wassenaar control, two pages later there may be an almost identical control but with different parameters which will cover either MTCR or nuclear supplier group controls. If the two were together, one after the other, or there was always a *nota bene* to direct people to the other, they would not get caught out so easily. I find that if I sit down with technical people, they very rarely have a problem in deciding if their goods are controlled. But, going back to the Chairman's question, most of the dual-use companies I have come across become aware of UK export controls via the US.

Q7 Sir John Stanley: My question related to the totality of the arms export business, and if you wish to reflect further on the question I put to you—it was a question across the totality of the business, as I have said—and wish to give us any further responses in writing, we will be glad to receive them.

Mr Hayes: Thank you.

Q8 Chairman: Can I just finish on dual-use and then bring in Roger Berry. You have said that it was useful anecdotal information and so on, but what should the Government be doing? Should they be targeting specific dual-use suppliers and how best could they do it? I think you are implying that we have an incomplete situation.

Mr Hayes: It is a question of resource, and we recognise that. The Government itself, the licensing authority, has access to a list of companies who are registered to use export licences. On the Internet it is very, very easy to identify companies from websites who are identifying goods which *prima facie* would appear to us to be export controlled. It is not a particularly difficult task to then look at those companies and compare them with the list of those companies who are registered for licences and then may be go and visit the companies and find out if they are, in fact, exporting or use the CHIEF system to find out whether that company is exporting.

Q9 Chairman: So that in an effective proactive way the Government could do more to increase awareness and if necessary enforce—

Mr Hayes: Yes, and better targets.

Chairman: That is very helpful. Thank you very much. Roger Berry.

Roger Berry: Good morning. Perhaps I ought to say that the fact that I am sitting here does not reflect the fact there has been a coup in the Committee, at least not yet! It is just our peculiar quorum arrangements. I thought I would make that clear.

Chairman: He has not lost the confidence of the Committee!

Q10 Roger Berry: Not yet! We have only recently received a letter, indeed it was signed three days ago, from the Minister about what was presented as a joint industry/NGO proposal in relation to extra-territorial controls. I suppose my first question has got to be, in the light of what Mr Hayes has already said, how joint was the proposal? There were two specific recommendations, one of which would extend extra-territorial controls to all items on the Military List, but the second, of course, applied for a probity test that would mean that some brokers would not have to worry if they were engaged in transfers from one friendly concern to another. Was that an agreed proposal? I only ask because we have not seen a copy of it ourselves.

Mr Hayes: Yes, it was very much a case of a *quid pro quo* whereby the extension to full extra-territoriality was matched by some means of alleviating the burden of the controls on legitimate business.

Q11 Roger Berry: You would have been happy with that.

Mr Hayes: Yes.

Mr Salzmänn: This was the outcome of, I think, four or five separate meetings with the NGOs to discuss the proposals.

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Q12 Roger Berry: Thank you. I just wanted to clarify that in case there was any doubt. The Government, as you know, has chosen to reject your joint proposal. I would like to hear your reaction to that. In particular, the Government was concerned that they still feel there is not enough evidence to warrant extending extra-territoriality to all items on the Military List. Are you persuaded by that?

Mr Hayes: I think we have to accept that, given their access to intelligence resources, et cetera, and risk assessment, they are better placed to make that judgment than we are.

Q13 Roger Berry: If their judgment were different, given the exemption that was approved in joint statements, it would have been, from your point of view, a doable proposition?

Mr Hayes: Yes.

Q14 Roger Berry: The Government's argument in response to your joint proposal is an argument that they have used before. Basically, they prefer a more focused approach and they are understandably concerned about reducing the burdens on industry. They seem to be presenting that as being the reason for rejecting the package, and yet you, yourselves, have agreed that with the two recommendations, am I right in assuming, you felt that the burdens on industry would not be too onerous given that probity opt-out, as it were?

Mr Hayes: Yes, we have always had the impression that it is the probity opt-out and the requirement to make what to some would appear to be a subjective judgment that is the issue which concerns government.

Q15 Roger Berry: The Government's approach, or the more focused approach, seems to be based on an assumption that they, basically, do not have the resources to do certain things that the Committee has in the past recommended, and the HMRC have shared the concerns that you expressed previously as to whether the Government does have the resource to enforce compliance. Do you believe that that is, from the Government's point of view, a major barrier to extending extra-territorial control? Do you believe that their concern is they feel they cannot enforce it?

Mr Fletcher: I would have thought so, and I have a great deal of sympathy for that. It would be another piece of bureaucracy having to do the probity bit, and there are other things in the pipeline with the European initiatives, and such like, which will also mean that they have to go through this type of thing. So I can understand from that point of view that it would be quite resource intensive for them. I thought it was quite an interesting point that HMRC might have problems with prosecutions overseas, which surely applies to the current situation as well as what we were proposing in the paper. I find that a strange comment in the paper.

Q16 Roger Berry: This place legislates for all sorts of things.

Mr Hayes: Yes.

Q17 Roger Berry: The Houses of Parliament legislate for all sorts of things, but, in terms of compliance, how much resource are you prepared to put into it is a question that is often asked, and we know of lots of legislation that is passed and we all know that the intention is to deter criminal activity, as defined in our legislation. The intention is not to put in billions of pounds to enforce all of it, because it cannot be done. Would you not agree there is nothing particularly unusual about this problem in the sense that this is what Parliament does all the time? For every piece of legislation there is always an argument that you could do more to enforce if you had more resources. Why in this case should there be an argument for not passing the legislation where it would send a clear signal?

Mr Hayes: I do not think this legislation in that sense is any different to any other, but legislation in and of itself does not deter. Enforcement, prosecution and penalties deter.

Roger Berry: Let us move on.

Chairman: Let us turn to the Arms Trade Treaty.

Q18 John Battle: The Government is committed to securing a legally binding treaty and they have signed up to pressing for an international Arms Trade Treaty. I wonder if I could ask you a couple of questions on how you think that is going. The Foreign Secretary seems to be pretty confident that there can be an agreement and that consensus can be achieved. The Americans are now in favour. I just wondered whether you shared his confidence and, as to the inclusion of ammunition within the treaty, whether there are any significant differences between the UK and the US that would hold it up in any way? What is your general view in brief?

Mr Salzmann: We have got a meeting with the Foreign and Commonwealth Office this afternoon, also with the non-governmental organisations, to sit down and talk to them about the outcome from the discussions at the UN at the end of October and identifying the timeframe for possible negotiation of a treaty. As a result, we are going to have a clearer view from the briefing which we are going to have this afternoon about the way ahead.

Q19 John Battle: Are you generally confident, or not? Do you think it is going to be just a sterile conversation?

Mr Salzmann: We are very supportive of the proposed treaty and we are keen to play a constructive role in lobbying our sister industries in other countries around the world who are more ambivalent towards the treaty to try to encourage them over the next two years to be more supportive of it.

Q20 John Battle: The industry is actively trying to convince states that are currently abstaining to be involved?

Mr Salzmann: Yes, we are going to be having a meeting, as I say, this afternoon where we can discuss the way ahead and how we can try to develop the

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treaty further. For instance, in terms of trying to win over countries who are sitting on the fence, I went over, back in I think about March 2007, to talk to the Russians in Moscow and try to win over the Russian industry. Clearly we have got a considerable way to go, but we are happy to sit down with the FCO and discuss what we can do to try to constructively engage with our overseas counterparts to try to engage with it and try to make sure that they are more supportive of the treaty.

Mr Fletcher: I am less confident than Mr Salzmann.

Q21 John Battle: Would you like to say why?

Mr Fletcher: Recently EGAD had a meeting with the Chinese delegation on the issue, and I have to say that after that I thought “I am glad I am not part of the negotiating team”, because they are totally focused on the issue of Taiwan and are not seeing further than Taiwan at the moment. I could see something coming out at the end of it if it was not a treaty, if it was some sort of arrangement, but a full treaty, I think, is going to be extremely difficult to achieve.

Q22 Mike Gapes: I went through the list of the votes in the General Assembly. A number of countries abstained. Only one voted against—Zimbabwe—but virtually every Middle Eastern Arab country or Islamic country has abstained. From your knowledge of arms exports to that region, the United Arab Emirates is now the major importer of military equipment in the world, I think, after China, India and Saudi Arabia, and there are a number of others, and, of course, there is Iran. Do you think that there is any concerted organised opposition from within the Arab and Muslim world presumably linked to Middle East politics, or is it just that they have not yet engaged with the issue?

Mr Salzmann: I have heard rumours that the Egyptians were in the background behind trying to persuade the other Arab states to try to abstain, because they had concerns that this might be an effort on the part of the developed countries to try to retain all defence technological capability and exclude them from that. I also read through the list of abstaining countries and this afternoon I have a meeting with the FCO. We have clearly got a hearts and minds campaign to try to launch with the abstaining nations.

Q23 Chairman: Just to pick up on the difference of view, you said you were trying to persuade. Are there any indications of the arguments that were persuasive? We have heard the ones that are not. What kind of arguments might be effective in persuading the abstaining nations of the merits of the treaty?

Mr Salzmann: The possibility that the Arms Trade Treaty could open up options for investment in defence industries in the countries and ease a path for transfers of technology between countries who are signed up to the treaty and are seen to be implementing the treaty effectively.

Mr Fletcher: It is not necessarily a difference of view. I think the UK Government is quite right to think about it and should do all that they can to press ahead in trying to get a treaty. It was just an observation having met the Chinese.

Chairman: Thank you for that. David Borrow, please.

Q24 Mr Borrow: Moving on the registration of arms brokers, which is something this Committee has been recommending systematically over the years, I would be interested in your opinion of that and the extent to which you feel that that was a burden on UK brokers if such was introduced?

Mr Hayes: I think that ties into the issue of extending extra-territoriality and the way the registration system is both constructed and administered, depending on how you do that. Any system is going to place a burden on the department, or departments, responsible for administering it. I understand that there are some legal concerns about the possible impact of, for example, deciding that an individual or an entity is not a suitable one to be registered and, therefore, arguably denying income or a living to that person. So there are a lot of factors in play here, and I think it is that uncertainty which is playing a large part in influencing the Government’s decision to reject the joint proposal.

Mr Salzmann: But the registration was part of our proposal.

Q25 Mr Borrow: I understand that the Portuguese have introduced a system of registration under which they would acknowledge a registration in their home country for a broker operating in Portugal, and they will accept that as being the registration. Would such a system have some appeal here?

Mr Hayes: Yes.

Mr Fletcher: There is always a danger, is there not, that individual countries may not be as vigilant in registering people as others, but that goes across the spectrum. It is not just necessarily for this particular incident.

Mr Hayes: The other issue I can see is that if you look at the various systems in various countries, you have to bear in mind that within the EU alone there are 27 different sets of military export controls. Globally who knows how many there are. What we mean by “arms” and what we mean by “broker” and what we mean by “brokering” are different under all of those systems. In the absence of any commonality, I do not necessarily see it working, no.

Chairman: I am looking at my colleagues. Are there any other issues that we have not covered that they want to ask about? Obviously we have had this dialogue that members of the Committee have established and it is extremely valuable to us. I think what is helpful to us is having you as practitioners in the trade. We need informing as to what works and what does not work and what the problems are. So in a sense it is a well-established dialogue. Perhaps I can ask you. Are there any issues that you wish to draw to our attention that we have not addressed? Mike Gapes.

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Mike Gapes: First of all, going back to the reply from Ian Lucas that Roger Berry referred to, I must say, the tone of this is very negative. I just wonder, given that there was a joint approach by the industry and the NGOs, and it also is very much in line with what members of our four Committees have also been suggesting, do you think that the Minister has been got at by his officials?

Chairman: What a suggestion!

Q26 Mike Gapes: No, it is a serious point, because sometimes when you get replies like this you just think they are trying to find reasons why they could not do it rather than looking at imaginative ways where they can go forward. The whole tone of the letter, for me, was negative, negative, negative, and I would just be interested in your reaction to my question.

Mr Hayes: At the risk of using a cliché, I think the answer is that you may think that; we could not possibly comment!

Q27 Roger Berry: Roughly what was the date on which your proposal was submitted? We have been chasing both private and public industries for a reply, and we got two sides of A4 on 14 December. It was in the summer some time, was it not?

Mr Salzmann: I think we submitted our proposal on behalf of both ourselves and the NGOs in late May/early June. We then had a meeting with the ECO to discuss the outline of our proposal; we then had a follow-up meeting in about June/July time to have their initial comments back and queries about the proposal and then we got sight of that letter yesterday.

Q28 Roger Berry: Late May/early June.

Mr Salzmann: Yes.

Roger Berry: It would seem there has been lots of discussion between government departments and within government department on this. Two sides of A4 is the reply.

Q29 Chairman: As you say, I think we need to make our own judgments. Is there anything you feel that you want to draw to our attention that has not been raised? If not, can I say thank you very much. I apologise for the late start but, as I think you probably appreciate, we really want this information on the record and we finally have our wish for something constructive. As Mike has just said, the fact that there is joint activity between the industry and the NGOs is particularly helpful and it does reinforce what the Committee does and strengthen our job as well. So thank you, all of you, very much indeed.

Mr Hayes: Thank you; and we too value the dialogue.

Witnesses: **Mr Oliver Sprague**, Amnesty UK, **Ms Katherine Nightingale**, Oxfam GB, and **Mr Roy Isbister**, Saferworld, gave evidence.

Q30 Chairman: Thank you very much for coming before us again. Again, for the record, could you introduce yourselves, although you do not necessarily require introduction?

Mr Sprague: My name is Oliver Sprague. I am the Programme Director for Arms Control, Amnesty International UK.

Ms Nightingale: Hello. My name is Katherine Nightingale. I am the Policy Adviser on Arms and Development at Oxfam GB.

Mr Isbister: I am Roy Isbister. I am the Team Leader on arms transfers and small arms at Saferworld.

Chairman: Thank you very much. I am actually going to hand over the first questions to Mike Gapes. The point is the Arms Trade Treaty.

Q31 Mike Gapes: Thank you very much. You heard the answer to the question earlier. The Foreign Secretary's letter to us expresses, I would say, some optimism, some confidence that we can get, by consensus, with the support of the United States, a strong international Arms Trade Treaty. Do you think that he is being over-optimistic?

Ms Nightingale: If I can start on behalf of my colleagues, I think probably, yes, he is being over-optimistic. I think it would be very hard and a very hard job for the UK to lead on to get a strong and robust treaty that has the consensus of 192 Member States of the United Nations, partly for the very

reasons that we know, that there are already a substantial number of abstainers that may have concerns and that, although you might have 153, a phenomenal majority of states within the United Nations in favour of the treaty, in many respects those 153 states may not get the kind of treaty they want because of the few and, indeed, possibly because of one. So a consensus that requires unanimity and that requires every single Member State, including Zimbabwe, to agree may not deliver the kind of treaty that we want.

Q32 John Battle: Mr Fletcher was suggesting that half a loaf was better than no bread: if you could not get a full legal treaty, you would go for an informal arrangement. Would you go down that line, or would you fight on for the full legal treaty?

Ms Nightingale: I think there is a range of options that are on the table when it comes to the kind of international legally binding treaty that could deliver the kind of impact you are talking about, which is about a more responsible trade and, from Oxfam's position, a more responsible trade that delivers a humanitarian impact for poor communities and vulnerable insecure communities around the globe. I think we would be cautious of what I understand to be described as guidelines or an arrangement. There are UN guidelines that were approved by the General Assembly in 1996, very

 16 December 2010 Mr Oliver Sprague, Ms Katherine Nightingale and Mr Roy Isbister

substantial, very coherent, very comprehensive and in many ways containing the things we might want a legally binding treaty to contain, but they are not a legally binding treaty. The UN, obviously, has the provision to provide something that is legally binding. There are, obviously, other mechanisms outside of the UN if a sufficient number of states were to come together. We have seen this with land mines; we have seen it with cluster munitions. There is a substantial precedent that could be set in customary law to recognise what the international obligations might be to apply to international arms transfers, but at the same time, I think, we are not saying that the current process could not deliver a strong robust treaty; we are saying it would be hard and we are saying the UK, as one of the leaders of that, needs to be coming into that process really strong on the kind of treaty it wants to see, really strong on strategy, really well resourced, with the capacity to lead and support that and working with the progressive states, the progressive voices out there that are pushing for that very strong treaty.

Q33 Mike Gapes: The Russians and the Chinese are amongst the abstainers, and we have heard reference to both them in the previous session. Do you think that both Russia and China will, ultimately, given the US has changed its position, now come on board?

Mr Isbister: I would have thought that is very useful in that it puts a lot of pressure on other states. You mentioned the Middle Eastern states before as well. I think, depending on the way that this is played, the change in the US position could have a significant impact on some of the countries in the Middle East. Obviously, there is all kinds of horse trading that goes on here. What other things are getting brought into the game by the US and what level of commitment are they willing to put in? With Russia and China: the conversation has only just started. There are certain issues that Russia thinks are very important, such as access to technology for Russian industry and also control of unlicensed production. Russia is very upset about all the AK-47s being used around the world giving Russia very bad press which, they say, are coming from other countries that are producing them without Russian permission. China this year—very interesting, very little engagement in the UN on this issue—had very little to say, so there is a whole conversation that is yet to be had there. It is very early days to be saying what Russia or China can sign up to, but I think it is going to be hard, of course it is going to be hard. If we think it is not, then we are fooling ourselves, but also the issue of consensus is interesting. Language, of course, is magnificently elastic in the UN and there are all kinds of interpretations you can take on consensus. If “consensus” means unanimity, that is a big problem, but there are other ways of slicing it.

Q34 Mike Gapes: What about the remaining differences that there might be between the US and the UK approach? Could we end up with an Arms Trade Treaty which actually is not robust but is one which the US and other countries have signed up to?

As I understand it, there is a possible exclusion of ammunition from within the terms of the treaty. Are there any other differences between the US approach to date and the UK and others?

Mr Sprague: I think it is worth saying that, as yet, we are not actually clear what the US’s position is on the Arms Trade Treaty. It has not yet identified what it sees as the core elements. Ammunition, as you said, is one of the big issues, but there are other issues around parameters, strong robust language on human rights, sustainable development and conflict and those types of issues. I think it is worth saying that as a humanitarian, and human rights organisation, Amnesty International believes, a treaty is only worth having if it is robust and it does stop irresponsible arms transfers and transfers that fuel human rights violations. To echo what my colleagues have said, the UN has not got a great track record in terms of arms control and disarmament issues, especially when consensus has been overly used to hamper progress. For issues like land mines and cluster bombs vetoes were used to essentially rule out any meaningful progress within the UN. An overwhelming striving to achieve consensus led to the collapse of the 2006 Review Conference on Small Arms and Light Weapons and you could say that the marking and tracing agreement was significantly weakened because there was an overwhelming sense of a striving for consensus and the progressive governments folded far too easily on their red lines, and the minority of sceptical governments were much, much tougher.

Q35 Mike Gapes: You were working on a timescale for achieving a final conference in 2012 and with preparatory meetings for this. Has enough time been allowed for those negotiations and (a linked question) is our UK team big enough, strong enough? Does it have enough resources to actually play this lead role effectively over the next two or three years?

Mr Isbister: We have serious concerns about the amount of time that has been allocated. There are four weeks of substantive preparatory meetings and four weeks for a negotiating conference over three years. We’ve been comparing that to some of the other treaties, conventions that have been negotiated in recent times, where we have tried to find something that maybe was roughly equivalent in terms of complexity and in terms of political sensitivities. We have looked at the Convention on Organised Crime, that took 11 weeks over two years, the Rome Statute for the International Criminal Court took 17 weeks over three years. Interestingly, the US has come out very forthrightly and said they do not think this is enough time to negotiate a treaty of this type. So I think we have got real concerns about that, and, as you said, the idea of resources is related as well. The faster you try and do something, the more resources you have to throw into it. We have a concern, I guess, about the range of governments involved in this and the type of officials who are involved. So we need more input from the MoD, we need more input from the arms transfer experts, for example, in the Export Control

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Organisation. So far this has been played out in the disarmament arena. This is not a disarmament agreement; it is about arms transfer controls. We need those experts in there working hard.

Q36 Roger Berry: In your written submission, you take up this issue about post export controls and you and the Committee have argued for some time that, for example, there should be “a no re-export without permission” clause in licences, and you give specific reference to the way the US has a robust system and you give reference to some developments in the EU, but could you, for the record, summarise what assessments you have made of the use of non re-export clauses by other countries? It seems to be part of the debate where we are all looking to see what other countries do and we can learn from each other, so what would be the examples that would “support your position” on this?

Mr Isbister: In terms of prosecutions that flow or remedial action that has flowed from cases of re-export where a country has a system of no re-export without permission, the US is probably the most obvious example. There is a record of prosecutions of the US chasing after this, and we can provide a number of examples to the Committee, if that would be useful. It is interesting that in terms of the EU there is much less information on individual cases, but in discussions that I have had with EU officials, they have argued very strongly in favour of no re-export clauses and they say they do make a difference. They are not going to deal with the scallywags and rat-bags who are deliberately out there to circumvent controls, but there is a large swathe of customers who are perfectly happy to honour their contractual obligations and who will make every endeavour to do so. These comments have been made in meetings operating under the Chatham House Rule so I cannot identify sources, but what I can do is go back to some of these people and ask if they would be willing to make a statement on the record. I am not sure whether that would work or not.

Chairman: That would be helpful.

Q37 Roger Berry: That would be very helpful. I hope this does not happen, but if the Government were to respond to our persistent and your persistent recommendations that non re-export clauses can be of value by saying they will not work, they will be difficult to enforce, et cetera, as they have done before, are there other measures that you would recommend that the Government considers to improve post export compliance?

Mr Sprague: Obviously, we think post export controls are very important and that they should be written into contracts commercially and also diplomatically, but I also think that things like proper, adequate robust end-use monitoring has to be important, and the Government needs to do a lot more checking than it currently does. I am reminded of the cases that we brought towards the Committee last year when we were talking about the potential role of UK components and technology in some of the Israeli equipment, for example, the UAVs. We as

Amnesty still have not been satisfied or had the answer to the question about: if UK technology especially related to engines has not been used in Israeli UAVs, what technology has been used in them? There is a very, very limited number of suppliers and all the available evidence suggests that there could well be a UK connection. So I am not actually sure that the end use has actually been investigated and followed up. I am sure that a thorough review was done of the licences, but I do not think in this case that was the issue.

Mr Isbister: Could I add one last thing? I was burning the midnight oil last night, so, since I stayed up, I may as well get it out. I was looking at the State Department’s latest report into the Blue Lantern system of end-use monitoring and in the most recent year (2008) in which figures were available, they calculated that 24% of their negative outcomes of their checks were for “indications or evidence of diversion or unauthorised retransfer or re-export”. This proportion is going up, and they say that they are expecting that this is not just a one-off blip and they say it is not particularly people deliberately trying to beat the system; it is just the increasing complexity of global supply chains means that states are importing equipment and then, later on, they are sending it on. So the US seems to think this is an area of growing importance. I think that is quite important.

Roger Berry: May I suggest that we ask Roy if he could let us have the chapter, verse and the reference he was poring over late last night, because that does seem to be a very important point the Committee might want to include in its report.

Chairman: Yes. Thank you for that.

Q38 Sir John Stanley: Can I come back to you with the same question I put to you about a year ago, really the reciprocal of the question which I just put to EGAD in the first part of this evidence session. Starting from the standpoint that the arms export business is a legitimate business, some or all of you might feel that it should not take place at all, but under the present legislation it is not like drugs, it is a legitimate business provided it is carried out within the framework of the Government’s legislation. My question to you is this: given the existing primary and secondary legislation, do you feel that there are any particular significant loopholes that are still out there and that need to be closed to fulfil the intentions of the Government to have arms exports on a responsible basis, compliance with international sanctions, compliance with EU policy and what we would regard to be morally acceptable? Do you think the present legislation suffices or are there any material loopholes still outstanding?

Mr Sprague: Obviously that is a very broad question. There are lots of ways we can answer this. Hopefully I can give you some instances where I think we would see there are still gaps. Obviously, the review of the current legislation is on-going. We will probably return to the issue of brokering controls during this session, but we are disappointed that movement on extending extra-territorial controls beyond small arms and light weapons, Category B

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and Category A, seems to have stalled again. Amnesty is still concerned about international production and the globalisation aspects and the global supply chain. Back in September we published new evidence of British subsidiary companies exporting vehicles that were used in Guinea in the human rights missions there, seen on television being used, these particular vehicles from South Africa, violations so serious that the EU imposed an arms embargo some weeks after. In those conditions, we repeat our concern for overseas subsidiary companies. Where there is a UN arms embargo, there should be an automatic prohibition on those subsidiary companies, if they are controlled by British companies, to supply weapons to a destination under embargo. Similarly, we are becoming frustrated with the lack of progress on the military end-use controls, the controls that are put in place to stop non-listed components that have a role in the abuse of human rights or the cessation of armed conflicts. In 2008 governments said that they would start to introduce those controls at an EU level and start to begin discussions. I am not aware of any concrete discussions that have taken place on that. It is nearly two years ago now.

Ms Nightingale: Can I preface something you yourselves bring up in your report, which is around the issue of corruption and the importance of the UK Government in ensuring that the legitimate trade that the UK industries engage in as part of the defence trade and arms trade is not draining funds that could be used elsewhere for development purposes or social spending by being drained from corruption or lack of transparency. Particularly what we would be keen to see is a comprehensive strategy to combat foreign bribery which Jack Straw was proposing that he is going to be releasing shortly and that, as yet, I have not seen. So I would be interested to see more efforts and a clearer indication of how the UK Government is taking forward its commitments to ensure it is addressing corruption and bribery within the arms trade.

Mr Isbister: I could add the conversation we have just had about re-export controls; I would see that as a loophole at the moment.

Sir John Stanley: Thank you. Those are three very helpful answers. If you wish to add anything further by way of additional written evidence we would be very glad to receive it.

Q39 Mr Borrow: Moving to arms brokers, to what extent do you think the Government has any awareness of UK brokers operating overseas and what they are doing?

Mr Sprague: Clearly, with the experience in Ukraine last year there are some issues, and the Government themselves admitted that they could have done more in outreach and awareness to certain governments. If you see UK companies appearing in your export licensing process, then it would be helpful to inform us of that fact. We think that with some targeted resources, using diplomatic posts et cetera to certain exporting countries, and, it should not be that difficult to come up with a list of countries where it is likely that UK brokers might be seeking to supply

weapons, and make sure that if any UK company applies for a licence, that this information is immediately put back into the UK to investigate. The more we have looked at this in the last couple of years, the more we have become aware of the use of the UK brass-plate industry: brass-plate companies and foreign companies using UK company registrations to basically broker weapons. Amnesty in the last year has seen at least three brass-plate companies that have been operating to very, very serious destinations. One was a company registered in Cornwall that in September 2008 was brokering small arms components to Rwanda, a very, very serious destination in terms of the potential risk for human rights violations or re-export to neighbouring countries. That appears to have happened without a trade control licence. The company itself was owned by two Ukrainians based in Kyiv, and the only connection to Britain was a brass-plate in Truro. There is a lovely quote from the company responsible for incorporating that; it is on their website and it says: "For something a little bit off the beaten track, £110 plus VAT. We will even supply the name on the brass plate for your company if it is required." More seriously, we had two other examples of British brass-plates. Again, they were Ukrainian. I do not know whether there is a theme here! One was based in the Isle of Man and one was registered in London, responsible for arranging the shipments, chartering the vessels that supplied a huge number of T-72 tanks—not small arms and light weapons—armoured vehicles and anti-aircraft guns to south Sudan. There is a very famous case that you will be aware of where Somali pirates hijacked a ship under suspicious circumstances. There were two other shipments before that one which almost certainly ended up in south Sudan. Both of those shipments were chartered by UK brass-plate companies, and one of those companies wrote to me when I asked them about it. I will quote the letter to me: "Note, the only reason for using (the company) during the vessel's chartering is the simplification of accounting, and the Ukrainian tax legislation is one of the most complicated in the world." That is the Ukrainian company saying it is much easier to do business through the UK. I am not saying this is an easy area of law; I am saying it is an extremely difficult area for the enforcement agencies to tackle because these operators are not operating in the UK. However, I do think there are things that can be done; for example, diplomatic pressure points to make sure the Ukrainian situation that you identified does not happen. That should not happen. We need to think a little bit outside the box and work out whether it should be right that arms companies can spend just £110 and be able to send weapons to Rwanda and Sudan.

Q40 Roger Berry: It brings in the whole question then of having that registration, that arms control licence, and the extent to which that would make a difference. If we had a UK register, to what extent would that ensure that foreign governments only issue licences to our registered brokers? That is part

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of the problem, if you have got companies that are acting as UK brokers, but are not registered, but that is not recognised by governments overseas.

Mr Sprague: Obviously, we are on record over the years as supporting a register of arms brokers. Arms brokering is such a complicated business with so many confused levels of transactions, and you need the most comprehensive set of controls you can possibly have, and effective and meaningful registration, not automatic registration but a registration that has some probity test. For example, we would hope that similar brass-plate companies would never be given a registration status if they were not domiciled, based, in the UK. We think that is one of the things that will help crack down on brokering. It is not just us that says that; Article 4 of the EU's Common Position agreed in 2003, said that best practice is for Member States to establish a register of brokers. Beyond the EU, it is both stated in the Wassenaar statement on arms brokering and the OSCE guidelines for arms brokering that states are again encouraged to develop the registers; so the international community has seen the value of establishing these things, and so we think they are important.

Q41 Roger Berry: Ian Lucas, in his statement in the Westminster Hall debate at the beginning of last month raised an issue as to what criteria would be needed in order to register; so he did not see it simply as, sign a form, send it in and register; there need to be some criteria. I would be interested to know what you think would be appropriate criteria and whether that links in with how you ensure that we have got adequate criteria for registration schemes here in the UK. How do you work on an international basis to ensure that registration schemes in other countries are of a similar quality so that you can put some value on the registration, so that you know that their regulation scheme is the equivalent of ours? That is one of the key issues in tackling that, and I would be interested to hear your comments.

Mr Isbister: On the criteria, there is work to be done. We have probably sat on our hands a bit too much waiting for the Government to come up with criteria it might choose. There are some fairly obvious ones; for example, that you have been convicted of an arms transfer control offence. That would be a reason to be refused. Clearly, you can count the number of those pretty much on the fingers of your hands, so how much effect that would have I am not sure. We are now just starting to look much more seriously at the different registration systems in different parts of the world and what criteria they are using, and also we are going to look at other registration systems in the UK—financial services, bouncers, childcare—the different ways they are trying to weed out the problematic individuals and organisations. So we are starting that now and we will come back to the Committee once we have more information.¹ I think the idea of internationalising a quality registration system makes absolute sense,

and that is obviously a process. Once you have got a good system in place, as is the case in other areas, you will try to spread that best practice.

Q42 Roger Berry: There is the situation in Portugal; are there, for example, other EU countries with good-quality registration schemes that we should be looking at in terms of their criteria?

Mr Isbister: Yes. There are quite a few European Member States that have registration systems. In the Portuguese case, if you are registered in your own country you do not need to register in Portugal as a broker. There is an interesting variation that we need to look at in more detail and see how widely that is followed, because if that is becoming standard practice then a UK registration could help legitimate UK businesses avoid the need for any number of registrations in other countries. You might see that as a sensible way forward.

Q43 John Battle: Following the end-use control with specific reference to equipment that could be used in torture, are you satisfied with the progress that the UK Government has made in pursuing end-use controls on torture equipment throughout the EU, because they seem to be dragging their feet a bit and the timetable seems to be disappearing into the future?

Mr Sprague: I think it is worth re-stating that we applaud the Government for its commitment to pursuing torture end-use control for all sorts of reasons, focusing controls on the use to which something is going to be put is really, really important and significant. But you are right to say this is not a done deal. We have talked about this as if it has actually happened, and it has not. Some of these reasons, to be fair, are beyond the Government's control. For example, the EU Commission committee that is responsible for this met last year, but I think I am right in saying that it had not met for several years, or it may not even have met before, so the first meeting was taken up with all sorts of issues, and this issue did not get on to the agenda. There is another chance in January or February of 2010 so we really hope that then—because it should be quite an easy, no-brainer thing to put through the system. It just brings export controls into line with the Government's existing commitments on the prohibition of torture and cruel and degrading treatment. We would say that if the EU action cannot be agreed in 2010, you need to hold the Government to its word so that it will introduce them unilaterally. It took 18 months to agree from start to finish the international treaty to ban cluster bombs, so if that took 18 months, then the Government can surely move on torture within two years!

Q44 Sir John Stanley: I want to now turn to extra-territoriality. Here, we have what appears to me to be a quite extraordinary current situation. We have a position in which the industry and the NGOs—and I commend both of them on this—have put together an agreed proposal to the Government to extend extra-territoriality to all the items in the category C

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list, which of course is the Committee's position. Extraordinarily, the Government has rejected your proposal. When one looks at the four grounds on which the Minister in his letter of 14 December has rejected your proposal, leaving aside the one that is *sui generis* to your proposal, the issue of the probity test—if you take the remaining three, proportionality, enforcement and record-keeping, and you apply them to other areas where the Government has already extended extra-territoriality, for example the sexual abuse of children overseas by UK residents, on which the Government had no compunction, I am delighted to say, in extending extra-territoriality, exactly the same objections could be raised against that extension. It applies to proportionality, enforcement and record-keeping—and you could say it applies exactly the same to the sexual abuse of children overseas; and yet the Government had no hesitation in extending extra-territoriality. Against that background, where you have in one area of policy the Government adopting extra-territoriality, and in another area of policy, arms exports, refusing to do so on grounds that are applicable to other areas where extra-territoriality has already been extended, the question that comes to me, and which I put to you is: does the government have a hidden agenda in this area? The grounds on which it is stating publicly it is rejecting these proposals, simply, in my view, do not bear scrutiny. Is there in your view any hidden agenda there, and in specific terms—and I am going to be specific—do you have any evidence that the present situation is serving the Government's interests, the interests of government departments or other government agencies; and out there, there may be third parties who, with the Government's knowledge and connivance, are moving weapons around in countries overseas which, if they were moved out of the UK, would be a criminal offence?

Mr Isbister: I have no knowledge of that going on and I would not like to go further than that. Others can contribute as well. I would like to make one point of clarification on the Government's proposal. I think our position on the record-keeping issue was slightly different than has been presented. We were suggesting that part of the probity test would have been to check that the company concerned had the kind of systems in place for things like tax records, inventory control, shipping documents, et cetera, which would mean that if the Government had concerns about what they might be involved in, it was reasonable to assume there would be an effective audit trail so that the Government could go in and investigate that company's operations. It was not simply that there would be no record-keeping obligations at all; but the export control record-keeping obligations that exist at the moment could potentially be replaced. So we were suggesting that it might be worth exploring whether that was another way forward. It is not necessarily a huge difference, but I think it is important to know that we, as NGOs, are not saying that companies should have no record-keeping obligations at all.

Mr Sprague: I am afraid I cannot comment on the Government's motivations. What I can say is that I question the assumption that there is insufficient

evidence to say that category C goods are part of international arms brokering. Amnesty has previously cited to this Committee and elsewhere that John Knight, an imprisoned, convicted arms broker, first entered the radar by trying to broker armoured fighting vehicles and Antonov aircraft to the Sudan. There were small arms and light weapons invoices in the manifest, but the big ticket items were armoured fighting vehicles. In January 2008 the US Government identified—this is a US example but it is important here—a Florida-based broker. They raided his business establishment and they found a decade's worth of brokering activities conducted by him involving items such as Russian M-24 attack helicopters, M-8 transport utility helicopters, SU-27 jet fighters, Iгла rockets and 122mm rockets. Interestingly, in the court documents on this prosecution for one of the deals involving the attack helicopters a UK broker was named in the paperwork, so this US broker was having at least some business dealings with an entity in the UK. If we accept that intelligence agencies—have good co-operation between the US Government and the UK Government, I find it surprising that that document would not be made available to people in the UK. That is another example of a category C item being traded. In the sting operation, the prosecution against the notorious arms broker, Al Kassab, a little bit like the Viktor Bout case—received 30 years in prison for agreeing to supply weapons to FARC in Columbia. They were small and light weapons, but part of the things he tried to broker included surface-to-air missiles—again not small and light weapons. I just want to say for the record that I think there are lots and lots of international brokering activities involving non small arms and light weapons that would cause serious concern. An attack helicopter in the wrong place is just as dangerous as an assault rifle.

Q45 Sir John Stanley: Thank you very much, Mr Sprague; what you have said is very helpful. If there is any additional written evidence that you would like to refer to us as a response to the Government's view that there is insufficient evidence of the need for extra-territorial, that would be very helpful, but could you bear in mind that the evidence that is really relevant here will always have to relate to UK residents overseas engaged in arms trading brokering activities that would be illegal if carried out in the UK?

Mr Sprague: Just to clarify, I only used those examples to suggest that there is evidence in the international brokering sphere to suggest that a whole range of offensive military equipment is subject to arms brokering.

Q46 Sir John Stanley: Ms Nightingale, would you like to respond to my initial question: is there a hidden agenda, and do you have any evidence that the British Government is using third parties to carry out arms trading overseas that would be a criminal offence if carried out in the UK?

Ms Nightingale: I will just answer basically that I have no evidence of that.

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Mr Isbister: I was just briefly going to add on to what Ollie had to say. The sting operation against Viktor Bout, who is still in a Thai jail awaiting the conclusion of extradition appeals a colleague of his allegedly involved in that, Mr Smulian, is apparently a British passport-holder. And Viktor Bout, has apparently been recorded as saying that if the FARC want helicopters he can get them helicopters that will be better than the Columbian Government's helicopters.

Q47 Chairman: Thank you very much. If I can briefly engage you on sustainable development criteria, it is an issue of concern to anybody involved in development activity, particularly the poorest countries, that it may be a priority amongst governments to buy arms at the expense of dealing with poverty and all those factors. Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria focuses on that and basically says, "What are you doing to assess, when arms transactions are taking place, issues that affect poverty reduction and making sure it does not undermine sustainable development of those countries?" Is there a consistency across the EU in applying it? Is it applied effectively at all?

Ms Nightingale: Obviously we are in an interesting position where we are a year into the Common Position establishing this as a legal obligation for Member States. We know that previously Member States have chosen—and in the case of Sweden they have publicly declared that they do not apply Criterion 8 and look very simply at the criteria on democracy or democratic government as the rationale rather than in other areas. Interestingly, during that period and during the period of the Code of Conduct, there was a lack of clear, consistent application of that criteria. You would see some states using that criteria for other reasons. In a piece of work we did and piece of research we did we identified certain states that used that criteria for a range of denials, and other states that never used that criteria at all for denials. We saw some states use the EU guidelines, the practical guide, the EU Code of Conduct, and others that did not use those and used their own considerations that their own national controls allow them. That led to a rather confused approach to apply those criteria. What we have seen in discussions, both as part of the wider global discussions about an ATT and what parameters should be included there, and within the EU Common Position now, are states re-evaluating and looking at their own legislation. I was in the Swedish Parliament three weeks ago, discussing with them what this would now mean for how they applied that. I think we are looking at an interesting chance to strengthen that clear and consistent approach. Ideally, looking at the five pages of outlines in the guidelines that accompany the Common Position, which are a good strong starting point for Member States to be using as a guideline for approaching that—we would say the three-year review of the Common Position will

obviously also provide an opportunity for states to evaluate how they are applying the Common Position overall.

Q48 Chairman: You have mentioned Sweden. It is possibly slightly surprising that Sweden would be doing that! Are you able to give us a note? You mentioned other countries and that there were variations within them.

Ms Nightingale: Yes, just going through—it is probably better if I send you through the piece of research we did outlining the different states.² It is probably important to note as well that this research was done under the Code of Conduct, so this has not been over the last year when states would have to look at how they can consistently apply these criteria under the legal obligation in the Common Position.

Q49 Chairman: Does that research look at the impact of corruption? Clearly, some of these arms transactions are not very open and accountable. Effectively you have got somebody somewhere in the States transacting substantial arms transactions coming out of a budget that would be better spent elsewhere, but it is not in the public domain. Is that part and parcel of that research?

Ms Nightingale: That piece of research is very specifically targeted at how states apply Criterion 8, and it will include in that whether they considered corruption as an aspect, but it does not comprehensively look at corruption *per se*. We have as part of our work, alongside other NGOs, looked at the kind of criteria in a future arms trade treaty or in any kind of regional application of considerations of corruption or accountability states would need to apply and what would that look like, to assess whether there is a substantial risk that a transfer would involve corruption or involve a lack of accountability and transparency that were to make corruption a higher risk, or wasted spending a higher risk. We did some work with SIPRI (Stockholm International Peace Research Institute) to identify examples of not only corruption but also of measures that have been taken now to address corruption, and what those indicators for export controls might look like; what export controls officials should be looking for in the procedure, to help them identify the risk and also the improved measures being taken. We have identified various examples from around the globe of where there is lack of accountability leading to corruption but also simply leading to the possibility of a badly purchased, very expensive piece of equipment.

Q50 Chairman: We have had the high-profile case of the Tanzanian traffic control system, which has caused some ripples in this country. Are there comparable examples in other EU states?

Ms Nightingale: There is a range of examples that we use, and that I can share with the panel in written examples. They are examples that run from

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states that continue to engage in very expensive deals with governments under coup or very expensive deals where the appropriate parliamentary procedures or appropriate state procedures, discussions between parliament oversight and the ministry of defence and the military, have not been followed, and the parliament in that county are investigating the deal and the transfers that have been agreed.

Q51 Chairman: That would be very helpful.

Mr Isbister: I would recommend, when the Committee gets an opportunity, to get in Andrew Feinstein, the former South African MP who resigned over these large procurements round about a decade ago that are still being paid for, to talk about how that whole process worked, because it is quite shocking. There are a few EU states involved in that, including the UK.

Q52 Mike Gapes: We have just commemorated the 20th anniversary of the non-legally binding EU arms embargo on China, which was introduced after the massacre at Tiananmen Square. Can I ask you a number of questions that relate to where we are? As you know, our Committee for several years, along with comparable people working for the US Congress and elsewhere, has been very exercised about this issue. We pressed very strongly that our Government should not agree to attempts from 2005 onwards to lift the arms embargo on China; but we were told that it was a symbolic morally influential statement that had no legal status but that the Code of Conduct was far more important. What is your assessment of the current situation? As I understand it, the EU has not lifted the embargo, but nevertheless arms exports to China have significantly increased, and the number of standard export licences issued has gone up, on the figures I have seen, up to a quarter of a billion, £227 million in 2007. Are we seeing an erosion of the embargo by stealth, and what conditions should be met before the embargo against China is formally lifted? We have had a lot of consideration in the past about human rights issues, release of prisoners, ending of the system of re-education through labour and imprisonment without trial: what is your assessment of China's compliance with those issues, and are there any other considerations that should be taken into account before the embargo is lifted?

Mr Sprague: Obviously, Amnesty—and you can read our report—has very, very serious concerns about the human rights situation in China. Just during the Olympics year, there were over 1,000 people detained unlawfully, and just in the first six months of this year we have documented at least 100 cases of activists that were arbitrarily detained or facing violence or intimidation at the hands of the police. We have also seen a worrying trend of increasingly lengthy prison sentences being handed down to political activists, things that we have not seen since the 1990s and early 2000s. In one case someone received 13 years and in another case somebody received ten years. On that ground alone we think there would be insufficient grounds to relax

the embargo. You are entirely right to say that. Of all the embargoes this one is the anomalous one. It has no force in law. It is not subject to the UK extra-territorial brokering controls or the embargo orders, and similarly across the EU. One of the issues that is interesting is—I wonder whether the decision not to lift the embargo, even though there was pressure from certain EU Members, was not a relationship to the human rights situation but was much more to do with what the US Government was saying and the fact that there would be very, very serious repercussions for any company or country involved in US defence contracts or collaborative projects. I say that because in October 2009, at the same time they were putting an embargo in place on Guinea, the EU lifted the embargo on Uzbekistan. As far as I am aware, none of the conditions or assessments or criteria that the EU put down as a benchmark for Uzbekistan to demonstrate its improvement in human rights has been met, so one has to question whether there were other national and strategic factors that led to the relaxing of that embargo. The other concerns for us, as Amnesty, and also for other NGOs, is that China is one of the major arms exporters responsible for supplying weapons into, for example, Sudan, Zimbabwe, Burma, and we have documented hundreds of examples of Chinese equipment. I know that the arms embargo was put in place for the anniversary of Tiananmen Square, but China's industrial base is extremely effective at reverse engineering. I would think it should very, very much be on the radar of all exporting governments that the technology and components that we sell to them, even if they come back to the UK and other European manufacturers as part of the manufacturing process, may well be facilitating the development of the Chinese arms industry, which in turn is proliferating some of the world's worst human rights crisis zones. One example that is probably relevant is that Chinese ManPADS that have been ending up in the latest UN report panel in the Sudan, captured from Chadian opposition groups in May 2009—there is a photograph of one of these in the latest UN panel report—was reverse-engineered from Russian ManPADS so is a copy of Russian ManPADS. Similarly, their assault rifles are copies of Kalashnikovs; so there is a long track record of these types of activities.

Q53 Mike Gapes: Do you wish to add anything? Can I ask you about the allowing of exports to China, the controlled goods that are allowed, and the increase in the number of standard individual export licences. Do you see any concerns that in practice there is no real control, and, taking your point on, is that linked also to the Chinese opposition, or at least abstention, on the arms trade treaty issue?

Mr Sprague: I had a look at the latest figures. There were a large number of licences but they were for the 2008 annual report. There were 59 licences issued on the Military List. They were all essentially components for air-to-air missiles, combat aircraft, military aero-engines; they were for that kind of hi-tech end of the spectrum. The one thing that I think is quite helpful is our improvements in transparency.

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For a number of those licences there are explanatory footnotes in the annual report as to what they might be used for and why the decision was made to agree that licence. I think there were four explanatory notes across a whole list of almost a page long of licences. So we really need to see those explanatory notes for all the concerns I have outlined about re-export and Chinese development of its defence industry. We would like to see, across the board, a much greater explanation of the whys and the whats and the whos of each of these.

Q54 Mike Gapes: What about the use of exported goods for internal repression? Is there any evidence of anything that has been sold to China that has been used since Tiananmen?

Mr Sprague: We have not seen any direct evidence whether licensed components have been used. It is certainly the case that encryption software, internet-monitoring tools and that kind of thing have been used, but I suspect that these fall outside of the control lists.

Mike Gapes: Thank you; that is helpful.

Q55 Chairman: Can I ask for a final comment from you. In regard to the Government's "independent survey" on the dual use sector, which we discussed in the previous session, do you have any comments to make on the value of that and whether it produced anything useful or surprising?

Mr Isbister: Yes. When I read it through the first time, quite quickly, I came away, feeling things were looking pretty positive. The tone was very positive. But on re-reading it and on further examination when you start to peel away and analyse the figures, there was a lot of stuff that suggests there are compliance problems. I concur with what David Hayes said earlier about this. A couple of key things are that the sample has quite a strong positive bias, because you can imagine who is going to be more willing to answer a survey, at this time when we are

all very busy, than who is not. David was talking about this kind of self-assessment. I saw nothing in there to check the facts, for example any kind of question that would just say, "Okay, you say you are compliant but do you do this, or this; what do you understand by compliance?"—it would have been very helpful to have some of that in there. There are some examples where the respondent group is too small to be of value, in particular one case where the respondents said they were never compliant, and another, where 50% of the two academics in this respondent group were quoted. I am not a statistician, but to my mind those are not statistically significant groups; so to present those as highlights in the study makes me worried about the overall quality of the study, and the level of awareness. Towards the end there is a communications table. They are generic figures for the most part but on a couple of occasions they are broken down to those respondents recommended by ECO and those who were independent. I would expect more knowledge of those who were recommended by the ECO. From the independent sample, the ECO website is known to only 31% of that sample. Awareness of events is known by only 17% of that sample. When you put that together with what I assume is a positive bias and look at who the respondents are, that raises some very interesting questions. The ECO suggested we come and have a chat about the figures and open them up. We said we would be keen to do that and pursue some of these issues.

Chairman: That is helpful. Are there any other comments? Thank you very much indeed. As I have said to the previous witnesses, we value this dialogue; it is essential for us to have your input and we appreciate what you have done. We appreciate also that you have undertaken some additional written information, so I apologise for burdening you a little further, but if you are able to supply us with it we would appreciate it and it would help our work. Thank you very much.

Wednesday 27 January 2010

Members present

Roger Berry, in the Chair

John Battle
Malcolm Bruce
Mr David S Borrow
Richard Burden
Mr David Heathcoat-Amory

Mr Bernard Jenkin
Peter Luff
Mr Malcolm Moss
Andrew Stunell

Witnesses: **Mr Ivan Lewis MP**, Minister of State, Foreign and Commonwealth Office; **Mr David Hall**, Deputy Head, Counter Proliferation Department (Strategic Export Controls); and **Mr David Vincent**, Head of Arms Trade Unit, Counter Proliferation Department, gave evidence.

Q56 Chairman: Minister, welcome. This is our last evidence session before the end of the current Parliament. For the record, would you like to introduce your two officials or ask them to introduce themselves?

Mr Vincent: My name is David Vincent. I am the Head of Arms Trade Unit in the Foreign and Commonwealth Office.

Mr Hall: David Hall. I am Deputy Head of the Counter Proliferation Department in the Foreign and Commonwealth Office.

Q57 Chairman: You are very welcome. Minister, I gather that you would like to make a brief statement.

Mr Lewis: Yes, just a few brief remarks, Chairman. Can I begin by thanking the Committee for the very constructive and close relationship that it has with the Foreign Office? Obviously it has a scrutiny role to play and that is absolutely right, in terms of holding us and Government more generally to account but also the constructive and positive nature of the relationship has been very important. I just wanted to say a few words about the Arms Trade Treaty because I think that this is a potentially historic step forward and is something that I think we can be proud of, that the British Parliament, the British Government, has promoted and pushed for. The situation is that the UN has now approved the Arms Trade Treaty resolution. That, for the first time, sets out a clear timetable for negotiation of a treaty. There are preparatory meetings to be held in 2010, 2011 and then the Diplomatic Conference, which should achieve the consensus on ATT, is scheduled for 2012. I think it is important to note—and this is very significant—that the United States supported the ATT resolution and all of our contacts with the Americans, all of our discussions with them, demonstrate that they are fully committed now to working to achieve the treaty. We have to recognise, though, there are many challenges that lie ahead. The timetable is tight and there are a number of key international partners who, while not necessarily against a treaty, at this moment are most definitely withholding their support; so we have a big job to do, along with others, over the next couple of years. We have begun a process, working with BIS, MoD and DfID, to have a cross-Government intensive focus on how we can make ATT happen. It is particularly important in terms of the work we are doing with

America, as I have mentioned, but also with our EU partners, but also with business and non-governmental organisations. We have been very clear from the beginning—and maybe this has been an unusual approach—to bring NGOs and business into the process. I think it is very important, though, that we send a strong message that, having got to the stage we have got to, we need to keep that partnership approach going as we move to make sure that ATT happens but also to make sure that ATT is an appropriate and robust framework. We will obviously want today to pledge to ensure that the Committee is kept fully informed of developments because I think it is probably true that parliamentarians have a role to play in this, in terms of influencing other parliamentarians, where relevant, in the countries that perhaps are a little more sceptical; particularly, if we have a level of cross-party agreement, to be able to have not just governments arguing and fighting for this but also that parliamentarians speaking to their peers in relevant countries can be incredibly helpful. Chairman, those were just a few opening remarks to set my evidence session in context.

Q58 Chairman: Thank you very much indeed. We obviously share your views about the Arms Trade Treaty and, indeed, British defence manufacturers strongly support the treaty as well; so there is a consensus, not just cross-party but all those involved in the UK arms trade seek this improved regulation. You have rightly mentioned that, with the change in administration in the United States, the position now is radically different from what it was before the election of President Obama. However, the word “consensus” in relation to process has caused some concerns. The Foreign Secretary, in his letter to the Committee, pointed out that this might suggest there would be a risk of undue delay. What does consensus mean? Does it mean unanimity? In which case, the one that voted against, Zimbabwe, could say “Sorry, we’re not having it”. What does consensus mean in this process?

Mr Lewis: Consensus can mean fudge and drift. We all know that. We have looked at this in terms of our capacity to get the international community to pass what would be an historic treaty, and the only basis on which we could have got the bind that we have at this stage is to say that we want to do this in a consensual

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way. Had we taken a different tack, frankly, we would not have been able to report to the Committee today on progress. What does it mean in practice? It means that at the Diplomatic Conference that will take place towards the end of the process, prior to the UN General Assembly vote in 2012, the objective is to ensure that meeting ends with all of the countries agreeing on a consensus. That may mean the vast majority of countries vote yes and a very tiny number abstain. We know that Zimbabwe, as ever, under this leadership, decided to vote against. Of course, we hope that by 2012 even they may be in a rather different position. I think the important point to make, though, is the final ratifying decision-making body is the UN General Assembly. Why do I make that point—because sometimes that body does not always cover itself in glory? The reason I make the point is because at that body a majority, particularly a significant majority, for a treaty is sufficient. Any majority would be sufficient for it to be passed but, for it to have credibility, authority and legitimacy, I think you would want an overwhelming majority. We therefore seek consensus. We want consensus coming in by the time we have got to the Diplomatic Conference and emerging from that conference but, in the end, there will if necessary be a vote at the UN General Assembly in 2012. That is our objective.

Q59 Chairman: The world's largest arms exporter of course is the United States and, as we know, the position of the US on the proposed treaty has shifted with the change in administration. Are there significant differences in thinking between the UK and the US on what should be in the treaty? As you know, there has been some speculation that the inclusion of ammunition within the treaty might be something that causes a difference of opinion. Given the importance of the US in all of this, would you care to comment on any differences in approaches that the administration there might be taking?

Mr Lewis: Ammunition is an issue. It is complicated but it is not a deal-breaker. We are absolutely clear in our dialogue with the US and others that it is not. We can work through those complex issues. What might be helpful is for me to sketch out very briefly what the contentious issues are that have to be resolved, because I think it is important that the Committee has a sense of where the negotiations will be focused. Provisions in an ATT—the inclusion of human rights, international human rights, humanitarian laws, sustainable development provisions—give some states a concern because they feel that might be used for political reasons to prevent them securing arms for their defence needs. So the broader related issues will be sensitive and delicate. We will have to handle that carefully. The scope of the treaty, what items should be covered—the inclusion of dual-use items, components and technology, ammunition, explosives, for example, and how the inclusion of some of these items may affect some states acquiring the goods and equipment they require for development. The final issue is potentially emerging defence industries—whether an ATT would adversely affect the development of nascent defence industries in favour of states with larger, more

established ones. Those, broadly speaking, are the areas where there will be engagement and difficulty and, to the wire, there will be a lot of negotiation. In the end, as we all know in this room, the words of the text will be everything. Making sure that it is robust, that it will make a massive difference and be historic in the changes it will lead to, while at the same time ensuring that as many countries as possible feel able to sign up.

Q60 Malcolm Bruce: I wonder if I could pick up on Zimbabwe's position as being the only country in the world voting against. You said, Minister, you hope they will be in a different space by 2012, but is there any active engagement on this? When you look at the list, if I am not mistaken, every other SADC country has signed positively—Angola, Botswana, Congo, Lesotho, Malawi, Mozambique, Namibia, Zambia—and even Burma has signed up in favour. There are lots of other issues with Zimbabwe, but what pressure is being brought to bear to say, “Far from you saying somehow that we are the perpetrators of your problems, putting yourself in that position makes you a pariah even amongst your own neighbours”? Is there no response to that?

Mr Lewis: The trouble is that being a pariah even amongst your own neighbours has never stopped Mr Mugabe, has it?

Q61 Malcolm Bruce: No.

Mr Lewis: On the other hand, there are two factors here. One is the internal pressure in terms of Morgan Tsvangirai and his party's role in the government. We continue to have confidence in him and support him very strongly. The other element is that South Africa and Kenya are major partners in this process; they are their lead partners with the UK and others. It is very important that in a sense we use those that Zimbabwe are most likely to listen to in terms of their capacity to influence. Once again, we hope that South Africa will take an important role in getting Zimbabwe to the right place on this issue. However, I think that we should send out a strong message. We are not going to allow President Mugabe to derail what could be one of the most significant changes in terms of arms trading we have seen in our lifetime.

Q62 Malcolm Bruce: The International Development Committee is visiting Zimbabwe next week and clearly we can raise this issue; but that is the problem is it not? One country can stop this treaty.

Mr Lewis: No, not ultimately. They can undermine the notion of a consensus, that is true; but in the UN General Assembly, unless I have got this wrong, there is no power of veto for one country. If necessary, there will be a vote. They cannot derail the treaty, therefore.

Q63 Malcolm Bruce: Can we be sure about that? Because, with other international agreements, it takes everybody to agree or there is no agreement.

Mr Lewis: No, I am told that the UN General Assembly has the capacity to have a majority vote; it does not have to have unanimity. We need to be clear. But anything you can do during the visit to get the message across to those people who are willing

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to listen—that, as you say, this puts Zimbabwe ever further out on a limb in terms of isolation within the international community—that would be greatly appreciated.

Q64 Mr Jenkin: Presumably, once the treaty is drawn up, each country has to ratify it individually, and that remains a matter of individual choice; and that is when we really find out whether there is consensus.

Mr Lewis: Yes.

Q65 Mr Jenkin: If a country votes against it, it may still ratify it, and a country that votes in favour of it may take rather too long to ratify it.

Mr Lewis: That will always be the difficulty, which is why the consensus approach is so important. I think it is very difficult for countries that do vote for it, either at the Diplomatic Conference or then at the UN General Assembly, then not to ratify it—very difficult. The bit that gets complicated is opt-outs, to adopt slightly different versions of ATT. That is why we are seeking maximum consensus because, in the end, what matters is implementation. We are quite optimistic. If members of the Committee would like me to say briefly which countries we need to do the most work on, I am happy to do that.

Q66 Chairman: We would be delighted to hear, yes.

Mr Lewis: China, for reasons that everybody here will be aware; Pakistan, India and Russia are the key countries that we have the most work to do with, frankly, and are the most significant in terms of the entire process.

Q67 Mr Heathcoat-Amory: The abstainers—and you have mentioned some of them—they are a pretty unlovely bunch, are they not? Cuba, Iran, Venezuela. But some of them like to portray themselves as being progressive in a general sense and in favour of collective security at the United Nations. What are the chances of cornering these people publicly and getting them on side, or are they completely contemptuous of opinion in the general sense?

Mr Lewis: Even the Conservative Party these days says it is progressive, so I suppose anything is possible!

Q68 Mr Luff: We could give you a history lesson, Minister!

Mr Lewis: It was a joke, Peter! I am sure that you will come back with a suitable response. What are the chances? I think that level playing fields are very important: a sense that if we sign up to this we will not be disadvantaged in terms of others. China always looks, as you know, at whether the United States are engaging and playing ball. Pakistan and India always look at each other, for obvious reasons. The Russians? We never quite know. It very much depends, as ever, as to whether you can persuade people. It is as much about self-interest as it is about being part of some idealistic, global solution. At the end of the day, I think this country can be very proud of the fact that often, on the big-picture global issues, it seeks to provide leadership. I think that to

some extent binds parties together. We may differ over the European Union but, on the big global issues, there is a desire to do the right thing in terms of what is in the interests of the international community. These countries will look at their own self-interest in terms of the decisions they make.

Q69 Mr Heathcoat-Amory: I understand that, but realistically we do not need them all, presumably. In the final game, you have said that we can still have a treaty without unanimity. Obviously it would be a big gap if Russia and China did not come in in some way, but presumably we could quarantine some countries, particularly the smaller ones, or would they become a magnet for arms dealing and wreck the whole treaty?

Mr Lewis: To be frank, yes. One of the difficulties—it is like a house of cards, is it not?—is if other countries see some of the bigger countries saying no and meaning it, and the danger is they may start to peel off. Any countries that remain outside of this pose a problem, not just in terms of delivery and implementation of the treaty and beyond the treaty but also securing the consensus. We therefore need to do a lot of work with the countries that I have identified and that Committee members have spoken about, to get them to the stage where they feel they can be part of the consensus without dumbing down the ATT to a point where it is pointless passing it. That is the challenge. There are more experienced people than me around this table who have negotiated. We all know the basis on which you have to negotiate. It is very important however that China, Pakistan, India and Russia have not voted against. They have withheld their support. I think that gives us some room for optimism. They could have withheld, they could have opposed, but they have not. They have chosen to abstain very deliberately, which of course gives them a negotiating position, a set of bargaining chips; so, as much as anything else, it will be tactical as well as real in terms of their abstention position. They did not vote against. The only country that voted against was Zimbabwe.

Q70 John Battle: As well as picking them off from A to Z, there are some clusters that I think could be focused on. There is a significant cluster around Kuwait, Qatar, Saudi Arabia and the United Arab Emirates—that whole Middle East bloc that is increasingly getting involved in the arms trade. Could we focus on it more regionally there? Secondly, in the “Absent”, the ones who did not even turn up, you have all the “stans”—Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan—and quite a lot of the arms trade from the former Soviet Union, from the Russian Federation, is coming through those countries. If we are to look at regionals—as Malcolm Bruce suggested on South Africa with SADC—could more regional pressure be brought? Because these are two critical regions where the arms trade is actually taking off.

Mr Lewis: I agree entirely with you. You have to have a regional strategy in terms of those countries you need to bring on board and you need to consider

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who are the most influential individuals in terms of doing the right thing; which regional institutions could adopt a collective position, which will be helpful to us. It is very important, therefore, that we talk about intensifying our efforts across Government that we have a regional strategy. It is also important that we are clear about who is in the best place to influence certain countries. It is no good our trying to influence countries where clearly our relationship with those countries is not what it might be, or where we have very little influence. We have to work through intermediaries and through others. You are right. We need a segmented approach; we need diplomatic engagement. Ultimately, if this matters, you need heads of state to talk to heads of state at the appropriate time. Of course, it is premature to do that right now. But, yes, you are quite right: we need a regional approach.

Q71 Malcolm Moss: Minister, it is obvious from what you have been telling us that this is a huge task and the list of countries that you have just gone through indicates that there is far from consensus at the moment. Is it your view that sufficient time is being allowed in the preparatory meetings over the next two years to achieve the kind of success that we want?

Mr Lewis: To be honest, if something matters and you cannot achieve it in two years then, frankly, when are you going to achieve it? I am a great believer that you either set, yes, a credible and a realistic but a serious timeframe to achieve your objective, or it will never happen. It will just drift on and on. Do I believe it is achievable? Do I believe the timeframe is doable? Yes, otherwise we would not be pushing it for 2012. Is it tough and is it difficult? Of course it is; but I think the change in American administration helps us and I think the general mood around proliferation issues—because we should not totally forget the push that will take place in 2010 in terms of proliferation—gives us an opportunity. The downside is we have the Irans, the North Koreas and others, who of course are outside of any consensus. I think it is important we set a deadline, a timeframe; I think it focuses people's minds. To be honest, I think it focuses governments internally to make this a priority. Would this have been a priority two or three years ago in terms of the FCO, BIS, MoD and the British Government? Almost certainly not. Everybody now has a clear objective, a clear plan to work towards. I think it is important and I think it is doable.

Q72 Malcolm Moss: Because the key point here is not the two-year timeframe that you have just alluded to; it is the fact that within those two years only four weeks of preparatory discussions have been allocated.

Mr Lewis: Formal, yes.

Q73 Malcolm Moss: Compared to 11 weeks for the Convention on Organised Crime and 17 weeks allocated to the Rome Statute for the International Criminal Court. In the context of these other things, four weeks does not seem an awful long time, does it?

Mr Lewis: In my view, four weeks for formal engagement and negotiation at that level is more than enough. You have to remember that most of the business is done outside of those formal meetings. We are all aware of that. To have 14 weeks or to have four weeks will not make the difference. The important thing is to work backwards from two things. Primarily the Diplomatic Conference planned for 2012 but also bearing in mind we want to have the UN General Assembly vote in 2012. In my view, that will drive people's behaviour on this.

Q74 Malcolm Moss: Will the UK negotiating team have sufficient resources?

Mr Lewis: Yes. Can I say this on that, because I think it is important. The resources are what we have across Government, but it is also the resources that we are using in this context from non-governmental organisations and from business; so we are actually using the expertise out there from NGOs and business as well as our in-house expertise. That is a novel approach but I think it gives us a lot more capacity and a lot more specialist knowledge.

Q75 Malcolm Moss: In the context of the in-house negotiating team, will there be arms transfer control experts on our team?

Mr Lewis: Yes. We will have access to people with that expertise. Whether they are people we directly employ, whether they are people from outside Government, we will definitely have them. We cannot proceed and be successful with this without that expertise as part of the team.

Q76 Malcolm Moss: Can I now turn to pre-licensing registration systems for brokers? The UK Working Group on Arms has told us that several European countries have already introduced their own pre-licensing registration system for brokers. What is the FCO's assessment of the effectiveness of these systems and are we any closer within the FCO to bringing forward our own system?

Mr Lewis: I think you are probably aware that in 2007 BIS did a review. It probably was not called BIS in those days; it was known as the DTI. It did a review of this issue and decided against a pre-licensing broker system for the United Kingdom. I will not go into the technical details because the Committee is more than aware of the case-by-case approach. We believe the case-by-case approach allows us to examine the nature of the broker involved; although that is not the primary factor that leads to any decision—I have to be frank about that—but part of the case-by-case consideration includes a review of the nature of the broker. I personally am not closed-minded to this. This is my view. I think we should be willing to re-look at it, as to whether it would add value. The important thing is would some level of licensing and regulatory system not simply pile a load of bureaucracy and red tape onto people and not actually achieve anything? Frankly, we do not need any more of that. Or would it really provide some safeguards that would reassure the Committee and the Government that this industry was behaving in an appropriate way? I am

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not closed-minded to it. As I say, the last review was 2007. It may be worth having a look at it at some point in the near future; but I would have to be persuaded that it is not regulation for regulation's sake.

Q77 Mr Borrow: As you may know, Minister, the Committee visited Ukraine last year. While we were there we acquired certain information which we felt suggested that the Government was not aware of the level of activity of UK brokers operating overseas. Do you think that is a fair assessment of the situation?

Mr Lewis: David, I will read out what it says here. "A register of arms brokers would have made no difference in relation to the list of UK companies given to the members of the Committee during their visit to the Ukraine. If it is the case that UK persons breached our controls by trading overseas without a valid UK licence when one was required, then existing powers would allow us to deal with such people." That is the very clear position: that having the pre-licensing of brokers would not have added anything in terms of what is already there, to prevent the list that you were presented with in the Ukraine.

Q78 Mr Borrow: Given that the Committee has had a fairly longstanding view in terms of registration of brokers, do you think there is any argument to be made that, had such a system been in place, that would assist in getting the co-operation of overseas administrations in assisting where we have UK brokers operating overseas?

Mr Lewis: I have no evidence that would be the case, that it would make it easier or better, but that is part of looking at it again—to see whether it would strengthen the system considerably or would it simply pile a load of red tape and bureaucracy and add no value to the existing safeguards we have. That is the judgment that has to be made. In the past, as you know, the Government has made the judgment that it would not add value and it would not be justified.

Q79 Mr Borrow: Has the Foreign Office considered using diplomatic posts overseas to publicise changes in our own regulations to ensure that, again, people operating overseas are aware of what the law and regulation is?

Mr Lewis: Publicising, I do not think we have. Should we think about it? I think we should. We have not done that to date in terms of publicising, but it is something that we could consider, yes.

Q80 Mr Borrow: Finally, something that came up from the UK Working Group on Arms was cases involving brass-plate companies in the UK brokering arms to Rwanda and southern Sudan. Again, that would seem to reinforce the Committee's view on having a pre-licensing registration scheme to deal with that sort of issue. If that is not the appropriate way of dealing with these sorts of companies, what is the way?

Mr Lewis: We would say that the case-by-case consideration of every application allows us to look at the nature of the broker and to make judgments about the broker. If there is major concern, that would be a serious factor that would be taken into consideration; but, again, it is a judgment that we have to make. If we do reopen this—and, as I say, I am not closed-minded to it—then those are the sorts of things we would have to consider.

Q81 Mr Borrow: I can see that you are stuck with the government position as it is but I am encouraged by the fact that you are willing to look at reopening some of these issues, even though you may not be in a position to accede to changes here this morning.

Mr Lewis: I am not able to announce a radical departure from government policy.

Q82 Chairman: Go on, force yourself!

Mr Lewis: That is why these two gentlemen arrived for 9.30! The serious point is that I am personally, having looked at this—because obviously I have been engaging with this in advance of the Committee meeting—I am willing to have a look at it.

Q83 Chairman: Minister, you have rightly said that more can be done to publicise changes in the UK export control legislation to update people. Would not a list of brokers narrow down the target group significantly? UK brokers operating in Ukraine—would they not be the first people you would make sure knew about any changes in UK legislation, not least in relation to brokering? Would it not therefore be incredibly helpful to have that registered list, for this purpose as much as any other?

Mr Lewis: The problem is that the people who want to play by the rules, the people who legitimately are involved in this industry, care about changes in legislation and regulation, want to be aware of it and to keep themselves up to speed. Those who want to play outside the rules will not be that interested when we start to inform them about new regulations and new legislation, because that is the whole point: they do not play within the rules. I think the question is will the register itself seriously add value? That is the judgment that has to be made. Because the people who behave properly in the context of this industry are fully aware of changes to regulations and legislation.

Q84 Mr Jenkin: In support of your position, Minister, is there not a danger that brokers will be used as front organisations and perhaps they would be hoodwinked into acting in a way that would be concealing the true nature of the transaction? Because it has a registered broker on the form in front of the official, that would actually appear to add to the transparency?

Mr Lewis: Absolutely, that is a risk. Of course it is a risk. That is why it is attractive superficially to say "If we have a register all of these problems will be resolved", but there is a real risk that it will not add any value; it will create lots of red tape, but people will be able to say "There is a register". We have to

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be able to demonstrate that will add value and make a real difference. That is my position—but I am willing to have a look at it.

Chairman: I do not think the Committee has ever said that we think this will solve all the problems. I guess we are looking at it in terms of belt and braces. Indeed, the additional information that arms manufacturers or arms exporters would have to provide is comparatively little. It is just that you would have that list to which you could pay particular attention when it came to brokering transactions. However, we had better move on.

Q85 John Battle: Could I ask about end-use controls and changing the EU Council regulation? I will not read out the number, but there have been some attempts to change that. I think the Committee were promised that the Government would be recommending changes at the back end of last year. There were to be further details on discussions of how that EU Military End-Use Control could be changed. I do not think the Government has yet come back to the Committee, so could you tell us what progress has been made in preparing proposals for amending the EU Military End-Use Control system?

Mr Lewis: To be honest, the discussions are ongoing and we have not reached agreement across Government in terms of—

Q86 John Battle: Does “ongoing” mean they are stalled, though, or not ongoing, or they are stuck somewhere. Are they actually taking place actively?

Mr Lewis: There is a lively and full and frank debate taking place in Government about what changes we may propose. We should remember that we are already working in accordance with the Wassenaar country principles. However, to be honest with the Committee, we have not yet reached a consensual government position on what any changes might be. That is the situation.

Q87 John Battle: Are you holding meetings—

Mr Lewis: I have not personally.

Q88 John Battle: No, as a department with what are technically called the “stakeholders”, expanding it. Are those active conversations working up a government position that you can then take and push it forward? Have you got a timetable for that?

Mr Lewis: Sure. There have been ongoing discussions. I do not know if you want to be clear about have we met with officials from other departments and when was the last time people met?

Mr Vincent: I wondered whether there was a distinction that needed to be made between the issue of torture end-use control and military end-use control.

Q89 John Battle: I am looking at military end-use.

Mr Lewis: I have been answering about military—

Mr Vincent: I do not have any details of individual discussions within departments but the point that the Minister makes is the right one, which is that this

has proved to be much more complex than even we thought at the beginning of the consideration of this issue. That really is why it is still taking some time for departments within Government to reach decisions.

John Battle: If I may say, matters are extremely complex and in fact I appreciate some of the progress that has been made, given the complexity so far. However, the Committee did ask for this to be pushed forward. Could you get on with it, please? Perhaps I may respectfully ask that.

Q90 Andrew Stunell: Minister, you can now answer the question that you very nearly did not answer before, which is about torture end use—where, as far as I understand it, the Government does know what it wants to do and is now working with European Union countries to get a combined approach. In fact, I think it was something like 13 months ago that you said you were just about to start those discussions. Can you tell us where we are up to and how long we wait for the rest of the EU, and when we could start to take some action ourselves?

Mr Lewis: To be clear about the list, as Committee members may be aware, the list at the moment is just about direct implements that can be used in the course of torture. We want to extend that list to implements of an indirect nature which are associated with torture. We are actively lobbying in the European Union for that to happen. The discussions are ongoing. There is not a date that has been agreed to try to move the necessary amendments but we are definitely, from a diplomatic point of view, trying to persuade others to go down this road.

Q91 Andrew Stunell: It was said that you were going to be meeting the new EU Commissioner about now. Is that meeting programmed at the moment?

Mr Lewis: I was, or at a ministerial level?

Q92 Andrew Stunell: The department.

Mr Lewis: I do not think that meeting has taken place yet, as far as I am aware, but I can write to the Committee on this. I can give you an update.

Mr Hall: We have had a meeting with officials in the Commission, particularly in the Commission legal services, and they have promised to take forward consideration of the issue and to come back to us. We need to chase them up now, but that meeting was not that long ago. As you probably appreciate, in some of the European institutions it takes a little while for these things to be considered. We will follow that up, but it is something that is actively ongoing in the dialogue between officials in my department and in the Commission legal services.

Mr Lewis: It may be helpful to write to the Committee with clarity about the process to get this list changed—which body is it, who has to vote on it, et cetera—and then the Committee and everybody is clear about what the objective is. If we can put, as John suggested on the other issue, some level of timescale I think it would be helpful.

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Q93 Richard Burden: One of the areas where over the years there have been some differences between ourselves and many of the NGOs on one hand and the Government on the other has been on the issue of non re-export clauses; so we were quite pleased that, during the Westminster Hall debate on our last report, Ian Lucas promised to inform us by the end of 2009 on the Government's decision whether to investigate the potential use of non re-export clauses. Has a decision been made and, if so, what is it?

Mr Lewis: Yes, the Government has decided to add a no re-export provision to the undertaking that exporters already have to obtain from end users prior to export; so that is a slight change in our position. Is that clear? Do you want me to repeat that?

Q94 Richard Burden: Could you explain exactly what that means?

Mr Lewis: I will just finish. BIS have added prohibition of re-export as part of the initial assessment. Previously the risks were not part of the initial assessment but that has been added now.

Q95 Richard Burden: Is that not what you were saying before? I think that was one of the put forward: that you do not need non re-export clauses because at the assessment stage there is an assessment. We were saying that is not the same as a non re-export clause. Has that changed or is it the same thing said a different way?

Mr Vincent: No, there is a difference. The Government has listened to the concerns about non re-export clauses. We are aware that the Committee is concerned over an extended period of time. I think there is perhaps a need to explain technically, if I can try, on just what the Government's response is.

Q96 Chairman: Perhaps I could preface that by saying that, thus far, this is news to us. If it is good news, we are delighted; if it is not, obviously we are not. Richard is absolutely right that, in response to the previous times we raised this, not least in Westminster Hall debates and so on, the Government has emphatically maintained that the risk of re-export is assessed during the licence application process; so anything new in that area is not, with respect, new. Please give us the good news!

Mr Lewis: There is a second element, which is new news.

Mr Vincent: I am informed that Ian Lucas, Minister for Business, wrote to the Committee on 16 December setting out this new approach.¹ I am wondering whether that is a letter that has not found its way to the Committee, or we may need to check back with our colleagues. Certainly there is no suggestion here that the change has been made because the existing case-by-case risk assessment is in any way insufficient.

Q97 Chairman: No, of course not. We would not suggest that.

Mr Lewis: So this letter never arrived? Is that what you are saying? The letter has never been received?

Chairman: I do not recall it. I will just check with our Clerk. We may have made a mistake but to the best of our knowledge . . . Has anyone here seen it?

Mr Jenkin: Could they just explain it?

Q98 Chairman: Yes. That is admin and we can sort that.

Mr Vincent: End users are required at present to give to the exporter certain undertakings about the goods which are being exported. It is that end user undertaking to which a re-export provision will be added. The new re-export provision, the undertaking, will state that the goods "will not be re-exported or otherwise sold or transferred if they are intended to be used in contravention of a UN, EU or OSCE embargo". That is new.

Q99 Mr Jenkin: How is that obligation to be enforced, because previously you claimed it was unenforceable?

Mr Vincent: I think that the points that we have made in the past about the unenforceability of non re-export clauses are entirely valid. However, the Committee has consistently made the point that there is, in your view, value in terms of possibly a deterrent value and also in terms of political statements.

Mr Hall: I think the point is that it is not enforceable in the sense that it is not something where we are requiring them to send information to us, so it is not quite the same as the no re-export clause that I think you have been looking for. What it is, though, is an undertaking which I think sends a clear message as to the Government's view of the unacceptability of re-export, particularly if it were to contravene sanctions or other measures that we find unacceptable. So I think it is a statement of intent rather than the no re-export clause that you were looking for.

Chairman: As I understand what you have said, that is a significant movement, in that there have been previous examples of re-exports, or potential re-exports, to embargoed destinations that this Committee has raised. In those circumstances there is no provision, as we understood it, for the country to whom we had exported giving an undertaking not to re-export to embargoed destinations. Obviously we will need to look at the letter; we will need to consider the implications; and we may wish to suggest going a little further—who knows? That is usually our job on these things. However, I have to say that, as I understand it, it is right that what is now being asked is more than what happened before. An undertaking is better than nothing, in terms of trying to enforce what we are trying to do.

Q100 Mr Jenkin: All I would suggest is that the undertaking should be a contractual undertaking between the exporting company and the receiving company, so that if a subsequent export is made then it is a breach of contract law and would be enforceable in the commercial law of our own country or any receiving country. It cannot be an

¹ Ev 50

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agreement between the governments because the actual process of export is not an agreement between governments. Is that what you are pursuing—could you clarify?

Mr Lewis: As to whether it is contractual? I do not think that is the plan at the moment. I think that we need to get this in a letter.

Mr Jenkin: I cannot see the point of just asking for a vague undertaking. That is just pointless. We need more flesh on the bones of this.

Chairman: Apologies if we have lost the letter but, equally, when we get the letter and we know precisely what is being proposed, we will give a formal response and take these issues up. Richard, you have probably made the most progress this morning so far.

Richard Burden: Heaven forefend! While we are looking at that letter and thinking this through at our end, I wonder if there is something else that we could ask you to let us know your views on. One of the things that we are aware of is that, contrary to the impression we had before, there are a number of other countries, including in the EU, who do have very clear non re-export clauses—France, Belgium, Germany, for example. We have the words of those. Perhaps, while we are doing our consideration, you could let us know if you have done any investigations about whether there have been any problems with those, or how they are working, because we may be able to learn something from them. Perhaps you could let us have some views on that.

Q101 Mr Heathcoat-Amory: All these questions of end-use controls and a ban on re-export are bedevilled by the problem of enforcement. Does the same objection apply to extra-territorial trade controls? That is, efforts to stop British citizens trading in illicit weapons, even if they do it outside our jurisdiction. It is obviously highly desirable that we should somehow control this, but I want to be clear about your objections to moving in that direction. As I understand it, it is based on a lack of evidence that this really is a problem and also the question of how in practice we would enforce this. Is that a summary of your position?

Mr Lewis: I think that as well as asking the question you have answered it, to be frank. There are two issues. One is enforceability and the other is would it be proportionate? Those are the two considerations. We do not believe that it would be proportionate and we do not believe that it would be enforceable. On that basis, therefore, that is why our position is as it is. It is quite straightforward.

Q102 Mr Heathcoat-Amory: The United States is famous for asserting extra-territoriality in a number of other areas. This does cause resentment of course in other countries, but it can be pretty effective. Have you examined exactly what controls you could assert over British citizens? After all, presumably they have a passport. They may be domiciled here; they may have assets in this country. What level of detail have you examined in coming to the conclusion that this would degenerate into a gesture and is impractical?

Mr Lewis: We have considered it in detail before we have rejected it. We have not just rejected it out of hand. Just because the Americans do it does not mean that we have to do it. We have heard that debate in a whole range of contexts. Also, we have examined this on its own merits and, having done so, we do not believe it is the right thing to do. It is reasonably straightforward. We have examined it in detail; the system has considered it and looked at it and we do not think it is enforceable, nor do we believe it to be proportionate.

Q103 Chairman: Is it not interesting that British defence manufacturers supported this? It was not just the NGOs or this Committee arguing that this was a matter that we felt needed to be addressed. British defence manufacturers produced this joint report with the NGOs and committed themselves to a proposal that they believed would be progress. Otherwise, presumably they would not have signed it. It is not just the Americans we are looking at here; it is British defence manufacturers who think this would be a sensible thing to do, is it not?

Mr Lewis: Sure, but we do not have to do everything they think is a good thing to do either. It is difficult, because we have looked at it. It is not that we have just said “Under no circumstances never”; we have really looked at this and we do not believe it is practical or, as I have said, proportionate. We can have a debate about that, but we are not minded to reopen this issue at the moment.

Chairman: No doubt that is one item in our report that we might flesh out further.

Q104 John Battle: Perhaps we could turn to the issue of development, particularly sustainable development—the idea that proposed exports of arms could seriously undermine the economy or the potential development of a poor country that disproportionately spends its money on arms instead of development. There is a proposal—it is Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria—and Britain signed up to it and said “We think it’s a good thing”, but how consistently is it applied across the rest of the EU? If we are out there on our own saying, “We refuse to let arms go because we believe in international development or development in your country” and then everybody else sells them arms, we are going no further forward.

Mr Lewis: I think that is true. If you look at the evidence, some other Member States, for example, have more Criterion 8 refusals than we do. The problem is that, even if you have consistent criteria, the application of those criteria can vary and it can vary for good reasons. There may well be different legal systems and statutory regimes. There may also be very different capacity in terms of making these kinds of judgments and decisions. Although we talk quite rightly about the importance of consistent criteria, therefore, the reality is that there will always be a level of difference in terms of application—as I say, because of different legal systems, because some countries have more expertise and more capacity. We have regular EU meetings to co-ordinate, to get

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maximum synergy in terms of decision-making, but we obviously cannot guarantee that there will be complete consistency all of the time.

Q105 John Battle: To be fair, when they look at the trade department or the agriculture department of the EU, the whole of that and the export-for-arms arrangements, consistency was developed by proper conversation in the EU where they agreed a proper process and indeed interpretation. I am just wondering whether that is being worked for at the EU level with any serious interest.

Mr Lewis: It is but, as you know—and you were one of the people who rightly wanted this and fought for it passionately—it is relatively new; so there is still a lot of work going on to try to ensure consistency and to ensure that everybody is taking Criterion 8 very seriously. What we can do is send the Committee further information, both in terms of how we have judged certain applications against Criterion 8 but also, if you like, the variability in judgments that are being made across the EU. However, there is a lot of work being done to try to get maximum consistency and to get Criterion 8 taken incredibly seriously.

Q106 John Battle: I think there is a review of the common position on Criterion 8. Because I do think that the work of DfID is massively internationally progressive. It does lead the world and I would be tempted to ask a question, for example, in applying the criteria, what kind of things do you take into account. You might actually include conservation agriculture, which is the new theme for reviving agriculture; it is a new theme that is being pushed out across agriculture and would be a massive impact on trade relations, for example. That might not be in the criteria. Corruption in states—how much does bad governance and corruption count? I would not mind knowing a little bit more about how we interpret Criterion 8 and what we are pushing at the EU to get a consensus.

Mr Lewis: I would be more than happy to get more information to the Committee on that.

Mr Hall: I just wanted to say briefly on that, it is worth knowing—reinforcing your position about the lead role of DfID and how the UK is ahead of the pack in terms of things like Criterion 8—there is a capacity problem, I think, in some other EU countries in terms of their ability to look at licences across all the criteria in the same sort of detail as we do. According to my notes here, we are one of only two EU Member States that routinely involve their development agency or department in looking at licensing decisions. That means that they are not doing it in the same—

Mr Lewis: Which is the other country?

Mr Hall: I do not know off the top of my head.

Q107 John Battle: The Netherlands?

Mr Hall: It could well be. It means that other countries are not doing it with the same granularity that we are.

Q108 Malcolm Bruce: The first objective, I guess, is to get the EU working together on this issue so that our development and arms sales strategy is consistent, but what about discussion with other donors like the Chinese? We have a situation in Africa where we are trying to engage one criterion and they are coming in, in the case of Zimbabwe, with arms. There is some evidence that the Chinese understand that there is some kind of dialogue. Is there actually a discussion with the Chinese that they should be considering these factors when they are engaged in this—not telling the Chinese what to do but trying to explore with them that there is some kind of common—

Mr Lewis: Certainly never tell the Chinese what to do! I think that you have made a really important point. The first thing to say, as a former DfID Minister, is that what John said about DfID is absolutely correct. DfID is a world leader on a whole range of development issues. I think that, again, all the parties should be incredibly proud of that. Malcolm, you know better than anybody that that is the case. This is another example where DfID, who are always consulted in the context of relevant applications in Britain, do a remarkable job. On the question of China, we have got to the stage with China, uniquely, where they have agreed to have a regular dialogue with us about development policy, particularly in Africa. This is quite a big shift for China to agree this, but that is not quite the same as getting China in any way to sign up to the notion of anything looking similar to Criterion 8. I would be staggered if we were able to get China to that position any time soon. However, the fact that we are engaged with China on a bilateral basis, talking together about development policy in Africa, is an advance that I think has not been achieved in any other situation. We know China has a very different view of its responsibilities in terms of development. It does not believe that there should be any account taken fundamentally of political considerations. It believes it is about doing business and it is not for China to “interfere in internal affairs of other countries”. While we believe in untied aid these days, quite rightly, we also believe that when there are regimes behaving very badly there needs to be some account taken of that before we make decisions. China frequently takes a different view. We continue to have the dialogue, therefore. It is new, their agreement to enter into that dialogue with the UK on Africa and development policy more generally; so of course we can raise these issues in that context; but I do not expect to see a shift in China’s policy for the foreseeable future.

Q109 Mr Heathcoat-Amory: On the question of China, Minister, can I ask you about the arms embargo? The EU declared this after the Tiananmen Square events of more than ten years ago. It is not legally binding; it is not comprehensive; it is probably being circumvented. Chinese human rights have hardly got better. I know that. I have seen the way they treat refugees from North Korea. Is this

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actually having any effect or are we degenerating into a kind of gesture here? What is being achieved by this embargo?

Mr Lewis: I think that, as the Minister with lead responsibility for our responsibility for our relationship with China, it matters to China that there is an arms embargo. They really do not like it and they really want it to change. What effect is it having on them? In practical terms, minimal but in political terms it is quite a significant issue. They raise it constantly at the highest levels. It casts aspersions on China's honour, if you like. Both that and the fact that the European Union has not yet granted China market economy status do cause the Chinese concern and do cause them to lobby constantly for us to change our position. At the moment, however, we see no grounds at this stage on which to do that. That is the position.

Q110 Mr Heathcoat-Amory: Should not embargos be specific, enforced, time-limited and regularly checked against objectives? It seems to me that the Chinese one is about now sending a message—they do not like it and it is a symbol of their repression—which I entirely accept. I think they are bad at human rights and I think it is a disgrace that they sign up to conventions and then break them, but we all want to sell them our goods, do we not? There is therefore a lot of evidence that this is not actually working. It is under review, we understand. Can you tell us who will review it and whether anything will be published? If so, by whom?

Mr Lewis: I do not have the details of how that review will be conducted. What signal would it send if the arms embargo were to be lifted? You talked about signals and messages. What message and what signal would that send? We were asked by the Committee about whether there has been any assessment of China's current progress or lack of it on human rights, and that review has now taken place and will be published in March. As I understand it, though, that is a UK review of the Chinese progress on human rights; it is not an EU review. That will be published, as I say, in March. The point is that, as far as I am aware, it does not link at all to the embargo—the review that is being referred to. I am not aware of a review within the European Union of the arms embargo at this stage.

Q111 Chairman: Perhaps that can be clarified through correspondence. That would be helpful.

Mr Lewis: Yes. That is my information.

Q112 Mr Jenkin: My understanding is that the Government is reviewing the arms embargo.

Mr Lewis: The Government is?

Q113 Mr Jenkin: Yes.

Mr Lewis: I am not aware that the Government is reviewing the arms embargo.

Q114 Mr Jenkin: So it is not under review. Because until, for example, the International Covenant on Civil and Political Rights has been signed, there is no case for review.

Mr Lewis: There is no formal review at the moment. It is an ongoing process.

Q115 Mr Jenkin: No formal review.

Mr Lewis: There is no review underway at the moment of this. It is an EU embargo. We obviously have to take a position on it. We are not at the present time reviewing our position on this.

Q116 Chairman: If there is any further clarification in correspondence, that will help us.

Mr Lewis: If that is not the case, then we will correct it with the Committee; but as far as I know there is no review at the present time.

Q117 Richard Burden: Could we move a little way westwards to arms exports to Israel? The Government wrote to us in July with an update of the review of the 182 extant licences. We were told about the revocation of five licences for equipment to the Israeli navy. They were the licences that were already there. At that time the Foreign Secretary told us that the Government would take the conflict in Gaza into account in assessing all future licence applications. Could you explain how that is being done?

Mr Lewis: First of all, we need to be very clear that, despite the fact that some people want this, there is no and will not be any arms embargo against Israel. We are firmly of the view that Israel faces real threats; so we have no intention of doing that. Equally, we have made it very clear, as the Foreign Secretary did in his statement in the aftermath of Gaza, that Israel is subject to the same review process as any other state in conflict situations. As you know, there is the case-by-case consideration but there is also a review in the context of the aftermath of conflict. That applied with Russia and Georgia as much as it applied in terms of Israel and Gaza. In those circumstances, in the aftermath of a conflict, there is a review. As far as I know, other than the decisions that were made public at the time in the Foreign Secretary's statement, there has been no other similar application since then.

Q118 Richard Burden: But what does this review mean? Is there any change in the way that Britain was viewing arms exports to Israel and the kind of checks that would need to be undertaken before Gaza compared to after Gaza? If there is a change, what is it? If there is not a change, what was the point of making the statement to us in July?

Mr Lewis: The fact is that, of course, after the conflict there was more evidence in terms of Cast Lead, of specific actions that were taken during that operation, which were taken into account—and that would continue to be the case. However, the situation is that it is still considered on a case-by-case basis in terms of the applications. We have evidence following the conflict which informs the judgment that is made on a case-by-case basis.

Q119 Richard Burden: Just looking at the published statistics over the first three quarters of last year, in other words the first three quarters after the Gaza

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conflict, in January to March there were four Military List export licences granted for goods worth £60,422; April to June, that had gone up to ten military list export licences granted for goods valued at £221,360; in July to September, in other words the period after we were apparently setting up our review process, 38 military list export licences were granted for goods valued at £603,489, including: components for combat aircraft; components for electronic warfare equipment; components for military aero engines; components for military communications equipments; components for sniper rifles; electronic warfare equipment; small arms ammunition; and unfinished products for air-to-surface missiles. That is just a few. So what was the case-by-case assessment being made of those?

Mr Lewis: The answer to your question is there was a case-by-case assessment made. The fact that you maybe do not like the outcome is an entirely different matter. What we can do, however, as we have always been willing to do, is share with you the basis on which decisions were made. We are quite happy to do that. If you are querying any of those specifically, we are more than willing to share with you the basis on which the judgments were made on a case-by-case basis, taking account of what happened in Gaza.

Q120 Richard Burden: We may well do that, but could I ask you this? Does the Government have a view that all these things—once have gone, after the case-by-case review has been done and the equipment has been supplied to Israel—Israel has two store cupboards for its arms: one store cupboard says “You can use these in Gaza or the West Bank or in Lebanon” and the other store cupboard says “You can’t use those and we’re not going to do it”? Is that the Government’s view? That there are two store cupboards for the small arms equipment, electronic warfare equipment and combat aircraft components? Is that the Government’s view?

Mr Lewis: There are two responses. First of all, I think we need to be clear that it is about less than 1% of Israel’s arms exports that come from the United Kingdom.

Q121 Richard Burden: Well, maybe, but that is actually—

Mr Lewis: No, I think it is quite important, because if people from outside of this House listen to the debate they may get a slightly different impression. The second point is, of course, the kinds of judgments that would be made would include whether weaponry was going to be used for internal purposes or to protect from an external threat. That is part of, just part of, the assessment process that is undertaken. All I can reiterate is that, on a case-by-case basis, those decisions are made. As I say, it is not just Israel and the aftermath of Gaza; there was also Russia and Georgia, where you know that a number of licences were revoked in the immediate aftermath of that conflict. We can give other examples. However, there is no arms embargo or ban on selling weapons to Israel. That is not the British Government’s position. It is the Government’s position, however, that in the aftermath of a conflict

we have to use and assess evidence that has emerged from that conflict and, in that context, make judgments about individual licence applications. That is exactly what has been done; so Israel has been treated like any other country that is subject to our regime.

Q122 Richard Burden: Does the Government believe it has a guarantee that none of those items of equipment that there have been in the first three quarters of last year will be used or could be used in the Occupied Territories? If so, how is that guarantee meant to be enforced?

Mr Lewis: What we have is a guarantee that the licence applications were approved consistent with the criteria that everybody in this Committee, the UK Parliament, is signed up to, which is a very open and transparent process compared to many. Richard, as I say again, if you want more details on the individual applications or the Committee wants more details on the individual applications and the judgments that were made, as far as I know we are able and happy to share those with the Committee.

Q123 Chairman: Minister, you are absolutely right that the UK is a small provider of arms to Israel. You are absolutely right that there have been a very significant number of rejections of licence applications. All of this is absolutely true. However, do you believe that the present system achieves what is stated government policy, which is that UK arms exports to Israel should not be used in the Occupied Territories? Do you believe that the licence application process itself, standing alone, is enough to guarantee that does not happen? Because there have been incidents both during the Gaza military action and before—there have been previous examples—where it has turned out that British components have been used.

Mr Lewis: If there is a weakness or a flaw in the criteria that we apply to Israel and to other countries, then that is the debate that we should have. If the Committee feels that our system of case by case review in the aftermath of a conflict is insufficiently robust, then I think the debate needs to be about whether the criteria and the review process need to be changed. I am not aware that the Committee has questioned whether the criteria and the review process in the past are robust enough. That is what has to be considered, and I think the only way you can look at that is to look at the basis on which we have made judgments—case by case—because that is the nature of the system. If the Committee wants a different approach to Israel, an arms embargo and all the rest of it, then the British Government is not willing to go down that road. It would require a change to the system, not just the criteria but this review-in-the-aftermath-of-a-conflict element of the system, which would not just be applied to Israel but would be applied to any other country.

Chairman: I would love to pursue this but I think that we had better move on.

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Q124 Andrew Stunell: Yes, it is very tempting to pursue it and I think that some of us would be quite concerned about sniper rifles, how they might be used and so on. However, I want to look at the flip side of this: the export licences which were actually refused related to Israeli navy licences. At the time we were told it did not affect the UK's defence relationship with either Israel or the USA. Could you confirm whether there were any operational implications for the UK's armed forces in the suspension of these export licences, and aspects of that side of the deal?

Mr Lewis: The UK armed forces? In what sense?

Q125 Andrew Stunell: In terms of reciprocal capability, et cetera.

Mr Lewis: No, we do not believe that this had any impact on our relations with the US or with Israel and we think that we applied the criteria fairly and transparently. That was accepted, and has to be accepted because those are the rules that we insist are applied. So it did not affect our relationship, no.

Q126 Andrew Stunell: In which case I will move on to Sri Lanka, if I may. We did get the letter from Ian Lucas on 31 December relating to Sri Lanka and that said that he could not state categorically that military communications equipment supplied from the UK had not been used in the suppression of the conflict against the Tamils by the Sri Lankan Government. What lessons would you say need to be learned for handling future applications in Sri Lanka and elsewhere where clearly equipment is capable of being used and misused in such circumstances?

Mr Lewis: I am sorry, it is back to the criteria. It is back to saying the aftermath of a conflict. We have to be clear, though. In the case of Sri Lanka, for quite a long period of time we have been very concerned about the Sri Lankan situation. As I understand it, there has been a very significant number of refusals in terms of Sri Lanka in the past. In a sense, the context with regard to Sri Lanka is that, on a long-term basis, we have been very cautious and very concerned. In terms of applications, however, we consider them on a case-by-case basis. In the aftermath of the recent conflict, in the same way as I answered Richard on the situation with regard to Israel, there are extra considerations in terms of what we have learned. The problem about the conflict in terms of Sri Lanka is that the evidence and the information we have is very patchy, as you know.

Q127 Andrew Stunell: As you quite rightly say, the same does apply in both of these situations, which is the lesson-learning afterwards. I would say to you that perhaps you did not clearly indicate to us that there was a lesson-learning process post the Gaza incident and you have not really said anything clear about what the lesson-learning is in relation to the conflict in Sri Lanka.

Mr Lewis: The lesson is that we are obliged (and this is in addition, remember, to the criteria) in the aftermath of a conflict—when you say we have not learned lessons, that is the whole point of the review process—to look at the lessons in terms of that

conflict, to inform the judgments that we make. That is an additional safeguard, in addition to the consolidated criteria. So of course we are learning lessons from the conflict and in terms of decisions that we will have made in the past. That is the whole point of the review element, which is an additional safeguard to the case-by-case, usual procedures that are operated. We do pore over the evidence and the lessons to be learned, obviously. The difficult bit is that, as you know, in Sri Lanka it was very difficult for us to get access and information.

Q128 Andrew Stunell: Would you be able to share with the Committee the results of poring over the evidence? What in fact did you learn and what changes or what new evidence or criteria will you be taking into account in each of those two areas?

Mr Lewis: Yes, I can give you an example. Following a review of all export licences, we revoked nine licenses in July and August 2009, and that was as a consequence of the review that we undertook.

Q129 Andrew Stunell: And that is in respect of Sri Lanka specifically?

Mr Lewis: Yes.

Q130 Chairman: The fact is, though, that at the time there was a fragile ceasefire in Sri Lanka and the UK was exporting significant weapons. It is not just the immediate aftermath of the most recent conflict; it is this sort of macro, longer-term view about unstable countries where, if there happens not to be a conflict at the time the licence application is being appraised, one gets the impression that it is seen to be an OK place for arms exports. It is all very well when conflict breaks out that policy tightens up, but there is a real issue here about having a fuller appraisal situation where the peace is fragile.

Mr Lewis: But at the heart of the criteria is that, in cases where we judge that licences would provoke or aggravate existing tensions, or a clear risk that goods might be used for internal repression, we have refused licences. That is at the heart of the criteria, so I do not understand.

Q131 Chairman: What I am saying is that I understand the criteria and the case of Israel and Sri Lanka are similar, and no doubt in a few other countries. No one is questioning what the criteria say. No one is questioning that people of goodwill will apply those criteria; but we know of circumstances where what the people who made the decision to grant the licence believed was going to happen did not happen, and in fact either UK arms ended up in places that were contrary to UK policy, as in the case of certainly Israel; in the case of Sri Lanka, arms were exported during ceasefire periods and, in retrospect, would it not be the case that there might be some regret that that had been done? It is not just a question of saying "Do the criteria invite us to consider these issues or not?" They do. It is the outcome that we are concerned about.

Mr Lewis: I accept that, but risk assessment means that people have to use the criteria and have to make their judgment and 99 times out of 100 the system

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works well and people make the right judgments. From time to time that goes wrong, and that is inevitable in any system. You can quibble judgment by judgment, or you can say that the criteria need to change; but you cannot have it all ways. If you take account of the aftermath of a conflict review, that also allows you to make decisions which say “We have learned the lessons where mistakes, it appears, were made or where unintended consequences of our decisions led to weapons being used in a way which is inconsistent with our policy and with the criteria”. I am not quite sure what you are saying, therefore. You can say that people have made, from time to time, wrong judgments. That is a perfectly reasonable thing for the Committee or any individual to say. My response to that is that in the vast majority of cases the judgments have been proved to be right, and there is no way that you will devise a system which is 100% free of any risk.

Q132 Andrew Stunell: That is obviously true. I do not particularly want to be confrontational about this but you have held a review and, when I asked you for practical evidence of what the consequences of that were, you referred to the five licences which had been revoked as far as Sri Lanka was concerned.

Mr Lewis: Nine in Sri Lanka and I think there were five in Israel.

Q133 Andrew Stunell: Does that imply or does it make it a fact that, in future, if a similar application was made for either of those countries it would automatically be refused, rather than being granted and then revoked? In other words, does this mean there is now a permanent change of approach to those licences, or after, let us say, six or nine months of nothing much happening in those two countries, if a new licence was put forward would you once again approve it and maybe once again be in a position where you had to revoke it? In other words, is there an institutional memory from these things having happened in relation to specific countries or not?

Mr Lewis: The answer to that has got to be yes, of course.

Q134 Andrew Stunell: Yet I saw some head-shaking.

Mr Hall: No, I was nodding my head. I was supporting the Minister—

Q135 Chairman: I can confirm that Mr Hall was nodding.

Mr Lewis: Otherwise we will be back to torture!

Mr Hall: It is a risk assessment and it is based on the available information that we have at the time. Clearly, that information is increased and is of higher quality in the aftermath, in the sense that you have learned the lessons from what has happened; so that information and that review process feeds into the risk assessment in future decisions. None the less, the future decisions are still made against a risk assessment, and it may well prove to be wrong.

Q136 Andrew Stunell: Perhaps I could just get you to say this explicitly. If a country has, so to speak, blotted its copybook, that blot will stay on the copybook rather than going back to zero and starting again. Is that the situation?

Mr Hall: The evidence of what has happened in the past will be taken into account in the risk assessments that are made in the future. That is what we are saying.

Chairman: We will return to this in our report and no doubt the Government will return to it in its reply.

Q137 Peter Luff: Can I turn to the Scylla and Charybdis—I do not know which is the rock and which is the whirlpool—of the question of the dual-use licensing system? Dual-use items are notoriously difficult, as I know from my constituency correspondence, with government ministers over companies trying to export to Iran. But when both the NGOs and the trade bodies agree, then I think we should all sit up and take notice. They do agree about the usefulness of the recently published independent study on dual-use compliance. They all seem to doubt its usefulness and certainly its objectivity. How do you respond to those concerns about that study?

Mr Lewis: We have to be honest about the limitations of the study but, alongside that, we feel that the methodology and the conclusions are robust. We do not accept that there is any sense of widespread evidence of non-compliance. So whilst the study was limited—there is no way we can dispute that—we believe it reached the right conclusion. It is consistent with what our view was.

Q138 Peter Luff: So you have rung up people and asked them if they comply and 91% of them said they did comply. I am surprised that it was not 100%, frankly. Who are the 9%? It does seem that you are asking a damn fool question—“Are you breaking the law?”, answer: “No”.

Mr Lewis: I understand what you are saying, but the serious point I would make is that the study is a contribution to this exercise but, separate to the study, we do not feel we have widespread evidence of non-compliance. We just do not accept that there is a large body of evidence that suggests that this is a major problem. If that is the case, I think we will have a responsibility to say so.

Q139 Peter Luff: Can I quote something to you, just to test this? The claim may or may not be right but it says that “While 91% of respondents replied that they felt fully compliant with the dual-use controls, Mr Hayes, Chairman of the Export Group for Aerospace and Defence, noted that only 42% reported using the SPIRE system which is the only means of obtaining an export licence”. What about this low awareness of SPIRE? It is very surprising, is it not?

Mr Lewis: I will deal with that specific point and then make a more general point. In terms of the study, BIS took a deliberate decision that 70% of those surveyed would be exporters who had never applied for an arms export licence. The survey was designed to capture both deliberate non-compliance and cases where exporters might be simply unaware of their obligations. That therefore explains the

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relatively low level of recognition of SPIRE. On the question of the study and all the rest of it, as I understand it, BIS has made repeated offers both to the NGOs and the business community, and indeed is willing to come before this Committee to explain the rationale for the study, the conclusions from the study, how it was carried out. That is an offer that is there to business, to NGOs and also to the Committee.

Q140 Peter Luff: You need to make it simple for business to comply with the rules. If SPIRE and indeed the Export Control Organisation website itself are not very well known by businesses who might be subject to dual-use compliance, why not use a portal that is much better known? It is supposed to be the Government's single portal for the business community, BusinessLink—which is well known now and having growing recognition in the business community.

Mr Lewis: I think that is definitely a reasonable proposal. We will feed it through to our colleagues in BIS.

Q141 Peter Luff: Thank you for that. I thought it was a reasonable question and it got a reasonable answer! Do you think you should be doing more to identify businesses that do require an export licence? That 70% who have never applied for one—perhaps a good proportion of them should be applying for licences. Do you think that you are doing enough?

Mr Lewis: BIS has a comprehensive training and seminar programme. That is available to people; that is available to organisations.

Q142 Peter Luff: Are they going out and saying, “We think you may need dual-use licences. Please come to these seminars and learn about them”?

Mr Lewis: Yes, that is part of their message. Absolutely.

Q143 Peter Luff: So you are identifying people, not just putting adverts in chamber of commerce magazines? You are actually proactively identifying businesses that might fail in this.

Mr Lewis: I think that they should perhaps speak for themselves but, yes, they tell us they are.

Q144 Peter Luff: We might ask them that. Finally from me, I spoke about Scylla and Charybdis at the beginning—obviously you have to get it right. It is very important that licences are issued prudently and thoughtfully, both to encourage exports and to prevent inappropriate use. Time is always an enemy here. Careful consideration obviously does take time but time can cost you the exports, so it is getting the balance right. Do you know what steps are being taken to reduce the processing time, because a third of respondents are still saying that it is taking longer than they expected?

Mr Lewis: In terms of individual licence applications? To be honest, it is back to John Battle's point to some extent. We are very clear, for example,

to involve DfID in a comprehensive way. We make sure that it is a genuine cross-government process—MoD, BIS. Of course it can always be better but is it not also good that we genuinely have and we do not just talk about having—which we are fond of doing in a whole range of other areas—a joined-up government approach, which I think is a model of good practice in this area? I think it is worth spending a little bit of extra time on getting it right and doing it in that holistic way. Of course we can always look at ways of speeding it up but I think that, overall, we should defend the better way in which we conduct the system in this country.

Q145 Peter Luff: Anecdotally, from people I have talked to, there is a sense of improvement in the system at present, I have to say. That is only anecdotal impression.

Mr Lewis: Thank you.

Q146 Chairman: Minister, a final question. It has been suggested that, as with all government departments, there may be cuts in the FCO budget. Given that everything that you do cannot be a priority, where do strategic export controls and non-proliferation rank in terms of priority for the FCO?

Mr Lewis: If you would have asked us that question two or three years ago, I would have been quite concerned about where it fitted in terms of priorities. If you look at the fact that we are leading on ATT; if you look at the fact that President Obama has announced this major initiative both on nuclear security and non-proliferation and that we want to be a key player in those processes; our relationships with the EU, with America and even countries like China, and our role in the Middle East, frankly these have to be priorities for the Foreign Office. While I cannot give you a budget settlement in my evidence before this Committee, I think that the level of political priority that ATT and non-proliferation now has, both domestically and globally, means that in any difficult budget decisions that have to be made these areas will have a greater priority than would have been the case only a couple of years ago—and I think that should be for the good.

Chairman: Minister, Mr Hall and Mr Vincent, thank you. Can I also say that the Committee appreciates your kind comments at the beginning. Can I reciprocate by saying that we very much value the information provided by your department, both the formal and informal information that you readily make available to our Committee. We are very grateful for that. Can I also say that the Committee, as it has said countless times in its reports, has appreciated the significant development of strategic export controls in recent years, developments of which we approve, and we are delighted to see this agenda. There are, of course, as you have gathered from this morning's session, still areas where we will be robust in trying to make a case for further improvements and developments; but, on that note, thank you very much again for your evidence this morning.

Written evidence

Written evidence submitted by HM Revenue & Customs

Thank you for your letter dated 16 June. The questions you raise relate to the enforcement of export controls and as such fall outside the ministerial remit of Ian Lucas, Parliamentary Under Secretary of State in the Department for Business, Innovation and Skills. These questions relate to enforcement undertaken by HM Revenue & Customs and your letter has been passed to me to respond as the Director responsible for Customs export procedures.

Q. Why was no further action taken against Mr Mohsen Akhavan Nik in 2000, other than a warning, when his illegal shipment of lasers was seized?

Following visits by officers to Mohsen Akhavan Nik (and the company who sold the laser sight to him), it was concluded that whilst an unlicensed export had taken place, the evidence did not show knowledge of the prohibition in force at the time or show knowledge of an attempt to knowingly evade the prohibition. It was also the first identified breach by this exporter.

The goods were seized on their return to the UK from Iran (they had been returned by the customer as faulty) and were not restored to the exporter, as is often the case. In view of the particular circumstances it was decided that a warning letter to the exporter was appropriate.

Q. When was the consignment of oxygen cylinders seized at Heathrow airport and what led HMRC to uncover the consignment?

HMRC detection officers at London Heathrow Airport initially identified the consignment on 17 May 2006. Once it became clear that items were subject to controls the oxygen converters were formally seized on 8 June 2006. This particular shipment was detected in the course of routine inspection duties undertaken by HMRC officers based at Heathrow airport.

Q. The notice states that despite the warning in 2000, Mr Mohsen Akhavan Nik and his conspirators had continued trading in breach of the UK's export control legislation. What other shipments were made by these conspirators between 2000 and the date when the consignment of oxygen cylinders was seized?

The defendants in this case were charged with export and trade control offences covering the period 31 December 2005 to 23 August 2007. It is fair to say that in addition to their illegal exports of military parts to Iran the Niks also traded with Iran in goods that did not require export licences from the UK.

The majority of their trade with Iran was conducted using the services of fast parcel operators whose arrangements with HMRC allow the export of goods under £600 in value to proceed without a formal export declaration being made.

Following the arrest of the defendants it was found that the invoices provided by the Niks to the fast parcel operators in respect of their shipments to Iran bore misleading or generalised descriptions and showed values, in virtually all cases, of less than £600.

The details provided by the defendants on the commercial documentation that accompanied these "fast parcels" have made it almost impossible to determine retrospectively whether the goods in question would have required an export licence.

Nevertheless, it was possible in some instances to identify, with the help of technical experts, certain items within the Niks business records that would have required an export licence and these alleged supplies formed part of the prosecution case at trial.

In respect of the period between 2000 and January 2006 it is believed that the defendants were concerned with a considerable number of exports but it has not been possible to prove conclusively that any of the goods, other than those included within the period of the indictment, required an export licence.

Further to the points raised on goods being exported through fast parcel operators, I would like to add that prior to 2002 customs declarations could be submitted either electronically on a paper form. Since 2002 we have implemented a 99% electronic declaration system for exports, though this did initially raise issues where fast parcel operators would have to submit disproportionate number of export declarations.

To ease the burden on the fast parcel operators and the number of declarations for goods below £600 submitted to the customs declaration system CHIEF (Customs Handling of Import & Export), a Memorandum of Understanding (MOU) was developed with the fast parcel operators that permitted them to submit bulked declarations and this was implemented in 2003.

As part of the MOU fast parcel operators now have dedicated control teams and awareness education, with a requirement to refer all suspicious activities and exports to customs.

I look forward to working with you and the Committees on Arms Export Controls and would like to take this opportunity to say that I value the contribution the Committees makes in what is an area of real importance for this Department.

20 July 2009

Written evidence submitted by Ivan Lewis MP, Minister of State, Foreign and Commonwealth Office

ARMS EXPORTS TO ISRAEL

When Bill Rammell appeared before the Committees on 22 April, he answered questions on the Written Ministerial Statement (WMS) that the Foreign Secretary had laid before Parliament the previous day. The WMS contained the Foreign and Commonwealth Office's (FCO) assessment of what UK-supplied equipment had, and had not, been used during Operation "Cast Lead". During the session, he also promised to give the Committees an update on the review of extant licences for Israel which was in train at the time. I am writing now to let you know the outcome of the review, and inform you of the action that was taken.

As the WMS highlighted, the UK is not a major supplier to Israel. However, the review did involve re-examining a total of 182 licences for Israel. Many of the items covered by these licences were for dual-use goods or not for use by the Israeli Defence Forces (IDF). None were for complete systems or platforms. However, there were a number of licences which gave us cause for concern, as they were for equipment which was almost certainly used in the operation.

The WMS sets this out in detail. Of particular concern were five licences for equipment to the Israeli Navy, which we knew were for the Saar 4.5 Corvette. We had credible evidence from a number of sources that this vessel had been used to bombard coastal areas during the Operation. With this new information, we reassessed whether we would have permitted the original exports and came to the conclusion that we would have refused the original applications under Criteria 2 and 3 of the Consolidated Criteria.

As a result of this, we took the decision to revoke all five licences. However, by the time the review had been completed, three of the licences identified for revocation were either already "time expired" or had been fully utilised, or both. The decision to revoke the remaining two licences was relayed to the companies involved on 10 July, and on the same day the Israeli Embassy in London was informed.

I would like to take this opportunity to reassure the Committees that we continue to rigorously apply the licensing criteria, and it was on this basis that we revoked the licences. There is no embargo in place against Israel, and all decisions continue to be taken in line with announced government policy. But clearly, the decision to revoke the five licences in question will also influence our thinking when assessing future licence applications.

Finally, I would be grateful if you could relay my apologies to the Committees that we were unable to inform you of these decisions before the story became public. Unfortunately, the details of the meeting between our officials and the Israeli Embassy were leaked to the press in Israel, who immediately ran the story under the misleading and incorrect headline that the UK had imposed an embargo on Israel.

I hope that this letter helps to clarify the UK government position.

22 July 2009

**Further written evidence submitted by Ivan Lewis MP, Minister of State,
Foreign and Commonwealth Office**

Thank you for the letter of 8 September from the Clerk of the Committees on Arms Export Control (CAEC) on your behalf about the outstanding question on Libya in the CAEC's report of the 2007-08 session. Let me say from the outset how sorry I was to hear that we failed to respond earlier to the CAEC on this particular point. Unfortunately, this was an administrative oversight on our part. To ensure that this is not repeated I have asked the individuals concerned to put in place a review system so that this does not re-occur.

When looking at the human rights situation in Libya there is no denying that it continues to give us concern. Reports from organisations like Amnesty International and Human Rights Watch continue to draw attention to restrictions on freedom of expression and assembly, political prisoners, arbitrary detention and the mistreatment of migrants. In addition, Libya continues to use the death penalty. Having said that, there have been improvements over recent years, but we would like to see this go further. As a result, we continue to look for ways in which we can work with the Libyan government to improve the human rights situation, and we look to identify opportunities to raise our concerns about alleged abuses where we judge that this lobbying will be effective. To this end we have, in the recent past, raised a number of specific concerns with the Libyan authorities, in particular over: the conditions in prisons, the continued application

of the death penalty and the criminalisation of homosexuality. Separately, the EU (with UK government support) has lobbied Libya on a number of issues, including the continued detention of Fathi al-Jahmi, Idriss Boufayed and the use of the death penalty.

In response to your specific questions about exports, I can confirm to you that our policy towards Libya has not changed. Export licence applications are considered on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria, in light of prevailing circumstances at the time of the application and depending on end use. The criteria make clear our commitment to assess the risk of exports being used for internal repression. If we considered an export licence application to be inconsistent with the Criteria, the licence would be refused.

When we assessed the export licence applications for the armoured personnel carriers and water cannon the government was satisfied, after very careful consideration, that these exports would not be inconsistent with Criterion 2. As part of the licensing process we placed specific conditions on the issue of these licences. These conditions included: that the goods were to remain in the control of the exporter until the end-user, the Libyan Police, had successfully completed, and been assessed against, appropriate training on the use of this equipment and best practice in public order situations. One aspect of the training was the “underpinning theories and models related to human rights and the proportionality of response”. Independent assessors from the UK Ministry of Defence Police and Humberside Police evaluated this training and concluded that the Libyans had met the standards expected. The government considered that the level of risk that the goods would be misused had been sufficiently mitigated by this training and evaluation to allow the exports to go ahead.

As part of the overall export licensing process, we keep under review the evolving circumstances in destination countries, and the end use goods and equipment exported from the UK are put to. We are confident that none of these goods breached the Consolidated EU and National Arms Exports Criteria at the time of export, nor have they done so since. But circumstances can, and do change, often quickly and without notice, so we will continue to monitor the situation closely to ensure that the equipment is not misused.

Finally, there have been suggestions in the media that the UK government deliberately tried to conceal this information from the CAEC, and by doing so, keep the information out of the public domain. I would like to make it very clear that this was never our intention. Had this been the case, we would certainly not have used these exports as a “case study”, in the 2008 Annual Report on Strategic Export Controls (page 13 of the report).

I am looking forward to working with the Committees on these and other arms control issues during the forthcoming parliamentary session.

23 September 2009

**Further written evidence submitted by Ivan Lewis MP, Secretary of State,
Foreign and Commonwealth Office**

ARMS EXPORTS TO SRI LANKA

When there is an outbreak of internal or regional conflict overseas it is standard procedure for the Foreign and Commonwealth Office (FCO), along with the Export Licensing Community, to review all extant licences to the destinations involved. Following the escalation of the internal conflict in Sri Lanka from January of this year a review of all extant export licences was carried out. The review sought to determine whether, in light of the changed situation, any licences should be revoked. I am writing now to update the Committees on the outcome of this review, and to set out our view on the implications for future strategic exports to Sri Lanka.

As Bill Rammell said when he appeared before the Committees in April, the Government has consistently taken a very restrictive approach to export licences to Sri Lanka, rigorously assessing all export licence applications against the Consolidated EU and National Arms Exports Criteria on a case by case basis in light of the prevailing circumstances. In particular, the Government has only issued licences for Sri Lanka where we have been satisfied that the goods would not provoke or prolong the conflict, nor be used for internal repression. However, the review has confirmed that it would be appropriate to revoke a number of extant export licences in light of the changed circumstances, and this has now been completed. These licences included replacement components for military utility helicopters and military telecommunications equipment.

Following publication of the CAEC’s Annual Report in August, sections of the media speculated, on the basis of partial information from previously published licensing data, that the Government had approved licences in breach of the Criteria. The focus of these allegations centred on three separate sets of licences, which were all approved during 2006 when the ceasefire was in place. The goods covered by the licences were armoured vehicles light machine guns and semi-automatic pistols. So that the Committees can satisfy themselves that these licences were not in breach of the Criteria, I am enclosing a more detailed description of the cases concerned:

Armoured vehicles (approved in September 2006): This licence covered the export of a small number of armoured four-wheel drive vehicles (less than ten) for use by senior government figures and visiting VIPs when travelling in Colombo and around the country. The Government assessed that the vehicles would not have been passed to other branches of the security forces and were extremely unlikely to be altered in any way that would mean they could be used offensively;

Machine Gun components (approved in September 2006): The export was for a small number of components for light machine guns. Given the role of the end-user in guarding and protecting buildings and ground installations and the low quantity, our assessment concluded that the components would not exacerbate existing tensions nor did they represent a clear risk for internal repression.

Semi Automatic Pistols (approved in February 2006): The application, submitted during the ceasefire, covered the export of a small number of personal side-arms for use by naval personnel. Our initial assessment concluded that the components would not exacerbate tensions nor represent a clear risk for internal repression. Furthermore, during recent combat operations, the navy are likely to have relied on its heavy weaponry to engage with the Liberation Tigers of Tamil Eelam (LTTE) rather than side arms.

In conclusion, the Government will continue to closely monitor the situation in Sri Lanka. While we cannot be certain exactly what happened during the fighting, particularly in the last days of the conflict, enough reports surfaced for us to have grave concerns about the numbers of civilians who might have died as a direct result of the final offensive. We have consistently supported calls for an independent and credible investigation into allegations of breaches in international law committed by both sides during the conflict, and for those accountable to be brought to justice. The UK's continued monitoring, combined with the outcome of the recent review will be taken into account when we assess all future export licence applications involving Sri Lanka. The vast majority of export licences received so far this year for Sri Lanka have been refused under the Consolidated Criteria. In practice, licences have only been approved where it was clear that the goods were intended for humanitarian, commercial or civil end use.

I hope you find this information useful.

14 October 2009

**Written evidence submitted by the Rt Hon David Miliband MP, Secretary of State,
Foreign and Commonwealth Office**

I would like to thank you and the other members of the Committee's for their continued support for our work towards an Arms Trade Treaty (ATT). This has been invaluable. I wanted to inform you of some recent important developments that I believe will help us secure a strong ATT within a clear timetable. I would be grateful if you could share this letter with your Committee colleagues.

In July this year we secured agreement by UN member states that the unregulated international trade in arms created problems that needed to be addressed. Building on this, we are submitting a new Resolution in the UN this week to call for a series of preparatory committee meetings in 2010 and 2011 leading to a full Diplomatic Conference on an ATT in 2012.

We have also been working closely with the new US Administration on an ATT and following discussions I had with Hillary Clinton over the weekend, I am very pleased to let you know that they have agreed to give their full support towards securing a strong ATT. In return, we have agreed to include in our Resolution language calling for further UN work that decisions at the UN Diplomatic Conference in 2012 are taken on the basis of consensus.

In line with the FAC report on 19 August, I judge that the highest priority is to secure the strongest possible treaty. I am very clear that US support is crucial to achieving this. The US shares our aim of establishing the highest possible arms export controls across the world. Their diplomatic force, and as the world's largest arms exporter, will help to sustain momentum and persuade sceptics.

I have thought carefully about the use of consensus as the basis for decisions at the UN Diplomatic Conference in 2012. There is a risk, as set out by the Foreign Affairs Committee in their report of 14 June, that consensus could lead to procedural delays. But we believe we have minimised this by calling only for consensus decision making at the Conference itself. With strong diplomatic pressure from the US and a broad range of supporters all pressing for high standards in an ATT, we envisage an increasing convergence of views that would make consensus the preferred method of decision making in the UN Diplomatic Conference. It would be a hollow victory to secure a strong treaty on paper through a series of majority votes if that meant that a number of key states would not ratify the treaty or implement its provisions.

The use of consensus does not change our commitment to a strong ATT that helps to prevent arms being used for human rights abuse, repression, and terrorism or to undermine social and economic stability and development. We look forward to continuing to work closely with a range of stakeholders from NGOs, Business, Faith Groups, Academics and others to secure the strongest possible ATT, with the widest possible support in the shortest possible time.

I will, of course, keep you up to date with developments. UK officials stand ready to brief the Committees' once the outcome of the Resolution is known.

16 October 2009

**Further written evidence submitted by the Rt Hon David Miliband MP, Secretary of State,
Foreign and Commonwealth Office**

I would like to thank you and the other members of the Committee for your continued support for a strong Arms Trade Treaty (ATT), and for your acknowledgement during the Westminster Hall debate on 5 November of the leading role played by the UK government in advancing the ATT cause. I welcome the forthcoming meeting on 19 November between FCO officials and the Committee to discuss this issue further.

I said in my letter of 16 October that I would keep you up to date on developments on our work towards securing an ATT. I am pleased to report a number of recent, very positive developments, which constitute real progress towards this objective.

You will be aware of the vote that took place at the UN First Committee on 30 October in which there was an overwhelming vote in favour of establishing a clear three year timetable to negotiate the treaty. This is a defining moment in the ATT process which sets a clear timetable for formal negotiations in 2010 and 2011, culminating in a Diplomatic Conference on the ATT in 2012.

Since Secretary Clinton issued a public statement underlining the US's full support for a strong ATT, on the understanding that negotiations would proceed on the basis of consensus, the US has been engaged actively in support of our efforts at the UN. As a result of the new US position there are already signs that some of the sceptical countries are beginning to approach the ATT differently. The next step in the UN process is a second vote on our ATT Resolution in General Assembly, in late November or early December. I expect this vote to have a similar positive result.

I am also confident that we can manage the risk of a delay in agreeing an ATT by a consensus based approach. Securing full US engagement in the process is a strong counterweight to this risk. The diplomatic force the US can deploy will be a great asset in driving forward the process as well as for engaging sceptics.

We have built up a broad coalition of domestic supporters who also want a strong ATT, including NGOs, faith groups and the defence industry. Coupled with active US support, I consider that the prospects for securing a strong ATT over the next three years are now much improved.

I will, of course, continue you to keep you up to date on developments.

23 November 2009

Written evidence submitted by the Export Group for Aerospace & Defence (EGAD)

Many thanks for inviting us to give evidence to the Committee on the morning of Wednesday 16 December 2009.

If we may, we would like to submit to the Committee, for their consideration, the following comments:

1. The past year has seen very many welcome developments in both the UK and international export control arena.
2. This has included, very recently, the decision at the United Nations with regard to the international Arms Trade Treaty (ATT), which is to be warmly welcomed. UK Industry will be happy to play an active and constructive role with both the British Government and also with the NGOs over the next three years to lobby our opposite counterparts in other nations and make the ATT a success.
3. We have been hugely encouraged by the 13 August 2009 announcement from the White House of a major review of the US export control system, and hope that some major, concrete developments may come out of this review.
4. We stand ready to work with the US-based Society for International Affairs (SIA), with whom we have worked harmoniously in the past, whenever the US Senate finally ratifies the proposed UK/US Defence Trade Cooperation Treaty, to ensure that our respective industries, on both sides of the Atlantic, will be able to implement this Treaty, and be in a position to make informed decisions on whether they want to be part of the "Approved Community", or not.
5. We have had highly constructive discussions with the NGOs to seek to come to a mutually acceptable solution to the issue of seeking to identify some way in which fully extraterritorial trade controls can be expanded to cover the whole of the Military List, and then presented their identified solution to the ECO, for their consideration.
6. We have had a meeting with the ECO to discuss the more effective promotion of awareness of the UK's Trade Controls to those UK persons affected by them.

7. We have established a dedicated Sub-Committee looking at the implications of the EU Directive.
8. We have continued to assist Cranfield University with the development and promotion of its “Strategic Export Controls” series of training courses, and been absolutely delighted that the ECO has now sought to include this scheme within its own “UK Export Control Training & Skills Academy” initiative.

We hope that the above comments may be of interest to the Committee.

23 November 2009

Further written evidence submitted by the Export Group for Aerospace & Defence (EGAD)

Many thanks for inviting us to give evidence to the Committee on 16th December 2009.

Just to clarify, we (EGAD) had a series of meetings with the NGOs (whose experts were drawn from Amnesty International, Oxfam and Saferworld) to discuss the issue of extraterritoriality. We were endeavouring to see whether we could mutually agree on a possible proposal to put to HMG for extending the UK’s Trade Controls to encompass full extraterritoriality to the whole of the UK’s Military List. These meetings took place on: (1) 14 March 2008, (2) 13 June 2008, (3) 23 July 2008, and (4) 18 February 2009. We then formally submitted our mutually agreed proposal to the Export Control Organisation for their perusal and detailed consideration at a meeting with the ECO on 21 April 2009, and then had a follow-up meeting with them to discuss this proposal further, and clarify any queries that they had, on 23 June 2009. We then had sight of the ECO’s 14 December 2009 detailed response to the Committee on our proposal on 15 December 2009, on the same day (I believe) that the NGOs were also notified of HMG’s views on what we had proposed.

We sincerely believe that the Export Control Act 2002, and the Export Control Order 2008, give the UK one of the most robust and broadly-drawn export control systems in the World, and the UK Government, in general, and the ECO, in particular, are to be warmly congratulated for delivering this radical overhaul of the UK’s export control system.

That being said, we have noted that there are some aspects of the operation of the above regulations which are causing problems for UK companies—these are almost invariably down to the quantity and quality of the staffing resources that are allocated to this activity within Whitehall; we are endeavouring to work constructively with the British Government to identify the problems concerned and ways of addressing them.

We were shocked to hear, from Oliver Sprague (at the NGOs’ evidence session), about the UK “brassplate” company which had been shipping defence materiel to southern Sudan, and trust that the British Government has at its disposal adequate legislative measures to be able to pursue the UK entity involved with vigour.

We have been invited to nominate representatives from companies to sit on a proposed new SPIRE Industry Working Group to provide input into discussions on possible future additional developments to the highly effective SPIRE system.

We have also been invited to nominate representatives from companies to trial the proposed new BusinessLink export control website, which is due to take over the dissemination of export control information to Industry from that of the ECO—many companies have expressed grave concerns about this development (just as the ECO’s website has been successfully revamped to rectify its previous shortcomings), and the initial results of the first trials indicate that this project potentially has a long time to run to get it right; the key, in our view, is for this work not to be rushed, but for the time to be taken to make sure that the final finished product does meet Industry’s needs.

We hope that the above comments may be of interest to the Committee.

24 November 2009

**Further written evidence submitted by Ian Lucas MP, Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills**

I am pleased to include a summary of findings from the independent study into compliance levels in the dual-use sector which was carried out earlier this year. I would be grateful if you would not disseminate or publish the summary of findings until we have published them on our website in December. I am however, also sending them to NGO and industry representatives in advance of publication.

I should stress that I realise that the study has its limitations: it did not purport to be a comprehensive audit, nor did it involve physical checks of exporters’ compliance systems and records. That would be impossible given the numbers of transactions involved. Its findings are necessarily based on respondents’ self-declared levels of compliance. However, the results are consistent with the ECO’s own compliance

audits, recent HMRC surveys, and other evidence related to compliance. The study was carried out by reputable consultants with a very good track record, using a large sample and robust methodology. Such studies are generally accepted as a legitimate means of establishing evidence through a number of indicators, short of physical checks. The interviews were carried out in complete confidence under UK Market Research Society guidelines, with the ECO having no access to individual attributed responses, or even the names of individuals or companies who responded. It is also notable in this respect that the study produced some negative results (ie indicators of non-compliance), which adds to its credibility.

The results from the study are very positive and indicate that deliberate non-compliance in the dual-use sector is not widespread. 88% of all respondents agreed that UK businesses take export control compliance very seriously and on average respondents felt that their own companies were fully compliant in 91% of cases where the controls applied.

Encouragingly, the vast majority of respondents (99%) felt that their organisation's compliance with dual-use export controls was either being maintained or getting better. While any deterioration in compliance is a cause for concern, only 1% said that they thought their organisation's compliance was getting worse.

As well as providing an indication of compliance levels, the study aimed to help the Export Control Organisation (ECO) improve awareness, communications 'and compliance by exploring respondents' perceptions of current information sources relating to the ECO and dual-use export controls. Again, results in this area were largely positive, with 87% of those who expressed a view, saying that their opinion of ECO is favourable or very favourable. There was praise, on the whole, for the ECO's training events, ECO website and its electronic application processing system SPIRE. This is not, of course, a reason for complacency, and Awareness and Compliance Units within the ECO are using the findings of the study to develop their communications and implementation strategies to further increase awareness and compliance with strategic export controls.

Your comments on the results of the study would be welcomed. I have not enclosed the full report with this letter because of its technical and statistical nature, but the consultants who carried out the research have endorsed the attached summary. Should you wish to have sight of the full report I would be pleased to provide it to you. My officials would be happy to make a formal presentation of the findings of this study if you feel this would be helpful to the Committees.

I look forward to continuing working with you in the coming months.

The Department for Business Innovation and Skills Export Control Organisation Dual Use Compliance Study November 2009 is available at: <http://www.berr.gov.uk/files/file53872.pdf>

26 November 2009

Written evidence submitted by the UK Working Group on Arms¹

SUMMARY OF RECOMMENDATIONS

With regard to UK brokering controls, the Government should prioritise targeted outreach activities to other arms-exporting governments to ensure that these governments are fully aware of UK controls and immediately inform the UK licensing authorities whenever a UK-registered company applies for an export licence.

The Government should take a wider review of the use of company formation in relation to arms brokering activities and consider steps to significantly tighten rules and oversight over any company registration and incorporation procedures for companies involved in the defence or security sector.

In addition to existing licensing requirements for the brokering of arms, the Government should establish a register of arms brokers, to which all UK entities would need to apply before carrying out any brokering activities.

The Government should continue to champion an EU torture end-use control, and should adopt such a measure unilaterally if it is rejected by EU partners.

The Government should pursue an expansion of the EU Military End-Use Control to include both complete items and components which the exporter:

- knows are intended for use in "listed destinations" (a limited set of destinations as specified by the Government) by the military, police or security forces, or
- has been informed by the Government that the goods will or may be so used, where there is a clear risk that the items or finished goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.

In the absence of an EU-wide agreement, the Government should take steps to introduce enhanced military end-use controls within the UK's own national transfer control system.

¹ The UK Working Group on Arms comprises Amnesty UK, Omega Research Foundation, Oxfam GB and Saferworld.

The UK Government should explore and establish ways of regulating exports from subsidiary companies. While clearly a complex legal area, the UK should be able to apply UK regulations on a UK parent company where it can be proved to hold de facto control over the subsidiary. We repeat our previous recommendation to the CAEC that, at a minimum, these controls should apply to exports from subsidiary companies to embargoed destinations.

The UK Government should emulate the actions of other major arms exporting states and introduce strict re-export controls based upon “no-re-export without prior UK authorisation”. The Government should also explicitly reserve the right to carry out follow-up checks in cases where suspicions have arisen regarding possible re-export or misuse of UK-origin arms transfers.

Anti Vehicle Landmines should be classed as Category B goods at the earliest opportunity. The decision not to include them runs counter to the UK’s existing commitments in this area; they have been clearly identified as categories of heightened international concern and the UK Government is at the forefront of efforts to reduce proliferation risks associated with these types of mines.

The Government should strengthen and clarify the recently introduced Cluster Munition (Prohibition) Bill through formal amendments and interpretative statements.

Moving into the (pre-) negotiating stage of the ATT process, the Government, working with partners, should develop and defend strong draft ATT text, and should devote significant resources to ensure that appropriate staff and sufficient time is made available to pursue a strong and robust Treaty.

The inclusion of clear and consistent criteria on sustainable development must be part of the UK Government’s core objectives for an ATT.

The UK Government should seek to encourage strategies within the EU for universal, clear and consistent application of criterion 8, and should spearhead discussions on how to assess the risk of corruption as part of that assessment.

The Government should ensure that it is including a full assessment of the risk of unaccountable spending as well as corruption as part of their arms export controls and application of criterion 8. This assessment should take place on a case-by-case basis but should also consider the cumulative impact of a series of transfers and should not be restricted to only least-developed countries.

BRASS PLATE COMPANIES

1. The UK Working Group on Arms (UKWG) is becoming increasingly concerned about the use of UK “brass plate” companies² to facilitate the supply of weapons to countries of concern. Evidence shows that such entities have helped facilitate transfers of weapons to several destinations of concern, seemingly without applying for the necessary Trade Control Licences.³

2. These transfers appear to have operated outside of the UK regulatory framework and therefore present significant challenges to enforcement and outreach activities, given that these companies appear largely to operate from third countries and any evidence-based enforcement activities involve very complex international jurisdiction issues. The result appears to be that such companies can operate with seeming impunity.

3. In at least one of these cases, it would appear that the rationale for using a UK-registered company was to avoid excessive administrative red tape and tax-related issues in the Ukraine. It is worrying that in this regard, the UK appears to be perceived as running a less robust system than the Ukraine.

4. The Government should prioritise targeted outreach activities to other arms-exporting governments to ensure that these governments are fully aware of UK brokering controls and immediately inform the UK licensing authorities whenever a UK-registered company applies for an export licence.

5. The Government should take a wider review of the use of company formation in relation to arms brokering activities and consider steps to significantly tighten rules and oversight over any company registration and incorporation procedures for companies involved in the defence or security sector.

BROKERING REGISTRATION

6. The above example raises the question, yet again, of whether the UK should require all UK entities that wish to broker controlled equipment to register as brokers. Registration should require some degree of probity test to ensure that all potential brokering companies are legitimate, bona fide companies and as such, the UKWG anticipates that as part of any vetting process the type of brass plate companies discussed above would fail this test.

7. When combined with an active outreach programme, especially to those states acknowledged as significant arms exporters in their own right, such a system of registration would alert the authorities in the exporting state of the need to exercise extreme caution (at the very least) where any UK broker was not

² Brass-plate companies are those entities that tend not to have an operational presence within the UK but do have a UK registered address.

³ See separate memoranda submitted by Amnesty International UK.

registered as such in the UK, and would hopefully lead to dialogue between the UK and the country of proposed export, dialogue that could result in potentially problematic transfers being refused and potentially problematic actors being brought under tighter control.

8. As the use of arms brokering controls becomes more widespread, more and more states are introducing their own brokering registration requirements. In some cases, most recently in Portugal, to be eligible for an export licence brokers are required to register unless they are already registered within their own national jurisdiction. This raises the prospect of UK brokers being forced to undertake complex, multiple registrations elsewhere because they are unable to register in the UK.

9. In addition to existing licensing requirements for the brokering of arms, the Government should establish a register of arms brokers, to which all UK entities would need to apply before carrying out any brokering activities.

TORTURE END-USE CONTROL

EC Regulation 1236/2005 and controls on equipment conducive to use in torture and ill-treatment

10. The UKWG once again applauds the UK Government's work to develop support for an EU-level end-use control on equipment suspected to be destined for use in torture and ill-treatment, announced in February 2008. We firmly believe that a workable torture end-use control might present a valuable preliminary model for the kind of military/security/police end-use control which the UKWG has advocated in previous submissions to the CAEC.

11. We note that a meeting to discuss the operation of EC Regulation 1236/2005 is due to be held in early 2010 and hope that progress is made on the torture end-use control at this forthcoming meeting. If, however, such a catch-all is rejected by EU partners, it should still be introduced unilaterally at a UK level (thereby setting an example for other EU partners to follow), and we welcome the Government's statement that it will consider introducing such a control independently.

12. The Government should continue to champion an EU torture end-use control, and should adopt such a measure unilaterally if it is rejected by EU partners.

MILITARY END-USE CONTROL

13. As stated in last year's memorandum, the UKWG welcomes the Government's stated intention to seek an expansion of the EU Military End-Use Control beyond its current coverage of non-listed goods intended for the use in or production of listed goods to be supplied to certain destinations. These discussions remain highly important to the conceptual framing of export controls in the future, placing increasing focus on the use of equipment rather than purely on its technical specifications. We are therefore disappointed that meaningful discussions on this do not appear to have been initiated by the Government. Despite announcing in February 2007 its intention to develop EU policy in this area, little or no substantive progress appears to have been made.

14. The Government has stated that such a measure would allow governments to require licences for non-controlled goods "which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies."⁴

15. We also welcome the fact that this end-use control is envisaged to extend beyond embargoed destinations. However, at present the Government has stated that it intends to limit this expansion to control non-listed "complete equipment".⁵ We are not convinced that such a measure would prevent problematic transfers involving the export of significant components or, for example, unfinished vehicle kits.

16. Since last year's submission, the UKWG have seen evidence of the use of armoured Land Rover-based vehicles by IDF forces in Operation Cast Lead. These vehicles were not identified in the Government's assessment of equipment of UK origin that may have been used. Available evidence suggests that these have been supplied as non-military utility vehicles which were then adapted into armoured vehicles by Israeli based company M.D.T. Protective Industries Ltd, part of the US company Arotech.⁶ According to MDT:

The "David" is the newly upgraded model of the "Tuborg", developed by M.D.T. in close cooperation with the Israeli Ministry of Defense to serve as the Israel Defense Forces' next generation armored vehicle . . . The "David" is built on a Landrover Defender 110 platform, with large side and rear doors for rapid entry and exit. It offers a high level of protection, yet is armored with lightweight materials to enable it to carry additional weight: 4-6 soldiers in full battle dress. The "David" has 4 gun ports.⁷

⁴ Review of Export Control Legislation (2007), <http://www.berr.gov.uk/files/file47087.pdf>.

⁵ DBERR, Review of Export Control Legislation (2007)—Government's End of Year Response (December 2008), p 6.

⁶ "Arotech's MDT Awarded Record \$22 Million Orders for 'David' Combat Armored Vehicles: Israel Defense Force (IDF) will use 'David' for combat missions", Arotech Corporation, 10 April 2006, <http://www.arotech.com/pr/2006/pr10042006.shtml>.

⁷ "Solutions: David", MDT Protective Industries, <http://www.mdtisrael.com/solutionsdavid.html>.

17. The Government should pursue an expansion of the EU Military End-Use Control to both complete items *and components* which the exporter:

- knows are intended for use in listed destinations (a limited set of destinations as specified by the Government) by the military, police or security forces; or
- has been informed by the Government that the goods will or may be so used;

where there is a clear risk that the items or finished goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.

18. In the absence of an EU-wide agreement, the Government should take steps to introduce enhanced military end-use controls within the UK's own national transfer control system.

SUBSIDIARY COMPANIES

19. Since our last submission, more evidence has emerged of the role that weapons supplied from UK-owned foreign subsidiary companies have had in the facilitation of grave human rights violations. The UKWG has provided the Committee with several similar examples in previous years. This issue continues to pose a direct challenge for the UK transfer control system, not least because subsidiaries are separate legal entities from their UK parents and therefore are regulated under the jurisdiction of the state in which they are located. In the case of overseas-based, UK-owned subsidiaries, it appears that UK controls do not apply at all—even to embargoed destinations. This is despite the fact that they may be controlled as well as owned by a UK-based company.

20. Most recently in Guinea, photographs captured by the media on 1 October reveal Guinean security officers patrolling Conakry in a Mamba armoured personnel carrier (APC). Ten Mamba APCs were sold to Guinea in 2003 by a company based in South Africa, Alvis OMC (now named Land Systems OMC), then a subsidiary of UK company Alvis and now a subsidiary of UK-based BAE Systems. An Alvis OMC spokesperson stated at that time that these vehicles would be used for “border control” in Guinea.⁸

21. Video footage also shows security forces arriving in these vehicles to suppress a demonstration on 28 September. Further footage of a subsequent funeral for victims of these attacks also shows Mamba APCs arriving with security forces that then fired tear gas at people gathered at Conakry's main mosque. In a previous report, Amnesty International documented the use of these vehicles in Conakry in January 2007 to drive into crowds of peaceful demonstrators while firing at them.⁹ Widespread violence and serious human rights violations committed by Guinea security forces in September 2009 prompted the EU to impose an arms embargo on 27 October 2009.

22. Land Systems OMC has also exported armoured vehicles to over 20 other countries, including India (for use in Kashmir), Nepal (where OMC-type vehicles were used in King Gynandra's takeover of executive power in 2005) and Uganda (where they were used to forcefully disperse opposition supporters prior to the election in February 2006).¹⁰

23. The UK Government should explore and establish ways of regulating exports from subsidiary companies. While clearly a complex legal area, the UK should be able to apply UK regulations on a UK parent company where it can be proved to hold de facto control over the subsidiary. We repeat our previous recommendations to the CAEC that, at a minimum, these controls should apply to exports from subsidiary companies to embargoed destinations.

POST-EXPORT CONTROLS (NO-RE-EXPORT CLAUSES, END-USE MONITORING)

24. The UK continues to resist taking any steps to enhance its post-export controls. Repeated calls to introduce “no re-export without permission” provisions and/or the right to monitor end-use into transfer licences or end-use certification requirements have so far been rejected. The Government claims that UK pre-licensing assessments are of such a high standard that post-export controls would not add any value. However, the UK Government's acknowledgement that it does on occasion seek to investigate end-use of UK-sourced equipment undermines this argument.

25. The Government has also argued that such measures would make no difference, on the grounds that if a recipient is intent on re-export then any contractual re-export restriction or monitoring commitment will be ignored. This completely fails to take into account cases where re-export might not be planned at the time of the original transfer but instead takes place after some time has passed and circumstances and requirements in the original recipient state have changed. It also ignores the value of setting out specific obligations in advance of a transaction, obligations that can then form a legitimate basis for seeking to prevent an unwelcome retransfer or to undertake remedial measures in the event that such a retransfer does take place.

⁸ Amnesty International, *Blood at the Crossroads: Making the Case for a Global Arms Trade Treaty* (ACT 30/011/2008, 17 September 2008), Chapter 6.

⁹ Amnesty International, “Amnesty reveals evidence of military equipment from UK-owned subsidiary company used in brutal Guinea”, 26 October 2009, http://amnesty.org.uk/news_details.asp?NewsID=18467.

¹⁰ For more information, see UKWG Submission to the ECA Review p.21, <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/page42883.html/strategic-export-control/legislation/export-control-act-2002/review/page42883.html>.

26. Anecdotal evidence from other EU states that do put in place re-export restrictions suggests that while this will not alter recipient behaviour in all cases, there are any number of customers that do take their contractual obligations seriously and will honour them. The US is well known for applying strict re-export controls, and for a vigorous approach to enforcement and penalties which actively seeks to generate future compliance by the company concerned and more broadly.¹¹ Moreover, the use of re-export restrictions is now spreading to other countries, such as China and Russia, whose arms transfer control regimes have not always been regarded as anywhere near as rigorous as the UK's.

27. The UK therefore appears to be behind the times on this issue. Not only is it failing to use the tools that other exporting states regard as valuable, it also stands in the way of what appears to be an emerging norm, and thus it may be giving succour to those who might look to re-export regardless of the wishes of the original transferring state.

28. The UK Government should emulate the actions of other major arms exporting states and introduce strict re-export controls based upon "no-re-export without prior UK authorisation". The Government should also explicitly reserve the right to carry out follow-up checks in cases where suspicions have arisen regarding possible re-export or misuse of UK-origin arms transfers.

ANTI VEHICLE LANDMINES (AVMs)

29. The UKWG is pleased that the Government is considering placing AVMs into Category B. There is universal agreement among the UKWG, industry and the CEAC that the case for shifting AVMs into Category B is compelling, unproblematic and straightforward to administer. As it stands, leaving AVMs in Category C means that AVMs may be traded under the Open General Trade Control License (OGTCL) and many of the permissible destination states under the OGTCL are not signatories to the Joint Declaration on AVMs. The current situation makes it impossible for the Government to fully meet its commitment under the 2006 Joint Declaration, namely to prevent the transfer

. . . of any anti-vehicle mine (a) to any recipient other than a State or State agency authorized to receive it; (b) if it does not meet the detectability and active life standards set out in this declaration, except for the purpose of destruction or for development of and training in mine detection, mine clearance, or mine destruction techniques; (c) to any State that has not stated the same policy that is set out in this declaration; and (d) without an end-user certificate.¹²

30. The UKWG does not support arguments hitherto raised by the Government that Category B goods are only for items where "international consensus" exists. In our view, Category B is also for items of equipment that also raise specific and serious proliferation concerns. We believe that AVMs clearly fall within this category, and furthermore we believe that the Government is already willing to exercise national discretion regarding the three weapons categories where it sees fit. The UK took the unilateral step to move unmanned aerial vehicles (UAVs) from Category A to Category B for a variety of reasons, and during drafting there was considerable discussion with national NGOs and industry about the range of SALW that would be classed as category B items.

31. Anti Vehicle Landmines should be classed as Category B goods at the earliest opportunity. The decision not to include them runs counter to the UK's existing commitments in this area; they have been clearly identified as categories of heightened international concern and the UK Government is at the forefront of efforts to reduce proliferation risks associated with these types of mines.

CLUSTERS LEGISLATION

32. The UKWG welcomes the introduction of the Cluster Munitions (Prohibition) Bill. The Bill was introduced into the House of Lords on 19 November and will have had its second reading on 8 December 2009. It is hoped that the legislation will have a swift passage through Parliament, which will enable the UK to ratify the Convention in time to participate fully in the First Meeting of States Parties in November 2010. However there are a number of areas where the legislation should be strengthened or clarified through formal amendments or interpretive statements. These are as follows:

¹¹ For example, in January 2009, the Qioptiq group was fined US \$15 million for more than 160 breaches of the US Arms Export Control Act and International Traffic in Arms Regulations (ITAR). The companies were formally part of Thales High Technology Optic Group when these offences took place. Several companies within the Thales Group were cited for unauthorised re-transfers of US-origin technology to various countries. For example, between 2001 and 2005 Thales Singapore re-transferred US origin technology to China, Cyprus, Israel, Iran, Egypt and Pakistan (Proposed charging letter to Benoit Bazire, CEO Qioptiq S.a.r.l. from David Trimble, Director, Office of Defense Trade Controls Compliance, US State Department, 12 April 2008, http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/Qioptiq_ProposedChargingLetter.pdf). Qioptiq Group was held liable even for the previous export control violations of Thales High Technology Optic Group, suggesting that companies can be liable under US law for offences dating back over a long period, which undermines the UK Government's argument that an extended length of time between the original export and the re-transfer is an impediment to applying re-transfer controls. Also, the civil penalties applied were of a level intended to generate future compliance with re-export controls by both the company concerned and others (who would be aware of this judgement). Clearly in the US it is considered that to be effective, any violations must be enforced with genuinely robust and punitive penalties.

¹² Declaration on Anti Vehicle Land Mines. CCW/CONF.III/WP.16/Amend., 17 November 2006.

Compatibility of the legislation with the UK Export Control Order 2008

33. An amendment should be inserted into the Cluster Munitions (Prohibition) Bill to prohibit transshipment and the provision of ancillary services such as transport, finance, insurance, marketing and promotion activities, as in the current Export Control legislation relating to Category A goods. Also it should clarify that the provision of financial services to anybody engaged in transshipment of cluster munitions is prohibited.

Prohibiting marketing and promotion activities

34. This is especially important in light of recent findings at the Defence Systems and Equipment International Exhibition (DSEi) held in September 2009 at Excel in London. The UKWG found that Pakistan Ordnance Factories (POF) was advertising artillery ammunition including its 155mm Base Bleed DP-ICM (Dual Purpose Improved Conventional Munition)—a cluster munition—in its product brochures. At the time of the exhibition, the organisers were contacted about these promotional materials and an investigation launched as to whether the exhibitor was in breach of its obligations. At the time of writing, the outcome of this investigation is unknown.

Prohibition on investment

35. An amendment is required to make it an offence to provide financial services and investments on behalf of any company involved in the production of Cluster Munitions. As previously stated, such measures are already contained with current transfer control legislation and it is important to ensure consistency across related legislation to avoid potential loopholes.

Positive obligations

36. The Bill does not include any of the positive obligations enshrined in the Cluster Munitions Treaty. While such an omission is not unusual for UK legislation established to implement international treaties, certain points may be useful to include via amendments such as:

- A requirement for the Secretary of State to table in Parliament the transparency reports required under Article 7 of the CCM, which could be included as an amendment to Clause 20 of the Bill. In relation to this and also a possible amendment to Clause 20, a requirement for the Secretary of State to “collect reliable relevant data with respect to cluster munition victims” as per CCM Article 5.1.
- An amendment to Clause 9, noting that the Secretary of State “shall notify the governments of all States not party to [the CCM] . . . of its obligations under this Convention” and “shall promote the norms it establishes” and “shall make its best efforts to discourage States not party to this Convention from using cluster munitions.” This language is taken directly from CCM Article 21.2.
- Foreign stockpiling: in June 08 the UK twice stated on the parliamentary record that although it does not deem it to be a legal requirement under the Convention, in keeping with its spirit, the UK would seek the removal of all foreign stockpiles of cluster munitions from UK territory within the eight-year period allowed for stockpile destruction. A statement clarifying this interpretation could be made by the Government.

37. The Government should strengthen and clarify the recently introduced Cluster Munitions (Prohibition) Bill through formal amendments and interpretative statements.

ARMS TRADE TREATY (ATT)

Current situation

38. On 30 October, states at the UN voted overwhelmingly in favour of a resolution to negotiate a “strong and robust” ATT.¹³ This resolution has since been endorsed by the UN General Assembly, with a final vote of 151 in favour, 20 abstaining and one (Zimbabwe) against. Significantly, for the first time the world’s biggest arms exporting state, the US, voted in favour of a treaty.

39. The resolution mandates a series of preparatory meetings leading to a UN negotiating conference in 2012 to elaborate a legally-binding instrument on the highest possible common international standards for the transfer of conventional arms. At the preparatory meetings states are expected to debate proposals for actual treaty text on issues such as scope, parameters and treaty implementation.

40. There are concerns, however, about the negotiating rules; the resolution declares that the negotiating conference will be undertaken on “the basis of consensus”. This reference, which was the price of US support, raises the unwelcome prospect that in the event of states taking a narrow interpretation of “consensus” (ie giving all states a veto over Treaty text), the will of the vast majority of states could be frustrated by the objections of a few, or even one. Moreover, while support for an ATT has been maintained

¹³ A/C.1/64/L.38/Rev.1, The arms trade treaty, UN First Committee resolution, 30 October 2009, <http://www.reachingcriticalwill.org/political/1com/1com09/res/L38Rev1.pdf>.

since 2006 (the year of the first ATT UK resolution) even as the mandate has become stronger, included among the abstaining states are several which are of major importance generally and regarding the issue of arms transfers specifically.

41. The UK has continued to play a leadership role on the ATT, for which it is to be generously congratulated. It is highly doubtful that we would be at this point whereby an ATT could be a reality by 2012 were it not for its strong engagement. Nevertheless it should not be assumed this is a “UK project”; support for the ATT is widespread and a range of other states have demonstrated a very real commitment to agreeing an effective, rigorous Treaty.

Developing Treaty text

42. Looking forward, the development of draft Treaty text is an urgent priority. As has been argued many times before by the UKWG, an ATT is only worth having if it provides real protections for human rights and development. It is incumbent on states that share this view to develop and defend appropriate text, and this process should start as quickly as possible.

Involvement of relevant departments

43. Up until now, UN discussions on the ATT have been led by disarmament diplomats, however the ATT is not a disarmament instrument and it is critical that arms transfer control experts from all relevant branches of government are brought into and begin to lead the process. In the case of the UK this will include for example officials from the Counter Proliferation Department in the FCO, the Export Control Organisation in BIS, the Counter Proliferation and Arms Control Department in the MoD, the Conflict, Humanitarian and Security Department in DfID, and the Counter Proliferation and Crime Regimes Team in HMRC. During the UN Open-Ended Working Group meetings on the ATT this year, there were occasions where the participants were not fully informed of or did not properly understand all the issues being discussed. For example, the divergence of understanding of what might be meant by the term “comprehensive scope” was extremely unhelpful. As one of the acknowledged leaders of the ATT process, the UK can set a useful example by bringing its arms transfer control experts to the centre of UN and other ATT discussions.

Consensus

44. As intimated above, the issue of consensus could create huge problems for the ATT; a narrow interpretation could encourage supportive states to sacrifice quality for the sake of reaching agreement for agreement’s sake. However, UN processes have previously interpreted the term “consensus” in a variety of ways, and states such as the UK should be asserting even now that it can not in this case give each and every state the power of veto. Tim Caughley, writing recently in *Disarmament Insight*, suggested using the type of approach to proceeding on the basis of consensus taken within the context of the Law of the Sea, ie “[every effort should be made] to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted”.¹⁴

Working with the US

45. The UK has an interest in working closely with other states on the ATT, be they ATT champions, agnostics or sceptics; the credibility of the ATT will benefit from its having widespread support. The relationship with the US will be especially important; the US has indicated that now it is in favour of an ATT it expects to engage very actively in the lead up to and during negotiations. While in many ways this is to be celebrated, there are indications that US thinking may not always tally with that of the UK, eg on the question of including ammunition within the scope of the Treaty. It is of fundamental importance that the UK works with the US but in so doing defends key Treaty elements, eg comprehensive scope (including ammunition), and rigorous, universally applied criteria based on the understanding that transfers are to be refused where there is a substantial risk that they will be used in serious violations of international human rights law or international humanitarian law, or will seriously impair poverty reduction or socio-economic development.

Adequate time

46. The process as set out in this year’s resolution involves four weeks of preparatory meetings in 2010 and 2011, to be followed by a four-week negotiating conference in 2012. Comparison with other treaty processes dealing with issues of a similar complexity and political sensitivity suggests that more time needs to be made available, at least during the preparatory stage. There are indications that some other states are already considering how best to provide more space for discussion, both within the official UN context and also in “unofficial” settings; the UK as one of main supporters of an ATT should be playing its part, both in terms of identifying opportunities itself and in supporting the efforts of others. Experience suggests this will involve substantial blocks of time made available for dedicated ATT debate; meetings in the margins of other events or for short (eg lunchtime) seminars are unlikely to move the process forward.

¹⁴ Tim Caughley, “Consensus rules the ATT. Or does it?”, *Disarmament Insight*, 10 November 2009, <http://disarmamentinsight.blogspot.com/2009/11/consensus-rules-arms-trade-treaty-or.html>.

Resources

47. A number of the issues raised above have implications for the resources that will be needed to make a success of the ATT (pre-) negotiating stage, for example commitments in terms of personnel from different government ministries and departments and in terms of additional opportunities for ATT discussions. The UKWG appreciates that in today's straightened economic circumstances there is enormous competition for these resources. But without further concerted effort from the UK, there is a serious risk that the ATT process will either fail or deliver an unhelpful lowest-common-denominator compromise. The UK has invested considerable effort and reputation on the ATT to date; it would be a terrible shame for the UK and a tragedy for the millions of people whose lives and livelihoods are threatened by irresponsible arms transfers if all the good work so far is undone by a lack of commitment moving forward.

48. Moving into the (pre-) negotiating stage of the ATT process, the Government, working with partners, should develop and defend strong draft ATT text, and should devote significant resources to ensure that appropriate staff and sufficient time is made available to effectively pursue a strong and robust Treaty.

SUSTAINABLE DEVELOPMENT, ACCOUNTABLE SPENDING AND CORRUPTION

49. The UKWG is concerned that under the current policy, arms transfers may be approved that do not involve accountable and transparent defence procurement procedures in the importing country, or because the true costs of the transfer are not clear, and are therefore at risk of draining resources without being accountable to the parliament or citizens of the recipient country.

50. These transfers risk undermining sustainable development where the importing country has a particularly limited budget, and military expenditure is balanced against spending on healthcare and education.

51. The example of Turkey as a Middle Income Country with continued development challenges and severe debt problems shows the implications of arms transfer costs on achieving poverty reduction and development goals such as the Millennium Development Goals (MDGs). Arms imports over the years have accounted for a significant component of Turkey's accumulated debt and researchers from SIPRI have calculated that between 2000 and 2007 alone Turkey's arms-related debt amounted to at least \$7.1 billion and more probably a figure in the range of \$10.5—\$15.8 billion.¹⁵

52. While Turkey is making good progress towards some of the MDGs, it faces challenges on others, including reducing child mortality, and the level of debt is acknowledged by the Government to restrict the funding on healthcare and education. The Turkish Government's 2005 MDG report highlights findings from the National Development Plan 2004–06 that:

the growing domestic debt forces the government to take austerity measures, which lead to further restrictions on the already constrained national budget. This impacts negatively on the allocation of funds for any policies targeting improvement of social welfare in general, and income distribution and poverty alleviation in particular.¹⁶

53. South Africa is an example of another country that has experienced the impact of international arms deals that drain significant resources. An arms deal approved in 1999 involving numerous and persistent allegations of corruption continues to cost the country R4bn (US \$530 million) a year in debt repayments.¹⁷ For a country struggling to meet some of the MDGs this is a significant cost. The same amount per year would correct reported infrastructural shortfalls in South African Schools, or would make up the gap in free provision of clean drinking water.¹⁸

54. In the second quarter of 2009 the UK granted Standard Individual Export Licences (SIELs) for transfers to South Africa and Turkey to the value of £38 million and £28 million respectively.¹⁹ It is not clear if or how the UK Government is ensuring that these arms transfers are part of accountable and transparent expenditure where applicable, and that their total cost including future debt payments is publicly accountable. It is also not clear how the UK Government is considering the cumulative impact of the cost of a series of transfers or how it is assessing the risk of corruption and mitigating that risk.

55. The establishment of the EU Common Position defining common rules governing control of exports of military technology and equipment has meant that certain states are looking again at how they apply criteria, including criteria on Sustainable Development in a clear and consistent way.

56. The UK Government should seek to encourage strategies within the EU for universal, clear and consistent application of criterion 8, and should spearhead discussions on how to assess the risk of corruption as part of that assessment.

¹⁵ Shooting Down the MDGs, Oxfam Briefing Paper, p 11.

¹⁶ Ibid, quoting the Millennium Development Goals Report: Turkey 2005, p 16, http://www.undg.org/archive_docs/6161-Turkey_MDG_Report.pdf.

¹⁷ Ibid, p 14.

¹⁸ Ibid.

¹⁹ "Strategic Export Controls Country Pivot Report 1 April 2009 to 30 June 2009", Export Control Organisation, pp 174–177 and pp 197–200, <http://www.fco.gov.uk/resources/en/pdf/4103709/5476465/strat-exp-cont-09.pdf>.

57. The Government should ensure that it is including a full assessment of the risk of unaccountable spending as well as corruption as part of their arms export controls and application of criterion 8. This assessment should take place on a case-by-case basis but should also consider the cumulative impact of a series of transfers and should not be restricted to only least-developed countries.

8 December 2009

Written evidence submitted by 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. Around 80% of CAAT's funding comes from its individual supporters.

2. The Secretaries of State, in their introduction to the Annual Report on Strategic Export Controls 2008, claim that: "... we remain committed to being as transparent and open as possible about our export licensing decisions and policy. In this way, all stakeholders can be assured that the trade in strategic goods is being handled responsibly."

3. CAAT is not assured. Even a cursory glance at the quarterly and annual Strategic Export Controls Reports on the Foreign and Commonwealth Office (FCO) website shows that military equipment continues to be exported from the UK to areas of conflict, governments with very poor records on human rights and countries with major development needs. Meanwhile, the myth that such exports are essential for the economy continues to be propagated.

UKTI DEFENCE & SECURITY ORGANISATION

4. Since April 2008, responsibility for promoting military exports has rested with UK Trade & Investment (UKTI). Its Minister, Lord Mervyn Davies, is part of the ministerial teams of both the FCO and the Department for Business, Innovation and Skills.

5. Military exports account for just 1.5% of all exports, with 40% of the value for these being imported. UKTI's Defence & Security Organisation (UKTI DSO) receives disproportionate support within the organisation. It has 160 staff working to promote arms sales whereas there are only 130 UKTI staff specifically allocated to all the other industrial sectors put together. The remaining 2,300 UKTI staff are available to support all industries, including military companies.

6. Even if ethical questions are put to one side, there can be no justification of such disproportionate support for one industry. However, the arms industry is hugely, and rightly, controversial.

7. Political intervention to support the arms industry is seen part of UKTI DSO's mandate. In a speech on 21st May 2009, Richard Paniguan, Head of UKTI DSO, said: "There have been high-level political interventions—often behind the scenes—in places like Libya, Oman, India and Algeria. The key here is consistent support over time, delivered at key points in a campaign. You'd expect us to deliver Whitehall support, and we are doing that."

8. With regards to Algeria, reports in *Jane's Defence Weekly* (23.9.09) and *The Sunday Times* (27.9.09) say that AgustaWestland is close to winning a helicopter order. Any such contract would be most disturbing, not least because it is said that the helicopters will be used for internal security purposes. The Algerian government has been fighting with radical Muslim groups for more than a decade. According to the reports, the Algerian authorities asked that the deal, which includes the supply of Merlin helicopters, some to be made in Algeria under licence, should not be publicised.

9. According to the response, July 2009, to a Freedom of Information (FoI) request from CAAT, between June 2008 and September 2009 UKTI DSO officials held meetings with representatives of the governments of China, Colombia, Democratic Republic of Congo, Georgia, India, Indonesia, Iraq, Libya, Pakistan, Peru, Philippines, Saudi Arabia, Sri Lanka, Turkey and Vietnam. Seven of these countries are considered to be "major countries of concern" in the FCO's "Annual Report on Human Rights 2008", published in March 2009—China, Colombia, Democratic Republic of Congo, Iraq, Pakistan, Saudi Arabia and Vietnam; others, including Georgia and Sri Lanka, were involved in major conflicts in 2008–09.

10. Another country to attract the attention of UKTI DSO is Angola, emerging from a long period of conflict. It also has large offshore oil reserves. While some of the potential exports might assist explosive ordnance disposal, the fact a country with underlying mineral wealth is seen as an "opportunity" for general military sales in the aftermath of war is a sad reflection on the UK government's priorities.

DSEI ARMS FAIR

11. UKTI DSO is co-organiser of the biennial Defence Systems and Equipment international (DSEi), one of the world's largest arms fairs. The latest DSEi took place at London's ExCel centre from 8–11 September 2009.

12. On behalf of the UK government, UKTI DSO invited representatives of countries involved in conflict and/or with records of human rights abuse to DSEi. According to a list of invited countries released to CAAT following a FoI request of the 53 countries which had received invitations at least 16 raised serious conflict and/or human rights concerns, or had urgent development needs. They were Algeria, Angola, Bahrain, Colombia, India, Indonesia, Iraq, Libya, Morocco, Pakistan, Peru, Saudi Arabia, South Africa, Turkey, the United States and Vietnam. Five of these, Colombia, Iraq, Pakistan, Saudi Arabia, and Vietnam, had been noted as “major countries of concern” in the FCO's Annual Report on Human Rights 2008. CAAT was pleased that Sir John Stanley questioned the presence of the Chinese delegation in the debate on your Committees' last report. (*Hansard*, 5.11.09, *Col 322WH*).

13. The Government argues that attendance of any particular country at a military exhibition does not mean that an export licence would be granted to export equipment on display at the exhibition to that country. However, the *raison d'être* of arms fairs is to facilitate the trade in general, putting sellers in touch with potential customers. The UK government cannot regulate the sales which result from contacts at DSEi between an overseas company and an overseas government.

LIBYAN ARMS FAIR

14. UKTI DSO's support for arms fairs is not confined to those which take place in the UK—it took space in at least 11 overseas exhibitions in 2009. For example, from 5–8 October 2009 UKTI DSO exhibited at the Libyan Aviation Exhibition (LAVEX) at Mitiga Airport in Tripoli. The Libyan Airforce was amongst the organisers of LAVEX.

SAUDI ARABIA

15. The problems that arise when a government tries to promote arms exports as well as control them are nowhere more obvious than in the case of BAE Systems' sales to Saudi Arabia. The UK's stance on corruption and human rights has, for decades, been undermined by the perceived need to placate elements of the Saudi royal family.

16. These sales, the benefits from which accrue to a private company, are co-ordinated by the Ministry of Defence Saudi Armed Forces Project (MODSAP) within the Ministry of Defence (MoD). In an arrangement which can only be described as bizarre, Saudi Arabia—a “country of concern” for the FCO—paid the MoD £47.6 million for the 77 UK-based civil servants, 43 UK-based military personnel, 29 Saudi-based UK civil servants and 61 Saudi-based UK military personnel who administer their arms purchases. (FoI, 15.7.09)

17. While information about the basic numbers of MODSAP staff was given without a problem, CAAT's experience has been that other information about the arms deals with Saudi Arabia has only been made available, and is then often heavily redacted, after a lengthy struggle through the FoI process. For example, in October 2009, information about the Export Credits Guarantee Department's risk assessment of the Al Yamamah deal was only obtained after an Information Tribunal judgment confirming an Information Commissioner decision that the information should be handed over. The original request had been made in 2005.

ISRAEL

18. As your Committees know, the UK has consistently sold arms to Israel, yet another FCO “country of concern”. Over recent years the UK government has licensed arms exports worth between £10 million and £30 million a year for export directly to Israel. During 2008, licences for goods worth over £27.5 million were approved. In addition, the UK has supplied components for incorporation in weapons exported to Israel by US suppliers.

19. In a Ministerial Statement on 21st April 2009, Foreign and Commonwealth Secretary David Miliband admitted that Israeli equipment used in Gaza “almost certainly” contained UK-supplied components. He cited F16 combat aircraft, Apache attack helicopters, Saar-Class corvettes and armoured personnel carriers. The following day, quizzed by your Committees, Foreign Office Minister Bill Rammell said no licences for components for the F16s, helicopters or armoured personnel carriers had been approved since the war on the Lebanon in 2006.

20. On 13 July 2009 the Israeli newspaper Haaretz reported that licences for spare parts for the Saar corvettes had been revoked. The UK embassy in Israel confirmed this had been done following the Foreign Secretary's statement. The Saars had fired into civilian settlements on the Gaza coastline during Israel's assault on Gaza in December 2008 to January 2009.

21. CAAT believes that this episode shows that, so extensive are the Israeli operations in the Occupied Territories, it is virtually impossible to guarantee that any military equipment supplied to the Israeli government will not be used there. The only effective action would be the immediate imposition of embargo

on arms and components going to Israel, whether directly or through incorporation into weaponry produced in third countries. This would send a strong message of disapproval to the Israeli government about its policy towards the Occupied Territories.

Licence granted on appeal

22. CAAT noticed that the 2008 report on the Export Control Organisation website said that a licence was granted on appeal for the export to Israel for the production of unmanned air vehicles. CAAT made a FoI for more information about this, in particular the company involved and the end user. The information was withheld under exemptions Section 41 (information provided in confidence) and Section 43 (Commercial interests) of the FoI Act. CAAT asks your Committees to look at this licence.

UK-Israel collaboration

23. Although it is not an export matter, CAAT would also like to register its concern about UK purchases of Israeli produced weaponry. In addition, it is deplorable that Israeli companies test their weapons in the UK. Many of our supporters have told us of their anger at the use of ParcAberporth for this purpose by Elbit Systems.

CHINA

24. Yet another FCO “country of concern”, China is subject to European Union (EU) military embargo instituted following the June 1989 massacre in Tiananmen Square. The scope of the EU embargo is left to “national interpretation” by each country. The UK interprets this ban as covering “lethal weapons”, including small and large calibre weapons and components, ammunition, military aircraft, fighting vehicles and weapons platforms.

25. According to the Export Control Organisation, licences were issued for the export to China of military and dual use goods to the value of £227 million in 2007; £214 million in 2008; and £278 million for the first two quarters in 2009. The licences include airborne and ground based radar, military aerospace components, range finders, surveillance equipment, laser sighting and targeting equipment, military electronics, communications and navigation equipment.

26. CAAT was not told how many meetings, see paragraph 9, UKTI DSO officials had with military representatives from China, where or when they took place, who attended, what subjects were covered and whether arms export licences were discussed. However, CAAT does not think there is any point in condemning human rights violations when your officials are discussing weapons sales with, or licensing the export of military equipment to, the perpetrators of those violations.

CORRUPTION

27. The UK government’s support for the arms trade has undermined its anti-corruption policies, leaving it open to accusations of hypocrisy when it speaks of tackling corruption overseas. In particular, the decision of Tony Blair’s government decision to stop the Serious Fraud Office (SFO) inquiry into BAE’s Al Yamamah arms deal with Saudi Arabia in December 2006 continues to leave its mark. As recently as August 2009, a Council of Europe report described this as: “the most prominent example of suspected political interference in the criminal justice system in recent years”.

28. CAAT hopes the other BAE cases being investigated by the SFO, and recently passed to a barrister prior to being handed to the Attorney-General, will be given the go-ahead by the latter so that they can be thoroughly examined by a court. Only in this way will the UK be seen to be putting its anti-corruption policy ahead of the promotion of arms deals.

29. It is good that the Queen’s Speech included the Bribery Bill. CAAT believes it is vital that the new legislation blocks the loophole that allowed the House of Lords’ judgment in the Judicial Review of the SFO’s decision on Al Yamamah. It must be explicit that investigations and prosecutions cannot be stopped on grounds of national security unless there is an imminent risk to life and all other options have been explored.

PRIVATE MILITARY AND SECURITY COMPANIES

30. In April the FCO began its consultation on Promoting High Standards of Conduct by Private Military and Security Companies (PMSCs), as “corporate mercenaries” are now politely called. The Government’s proposal, to abdicate responsibility for regulating the industry to the trade association, the British Association of Private Security Companies (BAPSC), was extremely disappointing. The Government appeared to feel that it would be enough for it to work with the trade association; itself only contract PMSCs with high standards; and to liaise with other governments on the international level.

31. Since the activities of PMSCs have resulted in killings and in human rights violations, this is totally inadequate. Not least, it fails to address the fact that overseas governments, mining companies, media organisations, aid agencies and others also have contracts with PMSCs - withholding UK government purchasing power is not a solution in these cases.

32. The consultation ended in July 2009 and nothing has been heard since, quite possibly because of the shooting in Iraq in August which resulted in the death of two ArmorGroup employees. They were allegedly shot by a third employee, who despite vetting by the company, was said by family and friends to have severe mental health problems. CAAT hopes this tragic case will prompt the FCO to reconsider its proposals for self-regulation.

33. CAAT thinks the Government should make an alternative proposal which includes the following features:

- (a) PMSCs should be prohibited from combat and banned from providing training, strategic advice and other support for combat;
- (b) all other PMSC services should be open to individual licensing requirements and open to prior parliamentary and public scrutiny. This should be complemented by an open register of PMSCs; and
- (c) the PMSCs should be made responsible under UK law for any breaches of human rights or the laws of war that may be committed by their employees overseas.

15 December 2009

**Further written evidence submitted by Ian Lucas MP, Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills**

During the recent Westminster Hall Debate on Arms Export Controls I confirmed that my officials had received a proposal from a joint industry/NGO working group on extending the extra-territorial scope of the trade controls. I promised that I would provide a response to that proposal within a few weeks and I am now in a position to do so.

Essentially, the proposal has two main strands:

1. Extend extra-territoriality to cover all items in Category C. This would mean that any UK persons trading in any items on the Military List would require a trade control licence, no matter where in the world they were located; and
2. Create what amounts to an exemption (which the proposal calls a Concessionary Authority to Broker) whereby anyone who passed a “probity test” would not have to apply for licences to conduct trade activities where either the source or destination was on a list of “friendly” countries. This exemption would apply equally to trade activities taking place within the UK as well as to those conducted wholly overseas. Furthermore, there would be no requirement to keep records relating to these activities.

The Government has given this proposal very careful and thorough consideration. My officials met with the industry and NGO representatives on two occasions over the summer in order to fully understand the details of the proposal and the concerns that underlie it. However, the proposal raises a significant number of practical and policy issues for the Government such that it is difficult to see how it could be made to work or be enforced. In particular I have concerns regarding the following aspects of the proposal:

- (i) *Proportionality*—Better Regulation principles call for regulation to be evidence-based and targeted at areas of risk where there is a demonstrated need to take action. I am not satisfied that the evidence that has been presented of trading activities of concern involving UK persons overseas and Category C goods is sufficient to justify the blanket extension of the trade controls to the whole Military List, and thus do not think it would be a proportionate response to the problem.
- (ii) *Exemption from existing controls*—any trader who passed the proposed “probity test” would be free to trade in Military List goods from any “friendly” country or to any “friendly” country without the need for a licence. Because this would also apply to trade carried out in the UK it represents a very significant relaxation of the existing controls. I am concerned that this is potentially a serious proliferation risk. In particular it assumes that it would be possible to make a categorical and binding judgement about the future activities of any given entity, which I do not think is realistic.
- (iii) *Enforcement difficulties*—HMRC have expressed very strong concerns regarding the difficulties of enforcing controls relating to activities that take place wholly outside the UK. As well as the obvious jurisdictional issues it is unlikely that they would have the necessary resources to conduct investigations overseas in all but the most serious cases.
- (iv) *Record keeping*—the lack of any record-keeping requirement under the Concessionary Authority to Broker also raises a number of concerns regarding our ability to assess a trader’s ongoing ability to use it. We would not be able to conduct compliance audits as is currently the case with Open Licences and we would be relying, in the absence of the trader’s own records, on media or NGO reports to provide “evidence” of wrongdoing. Again, this will make it more difficult to investigate alleged breaches.

These concerns are serious enough that I cannot accept the proposal. However, I do fully understand the Committees' and the NGOs' view that not all trade activity of concern is currently caught by the controls. Equally, I am aware that some of our industry stakeholders consider certain aspects of the current controls to be burdensome. But I firmly believe that we can better address these concerns by taking a more focussed approach, considering targeted extensions to the extraterritorial controls where that is justified by the evidence, and engaging constructively on reducing burdens where it is appropriate and can be achieved without reducing the effectiveness of the controls. I am copying this letter to the NGO and Industry representatives and the Head of the Export Control Organisation will be contacting them to offer an early meeting to discuss how we take this forward.

Finally, let me say that I am very grateful for the interest that the Committees and other stakeholders have shown in this issue. I look forward to continuing to work with you in the coming months.

14 December 2009

Written evidence submitted by Oxfam

SUMMARY

The following information outlines how six different EU member states applied Criterion 8 of the EU Code of Conduct based on phone interviews and correspondence with relevant EU member state officials during October and November 2007. State officials interviewed included those from France, Germany, Spain, Italy, The Netherlands, and Sweden.

Since the EU Code of Conduct became a Common Position in December 2008 member states are reviewing their application to ensure it is in line with this agreed EU policy, in which case the procedures outlined below may have changed.

FRANCE

In France, there are two aspects to a Criterion 8 assessment:

1. Sustainable development/economics of the recipient state.
2. Recipient country/end-user's technical ability to integrate and use the equipment in their national defence system.

The majority of denials in France under Criterion 8 are justified due to the technical ability of the recipient state as opposed to more economic reasons; for example, transfers of sophisticated equipment to recipient states who don't have a need or ability to use that level of equipment are more likely to be denied.

To evaluate the technical ability of a recipient state they will request input from embassies to check whether the equipment does fit within the stated security needs and if that is the right level/sophistication of equipment for them. They will also relate this to the real need, ie how much the proposed transfer represents in their military budget.

France also take into consideration the cost of military spending compared to the cost of spending for more social reasons (ie health and education), however, it seems that France concentrates a lot more of the technical ability of the recipient country.

They will also take a look at the cumulative effect of transfers to avoid excessive cumulating of military equipment. They will sometimes take into consideration the effect of proposed transfers from other member states if they have knowledge of what equipment is going out, for example if a French company is working with another European company, they'll take those exports into consideration (however it does not seem that they actively check what all EU Member States have sent to a proposed recipient state each and every time).

The French do not take the cost effectiveness of the proposed transfer into consideration—they do not make a decision on whether that piece of equipment is the most cost effective use of the recipient state's budget.

To evaluate which licences should be assessed under Criterion 8, there is not a specific list of developing countries. It is from personal and practical experience that an official knows which countries would be flagged up under Criterion 8.

However, they believe the elaboration of Criterion 8 in the User's Guide is extremely valuable. While France wouldn't use the User's Guide for each and every assessment under Criterion 8, when confronted with a very sensitive transfer, the User's Guide does provide a relevant source of information, and raises important questions and issues to consider.

France uses a pre-licensing system. During this initial pre-licensing stage, economic issues are not considered very relevant, however it does provide the French with the ability to modify a proposed transfer, for example by limiting the quantity or amount of goods to be transferred.

 GERMANY

Germany considers two aspects when evaluating a licence under Criterion 8 concerns: 1—technical capabilities; and 2—financial capabilities.

The technical capabilities analysis is not utilised very much. This is very sophisticated and rarely fits in. If a country orders a piece of equipment, then Germany works on the assumption that the recipient country would have carried out an internal audit themselves as to whether they really needed that piece of equipment. While other EU Member States look into more detail regarding this aspect, for Germany this is not a strong point of their evaluation.

The financial capability of the recipient state is by far the most prominent and logical part of their evaluation. They look into information available on budgets, and consider the defence spending against spending on more social needs (such as education). This is done on a case-by-case basis; they don't use numerical cut-off values.

To evaluate whether a licensing decision needs to have a Criterion 8 assessment, the country desk teams tend to provide advice as well as factual data and information. They also draw upon information such as the World Bank, IMF.

Opinions and advice can be drawn from the country desk teams as well as from in-country, also from the MFA, the Department of Development and the Ministry of Economic Cooperation.

Germany takes on a more case-by-case approach rather than looking at the cumulative impact of a number of transfers. Firstly, they do not put in place numerical cut-off values (ie exporting equipment up to a certain value) with regards to a country's defence budget. Secondly, Germany does not evaluate a transfer if it is part of a wider transfer (ie if Germany is supplying components and another EU Member State is providing the larger defence system for those components to be incorporated into)—Germany's current practice is that it is for the other exporting state to consider their own transfer in light of Criterion 8.

Criteria regarding the legitimate defence needs of the recipient country are also not a major factor for German licensing officials. However, they do take into consideration international defence interests, such as piracy (ie protecting naval routes) or terrorism.

Germany's actual methodology for applying Criterion 8 is not essentially a written procedure, it has been more practically developed over years of experience. So for example, while those colleagues who are new to the licensing process may rely more on the User's Guide, those with a long period of practical experience, don't need to apply a defined process because you become more experienced with taking decisions. And while the User's Guide is useful, it is important for Member States to continue working with it in its current format to develop their own thinking and ability to make decisions under Criterion 8, before evaluating whether improvements need to be made.

The reason why Germany does not apply Criterion 8 more frequently is because other criteria more often tend to come to mind for denying a licence than Criterion 8. Other criteria are clearer and easier to identify ie there is an embargo in place, there is a conflict; there is evidence of misuse by the police. However, Criterion 8 needs more discussion and evaluation—states have a right to buy equipment for their legitimate defence needs and the value of a transfer can often be stretched over a number of years.

Also, as probably more often happens, licensing officials deny a transfer under one or more of the other seven criteria, however because Criterion 8 is not often considered, it may not have been publicly used as a reason for a denial, but could have been one of the factors—and therefore did not get communicated to the other EU Member States that they denied a licence under Criterion 8.

ITALY

Italian law requires that any country that benefits from Italian development assistance is scrutinized periodically in order to ascertain that their level of military expenditure is compatible with their development needs. This evaluation is made jointly by the MFA (the General Directorate for Development Co-operation deals with development issues) and the MOD, with the Unit for Weapons Export Licensing at the MFA making the final decision regarding a transfer.

All 8 criteria are given the same consideration by Italian licensing authorities, and Criterion 8 is not applied in isolation from the other 7 criteria. Some of the criteria are used more frequently (eg internal and external instability, risk of diversion). Moreover, while some criteria are quite easy to apply (eg existence of an arms embargo), some others require a deeper scrutiny, such as Criterion 8.

During the Criterion 8 scrutiny, Italy takes into consideration the level of development, as it is defined by internationally recognized indicators (this includes for example, gross national product, per capita GNP, expenditure on health, education and social services), and the legitimate defensive needs (these are evaluated on more geo-political considerations than particular numerical indicators or ratios).

Other considerations that are taken into account include the value and the characteristic of the proposed transfer, as well as the technical capacity of the recipient (such as the recipient country's military infrastructure, and whether they can make effective use of the equipment). Italy also looks at the cumulative

effect of previous transfers from Italy (rather than from other EU states) to consider the true value of transfers on the recipient country's economy. However, Italy sometimes does take into account exports from different countries on a case-by-case basis.

Italy has developed some indicative numerical values. It has approved all parts of the User's Guide and considers it an useful instrument for the decision making process at the national level, and use it in its entirety. But to make Criterion 8 easier to implement, it would be helpful for international organisations to evaluate potentially risky arms purchasers.

THE NETHERLANDS

The Netherlands do not set much store by using numerical cut-off lines or specific values, and is very cautious about using filters. They believe that there's a story behind the figures, which they see as far more important, and that numerical values can sometimes be too convoluted. What they do is apply their general knowledge of the country, taking advice from the Ministry of Foreign Affairs (and the department for development and cooperation within the MFA) as well as taking advice from regional experts and involve embassies for additional information as necessary.

All large transactions have to go through the Minister for Development & Co-operation. There is the facility for parliamentary debates on very contentious transfer prior to the licence being approved.

To identify those countries that merit in-depth investigation, the Netherlands looks at the OECD DAC countries that are less developed and other low/middle income countries (not so concerned with the upper income countries, they will do a very brief Criterion 8 check for all countries, even rich ones, because by looking at military expenditure may indicate other issues beyond Criterion 8 such as regional instability). Aside from those countries on the OECD DAC list, they'll also take into account the value of the transfer, ie if it's a few thousand euros compared to a few million euros. Again, they won't use numerical cut-off values, but will apply common sense and knowledge of the country in question.

When doing the in-depth analysis, they look at defence expenditure as a ratio of social expenditure. More importantly though, they will take a look into how realistic those figures are, and whether defence expenditure is actually higher than their public budgetary figures. For this they consider issues such as how transparent or corrupt a country is, and what sort of defence priorities they have.

Netherlands don't consider the cumulative impact of transfers in the wider sense, however they will assess whether their proposed transfer is part of a larger transaction (such as if Netherlands transfers components—they will look at who is supplying the larger equipment), and will then also look at the larger transaction in more detail.

Netherlands makes use of the filters in the User's Guide if further in-depth analysis is needed. They will obtain additional information from the World Bank, IMF, UNDP Human Development Reports etc. They consider a country's long-term development needs.

Netherlands will not make judgements on defence expenditures as a whole. The licensing bodies will not engage on these wider discussions.

They will consider the legitimate defence and security needs of a country, however they won't consider the wider implications of whether the proposes transfer is the most cost effective approach to their military needs (but the nature of the Netherlands export industry is components and systems such as image intensifier components, as opposed to larger more complicated and expensive equipment).

Licensing decisions are taken by the Minster of Economic Affairs, but advice is provided from the MFA (in particular the Minister for Foreign Affairs and the Minister for Development & Cooperation).

Netherlands has in place a clear national policy on sustainable development—the two ministers in the MFA (Minister for Foreign Affairs and the Minister for Development and Cooperation) work together on sustainable development issues.

The Netherlands has not issued many denials under Criterion 8 for very practical reasons—Dutch companies aren't too keen on developing long-term relations with countries that are poor or instable. Historically, the Netherlands has exported mainly to EU and NATO states; this has increased in recent years. Transactions to poorer countries tend to be one-off ie spare parts, and if they are more longer term or of financial consequence, then the Criterion 8 assessment will come into play.

This is not an easy Criterion to apply. You need to develop a relationship with the country, look at long-term development assistance concerns. And then maybe consider what assistance can be given to address those development concerns. Isolating a country under Criterion 8 can have a negative impact, it is important to engage with the country, look at areas to invest time/resources in.

Criterion 8 concerns also indicate that other criteria should be invoked, such as regional and internal instabilities, or human rights concerns or risk of diversion.

SPAIN

Spain has in place a very clear methodology for applying Criterion 8. They utilise a “flash card” which sets out specific numerical figures for each country to aid with Criterion 8 interpretations. Indicators include:

1. Level of military expenditure related to health and education.
2. Military expenditure as a percentage of gross national product.
3. Human development indicators.
4. Military expenditure as a percentage of gross national income.
5. Life expectancy.
6. Gross national income per capita.

External debt may also be a factor that is incorporated into these flash cards. Aid per capita as part of the gross national income is also a sub-category of the flash cards.

The flash card is to help guide the decision making process, and contains specific numbers of what is acceptable and what is not (colour coded, ie those figures in red = serious development concerns). One of the figures mentioned was military equipment 60% or higher than spending on health or education.

Technical capacity of the recipient state is also taken into consideration, for example one case mentioned was for a proposed transfer of aeronautical equipment to a country that did not have complex aeronautical systems—this proposed transfer did not correspond with their military capabilities.

While the flash card is their own developed methodology for Criterion 8, they do sometimes refer to the User’s Guide. They think the User’s Guide was a very good effort—however it will take some time before all Member States better understand the methodology set out in it and therefore make more use of it. Cumulative licences granted and denied by other EU Member States are also an additional element to take into consideration.

Ministry of Industry and Trade take the final decision as regards issuing licences, however the Ministry for Foreign Affairs and Co-operations provide assistance and advice on international affairs (including sustainable development)—provide the knowledge to help the licensing officials interpret any difficult licences.

Spanish policy for sustainable development is very committed. But it can be difficult to make a decision under Criterion 8, and one of the other criteria is utilised at the same time. However, on the other hand if a state has a poor human rights record, internal instability etc. then this coincides with the economy of a country being very weak and therefore sustainable development concerns will also be paramount. Which means that when Criterion 8 does apply, it is not usually in isolation of other criteria.

SWEDEN

Sweden is not a big fan of Criterion 8. The main argument is that Criterion 8 is very difficult to handle. Sweden is of the opinion that if a country has a democratically elected government, then it is not Sweden’s place to refuse a transfer purely for economical reasons.

Every democratically elected state has an equal right to purchase equipment for their national security and defence needs. So for example, when South Africa wanted to buy aircrafts from Sweden, they couldn’t refuse the transfer just because South Africa has a weak economy, as they have a freely elected government they have the right to choose military equipment. However, he did say that was also important to consider other solutions. So for example if a transfer is being proposed to a questionable country, then other criteria, such as internal tensions and risk of diversion would be more important to consider than the economy of the recipient state.

Therefore, Sweden does not have in place any specific methodology for making Criterion 8 assessments. The economy of a country is taken into account as one aspect of the overall assessment made by the ISP (they look at the volume of the transfer and what is reasonable), but they don’t go into specific detail and don’t refuse a transfer purely because it is going to a poor country. Input to inform decisions is received from embassies and intelligence officers, as well as the licensing officials, and decisions are made by the Inspectorate of Strategic Products (ISP) on a case-by-case basis.

21 December 2009

**Further written evidence submitted by Ian Lucas MP, Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills**

EXPORT CONTROLS: RE-EXPORT PROVISIONS

I undertook during the Westminster Hall debate in November to give further consideration to adding a re-export provision to the UK control regime.

I continue to believe, as I said during the debate, that we should not make export licences subject to the condition that the underlying supplying contract has a clause preventing re-export without the permission of the UK authorities. That would impose an administrative burden on both the Government and the exporter and, because both the goods and the re-exporting entity would be outside the UK, it would be difficult to enforce in practice. I do not dispute that such a requirement would send a clear message that re-export to certain countries is unacceptable, but it would not increase our real-world powers to prevent such transfers.

However, I am pleased to be able to tell the Committees that I have decided to add a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export. As I think the Committees are aware, exporters already have to obtain undertakings that the exports will not be used for any WMD purpose, nor be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes. In the future, exporters will have to obtain a more general end user undertaking that the exports will not be re-exported or otherwise sold or transferred if they are intended for use in contravention of a UN, OSCE or EU embargo.

This approach avoids making the exporter liable for the actions of the end user, which are beyond the exporter's control. The Committees should also note that we could only take such actions into account in assessing the exporter's future licence applications to the extent we have evidence that there are diversionary risks linked to the exporter (as opposed to the end-user)—for example, evidence that the exporter had colluded in the breach of an end-user undertaking.

Also, given that those signing such undertakings are likely to have no connection with the UK, we cannot make them subject to UK export control law, and even if we could, there would be significant enforcement problems (principally in bringing a re-exporter before the UK courts). We would therefore instead seek to address any breach of such undertakings by the end user through our risk assessment of that end-user or of the country concerned, as appropriate, and factor that into our assessment of future export licensing applications involving that end-user, or that end-user country.

The ECO will inform exporters of this new requirement early in the New Year. Finally, you asked me to say how effective the French non re-export clause is. I am afraid I cannot comment on its effectiveness, but my understanding is that, for exports to non-EU and CGEA countries, the French require the foreign importer and end-user to certify that the goods are for the stated end-use, and that they will not otherwise be sold, gifted, lent or otherwise transferred, and not to re-export goods incorporating the goods without the prior written consent of the French Government; and that they require the receiving government to certify that they will not authorise re-export, resale, gifting, lending or transfer of the goods outside its territory without the prior written consent of the French Government.

22 December 2009

Supplementary written evidence submitted by Oxfam GB

Examples of deals involving EU member states and governments outside the EU where the proper parliamentary scrutiny of the deals or state procedures have not been followed.

OPPORTUNITIES FOR WASTE

As in any other area of government spending, without sound financial management, spending on arms is likely to be inefficient and wasteful. And that sound financial management must be accompanied by a clear national security strategy, based on a structured and regularly reviewed assessment of the threats facing a country.

Unfortunately such arrangements are uncommon.

Often decisions to purchase arms are made through structures and procedures that are governed by weak civilian oversight and poor transparency mechanisms. At worst, this encourages corruption and a waste of resources, and at best unnecessary expenses and an inability to effectively weigh up the relative merits of spending on arms and the government's other objectives. As a World Bank report states, "these practices weaken accountability for funds and provide a ready excuse for rent-seeking activities".²⁰

²⁰ World Bank (2003) "Combating Corruption in Indonesia: Enhancing Accountability for Development", p vii.
<http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/03-Publication/Combating+Corruption+in+Indonesia-Oct15.pdf>

INDONESIA

To make progress on development, Indonesia cannot afford any resources to be wasted on inefficient arms spending. The country spends just 0.98% of its gross domestic product on health care and 1.1% on education (the lowest in the region). In 2006, Indonesia still had the highest rate of maternal mortality in South East Asia (15 times higher than Malaysia)²¹ and over 37 million people (or 18%) living under the poverty line.²²

After the resignation of President Suharto in 1998, Indonesia embarked on a major political reform plan, which included addressing the historical lack of effective civilian control of the armed forces and their spending. It continues to be a vital but challenging process of reform for the government.

In 2003 the Ministry of Defence published its first ever Defence White Paper, an important step towards transparency; however, this was written without prior public debate and still reflected the armed forces' dominant views and interests.²³ The paper also stated that the ministry would be solely responsible for military procurement, yet in the same year the Indonesian Parliament investigated a deal to buy Sukhoi jet fighters and Mi-35 helicopters from Russia that was signed without the approval of the Ministry of Defence (and which used funds reserved for natural disasters).²⁴

The Ministry of Defence's leadership on procurement continues to be challenged by parts of the military. In 2006 the Air Force Chief of Staff declared that the different service branches carry out military procurement independently, particularly for the purchase of spare parts, and that the Ministry is only involved in major weapons contracts and those involving export credit facilities.²⁵

All this has an economic cost. In 2005, the Ministry of Economic Affairs challenged the Ministry of Defence regarding a contract to buy Russian Mi-2 helicopters. The contract was for more than ten new Mi-2s worth \$11.9m, but only two second-hand helicopters valued at around \$1.6m were delivered.²⁶ The final losses to the state were put at Rp6.56 billion (or approximately \$660,000).²⁷

The opaqueness surrounding military spending has been complicated further by the fact that, according to an inventory requested by the Ministry of Defence in 2006, Indonesia's armed forces control around 1,520 individual business enterprises.²⁸ According to Law no 3/2002, military expenditure should be financed entirely from the national budget, and in 2004 a new Military Law was passed, requiring the military to divest itself of all commercial interests by 2009. Until that happens, it is very difficult to know what the country's military expenditure—officially stated to be 1.2% of GDP—really is. This means that the civilian government cannot even decide the level of military expenditure, leaving a whole section of the economy that it cannot touch.

Like Indonesia, Nigeria is still coming to terms with a lengthy period of military-dominated government, during which there were no effective checks on arms spending.

NIGERIA

Even after Nigeria's return to democracy in 1999, the continued absence of an agreed national defence policy, and inadequate budgeting processes, have allowed waste in arms spending. Important steps by the government to improve the accountability of military budgets must be reinforced if additional funds are to be available for development.

In theory, the Ministry of Defence (MoD) has a large say in deciding the military budget, but in reality the contribution from civilian staff is small. Strategic procurement decisions are led by the Chief of Defence Staff, and are largely left to the military hierarchy to decide. However, there are also cases of the MoD signing contracts without consulting the armed forces. In 2005 the Air Force criticised the signing of a contract worth \$74.5 million for refurbishment, training, and logistical support related to Nigeria's G.222 military transport planes, as they were not included in the negotiations.²⁹

Capital expenditure on major military procurement deals is not properly detailed in Nigeria's national budget.³⁰ In 2000 and 2001 the national budgets did not include defence appropriations. Allocations to the military in these two years were made afterwards, under supplementary budgets that were not open to the public.

²¹ Indonesia Public Expenditure Review 2007, p 54.

²² United Nations Development Programme Indonesia, "Millennium Development Goals and Indonesia". <http://www.undp.or.id/mdg>

²³ K Anggoro (2007) "The Department of Defence of the Republic of Indonesia—Ineffective civilian control", in Almanac Indonesia 2007 Security Sector Reform, B Sukadis (ed), Lembaga Studi Petahanan dan Studi Strategis Indonesia and The Geneva Centre for the Democratic Control of the Armed Forces (DCAF), August 2007, p 5.

²⁴ Associated Press, "Indonesian leader to be investigated over jet purchase", 26 June 2003, available at <http://www.taipeitimes.com>; A Perwita (2004) "Security Sector Reform in Indonesia: The case of Indonesia's Defence White Paper 2003", *Journal of Security Sector Management*, Global Facilitation Network for Security Sector Reform, University of Cranfield, p 5.

²⁵ *Tempo Magazine*, "Marshall Djoko Suyanto: Why is the TNI being seen as smugglers?", 25 April to 1 May 2006, No. 34/VI.

²⁶ *Jakarta Post*, "Arms procurement dogged by markups", 26 January 2008.

²⁷ The Coordinating Ministry For Economic Affairs, Republic of Indonesia, "Trade and Investment News" 19 September 2005, p 4. <http://www.kbrisingapura.com>

²⁸ Human Rights Watch, "Too High a Price: The Human Rights Cost of the Indonesian Military's Economic Activities", vol 18 no 5(C), June 2008, p 26.

²⁹ S Adeyemi (2005) "Nigerian Air Force criticises G.222 deal", *Jane's Defence Weekly*, 17 August 2005.

³⁰ Budget Office of the Federation, Budget Details 2007, <http://www.budgetoffice.gov.ng>

The Nigerian government has taken steps to address some of these issues, and has ordered a number of investigations into military-related corruption. Overall, however, Nigeria suffers from non-transparent and inadequately controlled military spending, creating an environment in which the substantial waste of resources that could be spent on achieving the MDGs is all too possible. Due to low levels of transparency, it is difficult to know just how much of the national budget is wasted. A significant difference could be achieved with renewed action by the government and stronger global standards for arms transfers.

CORRUPTION

The international arms trade is considered by Transparency International to be one of the three most corrupt businesses in the world. Large, one-off deals can be of immense significance to the exporter, who becomes incentivised to do anything possible to secure them, including offering personal rewards to the purchasing decision makers. Many deals are complex and individually tailored so that prices are difficult to compare, making it easy for corrupt payments to be hidden in the overall cost. Secrecy, in the interests of “national security”, and poor governance make this easier still. The result is not only the waste of government resources, but also a distortion of spending priorities towards areas such as major arms deals where corrupt individuals can obtain the greatest benefit. In both ways, this can leave less government money available for development.

One particular deal involving South Africa and a number of European companies provides an example of what can go wrong.

SOUTH AFRICA

Numerous and persistent allegations of corruption have surrounded a series of contracts originally signed in 1999 between South Africa and a number of major European arms companies for frigates, submarines, utility helicopters, and fighter and trainer aircraft, at a total expected cost of R47.4 billion (\$6.3 billion) by the time the final payments are made in 2011–12.

These allegations of corruption go to the top of the South African defence sector and also implicate the arms companies involved. Joe Modise, the then South African Defence Minister, who died in 2001, was accused of intervening to change the formula by which BAE Hawk aircraft were preferred to the alternative Italian offer from Aermacchi. BAE Systems made a donation of £500 million to the African National Congress (ANC) not long after the deals were signed.³¹ Aermacchi was put under pressure to invest in a South African company, Conlog, of which Joe Modise was a shareholder. Although BAE initially agreed to the investment, the British company did not go through with the deal.³² BAE’s role in the whole series of deals is, however, still the subject of an ongoing Serious Fraud Office investigation in the UK.

Another company, Bell Helicopters, withdrew from bidding for the helicopter contract when it came to believe that investing in a particular partner company would increase its chances of success. Agusta, the winning Italian bidder, agreed to the investment.

In South Africa there have been two convictions for corruption in relation to the deal. Corruption allegations included the country’s Deputy President, Jacob Zuma, who had 16 charges for corruption, racketeering, and money-laundering dismissed in September 2008.

While the extent of corruption in the deals cannot yet be known, current evidence suggests that it could have contributed to South Africa obtaining a far more advanced and expensive package of arms than was necessary, at the expense of spending on social development and the MDGs.

South Africa’s progress towards the MDGs is slow or in some cases is even moving in reverse. The figures for underweight children, child mortality, and access to improved sanitation have all deteriorated since 1990, according to the most recently available statistics.³³ This arms deal continues to cost South Africa an average of R4 billion (\$530 million) a year, but correcting reported infrastructure shortfalls in South African schools would cost R3 billion (\$398 million) a year for 10 years, while the annual cost of making up backlogs in the free provision of water services has been estimated at R3.2 billion (\$425 million).³⁴

This example also calls into question the responsibility of exporting governments in addressing corruption in arms transfer controls. Transparency International, in its 2008 Progress Report on the 2007 OECD Anti-Bribery Convention, heavily criticised the UK government for failing to enact a single prosecution against a UK company for bribery of foreign officials. Numerous other OECD members, including Japan and Canada, were also accused of lagging behind in their implementation of the convention—although France,

³¹ See A Feinstein (2007) “After the Party: A personal and political journey inside the ANC” McGreal, “Arms deal investigators probe BAE payment to South African”, *The Guardian*, 6 Jan 2007, <http://www.guardian.co.uk/world/2007/jan/06/bae.armstrade>
D Leigh and R Evans, “BAE files: South Africa”, *The Guardian*, 7 June 2007, <http://www.guardian.co.uk/world/2007/jun/07/bae11>

³² J Roeber (2005) “Parallel Markets: Corruption in the International Arms Trade”, London: Campaign Against Arms Trade.
³³ South Africa, Millennium Development Goals Country Report 2005, <http://www.undg.org/index.cfm?P=87>

³⁴ Prices are based on cost estimates from South African National Treasury National Expenditure Estimates 2008–09. Total equivalent to \$6.3 billion at 2008 exchange rates.

Germany, and the USA were found to have increased enforcement efforts. The UK government was also criticised by the OECD for cancelling a Serious Fraud Office Investigation into BAE Systems' arms sales to Saudi Arabia in 2006.³⁵

At the same time, importing governments also bear a heavy responsibility to prevent corrupt practices in arms transfers. India, for example, has taken major steps to tackle corruption in its arms procurement processes.

INDIA

Between 2000 and 2007, India was the world's second largest arms importer, accounting for 7.5% of all major weapons transfers.³⁶ In 2005, the country's Central Bureau of Investigations (CBI) was investigating 47 separate arms deals for possible corruption, including a \$269m contract with Israel Aircraft Industries (IAI) and Rafael for seven Barak surface-to-air missile systems.³⁷

The Defence Minister at the time of the deal in 2000, George Fernandes, Navy Chief Admiral Sushil Kamar, and Jaya Jaitley, President of Fernandes' Samata Party, have been accused of receiving bribes. Numerous agents and arms dealers have also been indicted in relation to this and other deals. Other contracts subject to CBI investigations and raids include ones with Russian, South African, and Czech companies.³⁸

Since coming to power in 2004, the United Progressive Alliance government has sought to tighten up procurement procedures. Defence Minister A.K. Anthony is seeking to enforce anti-corruption rules,³⁹ independent monitors have been appointed to vet all major defence deals,⁴⁰ and "Integrity Pacts" are being implemented to ensure good practice in procurement processes.⁴¹ Some deals with companies implicated in corruption cases have been cancelled,⁴² while others—such as a potential air defence deal with Israel—have been put on hold.⁴³

Such action by the Indian government is crucial. India is the second biggest spender on arms transfers in the world, and yet continues to experience significant levels of poverty and is not yet on track to meet any of the MDGs unless significant changes are made.⁴⁴

All of the problems highlighted by the cases in this section can be tackled. Like India, at least some other importers and exporters are taking steps to tackle corruption and bad, unaccountable management of arms procurement. Much of this must be done individually by national governments, but it can and would be reinforced by an international Arms Trade Treaty.

Additional information from:

Arms Transfer Decisions: Considering Development. Oxfam Briefing Note, June 2008.

<http://www.oxfam.org/en/policy/bn-arms-transfer-decisions-considering-development-0806> Taken from pages 2–3

THE OPPORTUNITY COST OF SPENDING ON ARMS

When arms are purchased to fulfil a state's legitimate and legal security needs, they can contribute towards long-term stability or development. All too often, however, decisions about arms purchases are made with little or no accountability to citizens. This can lead to international arms transfers that are not part of a national security strategy and may not be cost-effective. The costs of such purchases divert resources away from social spending that could benefit development—representing a direct opportunity cost. Conventional weapons such as frigates and fighter jets can cost hundreds of millions of dollars, making large conventional arms the greatest risk for opportunity cost.

In 2004, countries in Asia, the Middle East, Latin America, and Africa spent an estimated \$22.5 billion on arms.⁴⁵ This figure is the same as annual cost of putting every child in school and reducing child mortality by two-thirds, two of the MDGs.⁴⁶ Whilst men are predominantly the victims of armed violence, choices

³⁵ OECD (2007) "OECD to Conduct a Further Examination of UK Efforts Against Bribery". http://www.oecd.org/document/12/0,3343,en_2649_201185_38251148_1_1_1_1,00.html

³⁶ SIPRI arms transfers database.

³⁷ R Bedi, "Delays and anti-corruption red tape dog Indian procurement", *Jane's Defence Weekly*, 21 December 2005.

³⁸ See, for example, R Bedi and A Ben-David, "India's CBI files corruption charges", *Jane's Defence Industry*, November 2006, p 3.; S Satyanarayanan, "FIR against Fernandes, Jaya, ex-Navy chief", *The Tribune*, Chandigarh, 10 October 2006.

³⁹ "India vows to clean up military contractor corruption", *Agence France Presse*, 25 October 2006.

http://www.spacewar.com/reports/India_Vows_To_Clean_Up_Military_Contractor_Corruption_999.html

⁴⁰ "Government appoints independent monitors to vet major defence deals", *The Times of India*, 10 September 2007

<http://timesofindia.indiatimes.com/articleshow/msid-2355630.cms>

⁴¹ Transparency International India,

www.tiindia.in/content.asp?ma=Programs&ta=The%20Integrity%20Pact

⁴² K Phasiwe, "Denel bribe row deals blow to SA arms trade", *Business Day*, 4 October 2005.

www.businessday.co.za/articles/frontpage.aspx?ID=BD4A98377

⁴³ S Dikshit, "Barak probe stalls project", *The Hindu*, 21 May 2008.

<http://www.thehindu.com/2008/05/21/stories/2008052160960100.htm>

⁴⁴ MDG Monitor, India http://www.mdgmonitor.org/country_progress.cfm?c=IND&cd=356

⁴⁵ CRS (2004) Conventional Arms Transfers to Developing Nations, 1997–2004, 29/08/04.

⁴⁶ See International Finance Facility Proposal, January 2003, HM Treasury, available from: www.hm-treasury.gov.uk/documents/international_issues/international_development/int_gnd_iff2003.cfm

around reduced social spending and the related reduction in access to essential services can have a severe impact on women and girls. They suffer most from unequal access to services and from the burden of having to provide welfare when it is not provided by the state.

High-cost arms transfers continue to raise concerns around the globe. The sale of four corvette ships by the Netherlands to Indonesia has provoked public questions and parliamentary debates. With the cost reportedly more than €700 million and with cheaper alternatives available, questions have been raised about the appropriateness and opportunity cost of granting this transfer to a country that receives significant aid, including debt relief to assist reconstruction after the 2004 tsunami. In 2005, Indonesia spent more than eight times as much on debt servicing as it did on education and healthcare.⁴⁷

The sale of a frigate by South Korea to Bangladesh, agreed in 1998 at a reported cost of \$100 million, also illustrates the risk of opportunity cost to a country trying to meet development goals. Not only were questions raised about the appropriateness of the purchase but also about the value for money that it represented. Cheaper bids were reportedly available and after only eight months technical faults returned the frigate to the shipyard for five years.⁴⁸

EXACERBATING HIGH OPPORTUNITY COSTS

Several factors can aggravate the risk of opportunity costs and drain resources away from spending on education and healthcare.

Corruption and lack of government accountability can encourage high levels of spending on arms transfers or inappropriate purchases. The arms trade is one of the most corrupt industries in the world, due in part to the high levels of secrecy surrounding defence and security decisions.⁴⁹ Even when military budgets are presented to national parliaments, they rarely contain allocations for arms procurement, or they appear under ambiguous headings such as “other expenditures”.

Deals characterised by low levels of accountability can fuel corruption. For example, in 1998, when Uganda purchased helicopters for its military, corrupt payments to those who negotiated the deal were the most obvious motivation.⁵⁰ Low levels of accountability can also encourage inappropriate purchases or higher prices for the transfer. In September 2006, following the military coup that ousted Prime Minister Thaksin Shinawatra in Thailand, despite no apparent change to the security environment military spending increased by 66%, representing a significant opportunity cost. During this period the Swedish government came under pressure for its decision to negotiate the sale of 12 Gripen fighter aircraft to the country.⁵¹

20 January 2010

Supplementary written evidence submitted by Saferworld

This Memorandum focuses on the issue of registration of arms brokers. The 2003 Common Position on the control of arms brokering contains an option for a two-stage licensing procedure for arms brokering controls in EU member states. The first stage involving an application to be entered into a register of brokers or of those involved in the trade in arms or military equipment. Despite repeated calls from Saferworld and other members of the UK NGO Working Group on Arms and the Committees for Arms Export Controls, the UK currently does not maintain a register of brokers, rather it has a de facto list of all those who have been granted arms trading licences.

Saferworld has contacted a number of EU Member States that maintain arms brokering registers regarding the criteria they apply when deciding whether to approve registration applications. In addition, other registration systems within the UK were also considered for applicable registration criteria. Summaries of the relevant elements of these other registration systems are contained in the appendix to this Memorandum. Below, based on this research, we set out a non-exhaustive list of possible criteria which might be applicable in an arms brokering registration system within the UK. This research is ongoing; further information will be made available to the Committees as it becomes available.

POSSIBLE ARMS BROKERING REGISTRATION CRITERIA

1. Registration could be refused if the applicant is not a natural or legal person incorporated in the UK with the firm’s head office and registered office located in the UK.

Within the UK, the Financial Services Authority (FSA) requires incorporation in the UK of applicants seeking to be registered as financial services firms.

2. Registration could be refused if the applicant (legal or natural persons) has been convicted of arms brokering-related offences.

⁴⁷ F Slijper, Case study, Netherlands to Indonesia (sources available on request).

⁴⁸ F Slijper, Case study, South Korea to Bangladesh (sources available on request).

⁴⁹ The arms and defence sector was rated among the three most corrupt industries by Transparency International in 2006. www.transparency.org/news_room/in_focus/2006/defence_sector

⁵⁰ W Omitoogun and E Hutchful (2006) Budgeting for the Military Sector in Africa, SIPRI.

⁵¹ F Slijper, Case study, Sweden to Thailand (sources available on request).

In Portugal, an application will be refused if an applicant has been involved in illicit trafficking in weapons or other goods and military technology or dual-use goods including violations of sanctions and embargoes established by the UN, the EU, the Organisation for Security and Cooperation in Europe (OSCE) or by the Portuguese State. Bulgaria requires that the single-person trader, manager, members of the managing and control body of the commercial company make statements that they are not related to persons and organisations that have infringed the laws regulating arms exports controls in the member states and third states.

3. Registration could be refused if the individual or company has been convicted of “serious offences”, such as crimes of fraudulent or negligent bankruptcy, fraud, robbery, theft, extortion, corruption, money laundering or other violations of the law regardless of whether these involved controlled items. A statement to that effect could be required of the applicant, and background checks could be carried out by the Criminal Records Bureau (CRB).

In Portugal, an application will be refused if an applicant has been convicted of any of the above. The registering authority could be prescriptive of the crimes which will disqualify an applicant from registering, it could apply its discretion in disqualifying applicants, or, as the UK’s Security Industry Authority does, it could apply a combination of the two methods in coming to its decision.

4. Registration could be refused if the individual or, where the applicant is a legal person, the relevant members of staff, have insufficient knowledge of strategic export controls and arms-brokering related issues. This could be ensured by the registering authority conducting a proficiency test of the relevant members of the organisation.

Portugal tests the expertise and qualification of the CEO and members of the board of the applicant company related to the activity. In Romania, the final stage of registration is represented by an interview by the Director of the Conventional Arms Division of the managers of the corporations and the person in charge for export controls.

In the UK, to determine if a relevant company is “fit and proper” to be registered, the FSA assesses the competence and ability of management, the management’s commitment to carrying on the business with integrity, and the management’s commitment to carrying on the business in compliance with the regulatory regime.

5. Registration could be refused if it is determined that the applicant does not have the capacity to effectively control transfers of controlled items.

In Spain, the Joint Board of Foreign Trade Regulatory Defence Equipment and Dual Use considers the effective capacity of the operator to control the transfers of the materials, good or technologies included in the enrolment application.

6. Registration could be refused if the applicant has been declared bankrupt or is subject to bankruptcy proceedings.

In Bulgaria, this shall be evidenced by a court document. The Czech Republic, Portugal and Sweden also conduct background financial checks on applicants, with a history of bankruptcy being a possible disqualifying factor.

7. The registering authority could also consider conducting an on-site verification of the capacity of the applicant before a decision is made.

In Romania, during the registration process, the Enforcement Team of the Conventional Arms Division conducts an on-site verification of the company’s facilities.

8. Registration could be refused if it is determined that granting it would contradict the UK’s foreign policy and security objectives.

In Lithuania registration will not be granted if registering the applicant contradicts Lithuanian foreign and security policy interests, public security interests, Lithuanian international treaties or EU legal acts.

9. Registration could be refused if the applicant has committed a deliberate crime and is still completing the sentence.

In Lithuania, registration will be refused if the applicant is still completing the sentence on a deliberate crime.

10. Registration could be refused if the applicant fails to submit all the required documents or if the submitted documents are false or incomplete.

In Lithuania, registration will be refused if all the required documents are not submitted or if the submitted documents are false or incomplete.

ADMINISTRATIVE ISSUES

11. An application should consist of a duly completed application form accompanied by relevant documentation. Such documents could include:

- A Certificate of Registration of the company.

- A list of the individuals who are directly involved in this activity, accompanied by their CVs, employment records and notarised specimen of their signatures.
- A certificate of proficiency issues by an accredited testing agency.
- Any other documentation that the Government deems will be necessary to reach an informed decision.

12. As is the case in childcare registration in the UK, if the applicant, or some other person associated with the application has lived abroad in the five years prior to the application, such fact ought to be declared in the application form. If the CRB does not have a reciprocal arrangement with the said country, extra evidence of the person's good character could be required.

13. Registration should be time limited. In Bulgaria, registration is valid for three years. Also, in Estonia, new companies are registered for a one-year testing period, following which they may apply to be registered again for a longer period of time.

14. Registration could be revoked if any of the above criteria is subsequently violated by the broker.

15. Regarding registration of foreign brokers, in Bulgaria, Lithuania, Portugal and Romania no registration is required in-country of brokers already registered in their home countries. However, in the Czech Republic, Romania and Sweden brokers already registered in their countries of domicile will still be required to register before brokering activities can be undertaken.

Annex 1

OTHER REGISTRATION SYSTEMS

INTRODUCTION

An increasing number of the UK's EU partners require that arms brokers be registered. In addition, the UK operates registration systems for a range of other types of activity. In order to help inform debates regarding the possibility of establishing a UK register of arms brokers, summaries of various aspects of the practice in these other jurisdictions and other systems is set out below. This research is ongoing; further information will be made available to the Committees as it becomes available.

1. BROKERING REGISTRATION IN OTHER EU COUNTRIES

1.1 Bulgaria

In Bulgaria, individuals and legal persons must be registered before they can engage in arms brokering. Registration is carried out by the Interdepartmental Council and is valid for three years. Bulgaria maintains a public arms brokering register.

Persons, applying for registration, are required to submit, *inter alia*, the following documents:

- an application according to a sample provided;
- a document issued by the competent court that the applicant has not been declared bankrupt or is not subject to bankruptcy proceedings, as well as that no termination of operation has been registered and no declaration of insolvency has taken place when the applicant has not been re-registered under the Commercial Register Act;
- a list of the individuals who will be directly involved in arms brokering activity, their CVs and employment records, proof of a clear criminal record and a notarised specimen of their signatures, as well as information whether they hold clearance for access to classified information;
- a clear criminal record of the single-person trader, manager, executive director, the members of the managing and control bodies of the legal person, and/if such members are legal persons/of their representatives in the respective managing body, certifying that there has been no previous conviction for premeditated crime of a general nature;
- proof of a lack of liquid and enforceable receivables; and
- a statement by the single-person trader, manager, members of the managing and control body of the commercial company that they are not related to persons and organisations that have infringed the laws regulating arms exports controls in Bulgaria or elsewhere.

Bulgarian export control legislation requires registration of Bulgarian natural or legal persons only. Foreign brokers are not legally required to register to act as intermediaries. Nevertheless, foreign intermediaries declared to be part of a deal to be assessed by the Bulgarian export control authorities must present a verified copy of their respective registration/licence/authorisation.

1.2 *Czech Republic*

In the Czech Republic, the same rules that apply to brokers are also applied to the importers or the exporters according to act No 38/1994. This is because Czech legislation views arms brokering as an integral part of the trade in military and defence equipment. Therefore, the Czech Licensing Authority includes brokers in the list of registered holders of permission to trade in military and defence materials, and no special criteria or conditions are applied to them. All individual trade in military material, including brokering, needs individual licensing.

In considering a registration application: (1) The MFA decides on individual destinations with which the applicant asks to be allowed to trade. These are based on existing embargoes, EU positions, other international and regional organisation treaties (eg the moratorium on transferring SALW to ECOWAS), and also the Czech Republic's position towards individual countries; (2) The Licensing Authority oversees the procedural correctness; (3) The Ministry of Interior checks the applicant's financial and legal background, and conducts a security check. If there is a problem at any stage of the application process, the application is refused.

A broker registered in another member state wishing to conduct brokering activities in the Czech Republic is deemed a trader in military and defence materials and must comply with Czech legislation and be registered in the Czech Republic.

1.3 *Estonia*

Estonia has established a register of brokers. An applicant should not have committed a crime in the five years prior to the application. The registering authority will usually also organise a meeting with the applicants to determine their plans, their relationships with business partners and their understanding of the law. For new companies (who have no history dealing with export control matters) a one-year testing time is usually implemented, following which the company may apply again to be registered for a longer time.

According to the Strategic Goods Act, a person does not need to be entered in the register if the person is already entered in a register intended for monitoring brokers in a country participating in all export control regimes.

1.4 *Lithuania*

The register of brokers in Lithuania was established in 2003 by Government Resolution, implementing Common Position 2003/468/CFSP. An application may be denied if:

- the applicant fails to submit all required documents;
- the submitted documents are false or incomplete;
- the applicant has committed a deliberate crime and the conviction is still in force;
- the applicant is denied the right to become a broker by a court decision; and
- registering the applicant contradicts Lithuanian foreign and security policy interests, public security interests, international treaties or EU legal acts.

Registration may later be revoked if it is established that the broker has supplied arms to countries under arms embargo.

Foreign brokers are subject to registration in Lithuania if they do business in Lithuania. Foreign registered brokers are however not subject to registration in Lithuania if they are only transiting the goods through the territory of Lithuania. They will, however, still need to apply for a transit licence. Before issuing such licence the competent authorities have the power to assess if the exporter and importer (end user) of goods fall under arms embargo or any other sanctions.

1.5 *Portugal*

When assessing an application to register as an arms broker, the Portuguese Government considers the following:

- the human resources of the applicant relative to the kind of activity to be undertaken;
- the technical and financial resources of the applicant;
- the reliability of the CEO or president and the members of the board;
- the expertise of the CEO or president and the members of the board related to the activity;
- transparency of the structure that allows proper control of the applicant's activity, when this applicant belongs to a group of companies;
- security accreditation by the National Security Authority; and
- the technical qualification consists of the specific knowledge of the military goods and technologies that are meant to be produced or traded, acquired after adequate training.

A company or person *will not* be accepted for registration if:

- convicted in Portugal or abroad for crimes of fraudulent or negligent bankruptcy, fraud, robbery, theft, extortion, corruption, money laundering or other violations of the law regardless of whether it involves defence related products or other goods; or
- involved in illicit trafficking in weapons or other goods and military technology or dual-use goods including violations of sanctions and embargoes established by the UN, the EU, the Organisation for Security and Cooperation in Europe (OSCE) or by the Portuguese State.

1.6 Romania

According to Romanian legislation on arms exports control, all exporters, importers and brokers are subject to registration—only a registered legal person has the right to submit a licence application. The last ministerial order on the matter (Order 59/2005 of the President of the National Agency for Export Control) describes the requirements for registration.

Registration in Romania is a 60-day process that involves a written application supported by several documents relating to the legal person, the CVs of the managers, and the reports of the proposed activities. During the registration process, the Enforcement Team of the Conventional Arms Division conducts an on-site inspection, and may request additional information from Romanian enforcement agencies.

The final stage of the process involves an interview by the Director of Conventional Arms Division of the managers of the legal entity and the persons in charge of export controls.

Registration applies to Romanian legal persons, Romanian citizens resident in Romania; and foreign citizens resident in Romania.

A foreign broker is not required to register, however, in 2008 a procedure for all Romanian exports and imports was introduced whereby the Romanian Nation Agency for Export Controls (ANCEX) issues licences for Romanian exports and imports that involve foreign brokers only if they are registered in their country of residence.

1.7 Spain

The legal requirements contained in the Common Position on arms brokering were implemented in Spain in Law 53/2007 on the control of foreign trade of defence material and dual-use and in Royal Decree 2061/2008, which establish the Special Register of Foreign Trade Operators Defence Material and Dual-Use (REOCE) and the arms brokering registration procedure.

Operators who apply for permission to export, import, transfer and broker materials, products and technologies referred to in the Regulation must be enrolled in the Register (REOCE). The registration process can only be undertaken by natural or legal persons resident in Spain.

Any natural or legal person that wishes to engage in transfers of regulated firearms must first obtain authorised dealer status by the General Directorate of Police and Civil Guard.

Following the submission of an application form, the General Secretariat of Foreign Trade, taking into consideration the report of the Joint Board of Foreign Trade Regulatory Defence Equipment and Dual-Use (JIMDDU), decides on the registration, notifying the concerned of its decision within 60 working days.

In issuing its report the JIMDDU shall consider if there are any records of past involvement in illicit activities of the applicant or operator. The JIMDDU shall also consider of the capacity of the operator to control the transfers of the materials, goods or technologies included in the enrolment application. If either condition is not fulfilled, it shall refuse the application for registration. If the initial conditions that advised a registration changes, it may lead to the suspension or revocation of the previously approved registration.

Foreign-registered companies wishing to trade defence materials must prove that they have official authorisation for activities related to national defence in accordance with the provisions of Royal Decree 664/1999 on foreign investments.

2. OTHER REGISTRATION SYSTEMS WITHIN THE UK

2.1 Criminal Records Bureau (CRB)

Although not a formal registration system, CRB checks are used to verify the backgrounds of persons seeking to work with certain vulnerable groups of people. Persons may be asked to apply for standard or enhanced CRB checks if they will be working with children or vulnerable adults, working in an establishment that is wholly or mainly for children, working in healthcare or they have applied to be a foster carer, adoptive parent or child minder.

The application process involves detailed checks against information held on the Police National Computer (PNC), which holds all convictions, cautions, reprimands and warnings in England and Wales and most of the convictions in Scotland. Plans are being made to supplement these records with criminal convictions from Northern Ireland. Enhanced CRB checks involve reference to the new Independent

Safeguarding Authority (ISA) to see if applicants are barred from working with children or vulnerable adults. With an enhanced check, the applicant's details are also sent to the Police to be checked against locally-held records.

Under this system applicants are disqualified from working with children or vulnerable adults by reason of their commission of previous crimes.

2.2 Registration of Financial Services

Before a firm can undertake a regulated activity, the Financial Services Authority (FSA) must be satisfied that it can meet minimum standards, called Threshold Conditions, and that the persons running the firm are "fit and proper".

The initial Threshold Condition deals with the legal status of the applicant firm. The second condition requires the firm's head office and registered office to be located in the UK, unless it carries on only insurance mediation services, in which case its registered office, or its head office if it does not have a registered office, should be in the UK.

The third condition states that if the applicant has any close links with other firms or individuals, these must not prevent effective FSA supervision of the applicant. Fourthly, the FSA must be satisfied that the applicant has adequate resources. Finally, and most important for this purpose, the FSA must be satisfied that the applicant is "fit and proper" to be authorised. To this end, the FSA shall assess the competence and ability of management; the management's commitment to carrying on the business with integrity, and the management's commitment to carrying on the business in compliance with the regulatory regime.

Whether a person is "fit and proper" to be approved to perform controlled functions for an authorised firm or an appointed representative firm depends upon if he/she can satisfy the FSA that he/she can meet, and maintain, the criteria for approval (the fit and proper test (FIT)); and then perform their controlled function in accordance with a set of standards (the Statements of Principle and Code of Practice for Approved Persons (APER)).

2.3 Childcare

The Childcare Act of 2006 sets out the legal frameworks for the regulation and inspection of provision for children from birth to age 17. It introduced two registers for those providing childcare: the Early Years Register and the Childcare Register. Ofsted carries out checks with the Criminal Records Bureau (CRB) and local authority children's services departments before making a decision on whether to grant registration.

When a registration application is made, Ofsted decides on the suitability of *inter alia*:

- the nominated person;
- people aged 16 or over living or working on domestic premises where there is an intention to provide childminding or childcare on domestic premises;
- the manager of childcare provision on domestic or non-domestic premises;
- childminder assistants or childcare staff where childminding or childcare is provided or intended to be provided on domestic premises;
- people who are partners, committee members, directors or hold similar roles in an organisation applying to join the compulsory or voluntary part of the Childcare Register, as a childcare provider on domestic premises; and
- people who are partners, committee members, directors or hold similar roles in an organisation applying to join the compulsory part of the Childcare Register, as a childcare provider on non-domestic premises, where the organisation's main purpose is childcare.

If the applicant, or some other person associated with the application has lived abroad in the five years prior to the application, this must be declared in the application form. If the Criminal Records Bureau (CRB) does not have a reciprocal arrangement with the said country, extra evidence of the person's good character could be required.

An applicant cannot be registered if:

- previously disqualified;
- anyone who is part of the organisation applying to provide registered childcare, such as a partner, director or committee member, is disqualified;
- the applicant, or anyone who is part of the organisation, lives with someone who is disqualified; or
- someone who lives on the premises where childcare is provided is disqualified.

It is an offence to employ someone who is disqualified, or who lives with someone who is disqualified.

Refusal of registration disqualifies the person from providing childcare in the future. Registration may also be refused if the person is deemed to be unsuitable to care for children.

2.4 Security Industry Registration

According to the Security Industry Authority (SIA) Guidelines,⁵² licensing (registration) is required for manned guarding activities, including of cash and valuables in transit protection, close protection, door supervision, CCTV surveillance and manned guarding. Directors or partners of any business or firm that is part of, or a subsidiary of, a security provider supplying licensable operatives in connection with services supplied for the purposes of or in connection with any contract to a consumer will also need to be licensed as either front line or non-front line depending on their role.⁵³

Before an applicant can apply for SIA licensing, they must attend a training course organised by a training body. Upon application, a CRB check is carried out on the applicant. A past criminal conviction will not automatically disqualify an applicant from registration; the following conditions shall also be considered:

- whether the offences are included in a specified list;
- the classification of seriousness of the offence;
- the actual sentence or disposal given for the offence; and
- how recently the offences were in relation to the date of decision making.

Other criteria considered include:

- the mental health of the applicant;
- other (non-conviction) information relating to the specified criminal offences;
- how recent the non-conviction information is;
- information in fixed penalty notices or penalty notices for disorder;
- the applicant's right to work in the UK; and
- other information that the SIA might request of the applicant.

20 January 2010

Supplementary written evidence submitted by Ivan Lewis, Minister of State, Foreign and Commonwealth Office

Thank you for inviting me to give evidence to the Committees on Arms Export Controls on Wednesday 27 January. I am now writing to follow up on a number of issues where the Committees requested further information.

NO RE-EXPORT PROVISIONS

During the evidence session, I was pleased to be able to refer to the Government's decision to introduce a "no re-export clause" into the end-user undertaking that must be supplied in support of export licence applications. I understand that you have now received the letter from Ian Lucas MP on this matter.

Although we have information on other Member States' policies in this area, detailed information regarding how these work in practice is not readily available. We have therefore requested that the issue of "no re-export" provisions be added to the agenda for the next meeting of on the EU Working Group on Conventional Arms (COARM) on 26 February. In addition we have asked EU Member States for a summary of their experience, prior to the next meeting of COARM. My officials will write to the CAEC in March following our consultation with EU colleagues on this issue.

EU MILITARY END USE CONTROL

Ian Lucas will respond to the Committees on this issue in his reply to the CAEC's letter of 28 January which requested written evidence on a range of export control issues.

EU TORTURE END USE CONTROL

The UK proposed amendment to the existing EU Torture Regulation (EC Reg 1236/2005) is currently with the EU Commission Legal Services for their comments. The last substantive discussions between UK officials and Commission representatives were in September 2009. We have already made contact with the relevant Commission representatives and have asked for a progress update. Once we have established the Commission views we will look to agree a timetable for adoption of the amended regulation which will include agreement at EU working group level, submission to the European Parliament and ultimately lead to adoption of a Council Decision.

⁵² Get Licensed: SIA Licensing Criteria; available at http://www.the-sia.org.uk/NR/rdonlyres/725E43BE-2163-4E85-9151-6EAB15990BC1/0/sia_get_licensed.pdf.

⁵³ Get Licensed, op cit, pp 6–12.

We are aware that progress has been slow on this issue, but our clear preference is for an EU wide control and indications are that there is significant support for our proposal among EU Member States. We will continue to actively engage all the relevant stakeholders and my officials will report back progress to the CAEC, in March.

CHINA EU ARMS EMBARGO

I can confirm, as I said at the Evidence Session, that neither the UK nor the EU has plans to hold a specific review of EU arms embargo on China.

In general terms the arms embargo on China has been under review since 2003. In 2004 the European Council concluded that:

“It is looking forward to further progress in all areas of the relationship as referred to in the EU-China Joint Statement, in particular, the ratification of the International Covenant on Civil and Political Rights. In this context the European 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”.

THE CONSISTENCY OF THE EU CONSOLIDATED CRITERIA

Adoption of the Common Position in December 2008 changed the status of the EU Code of Conduct on Arms Exports from a politically to a legally-binding instrument. Making the Common Position legally binding reinforces EU member states commitment to ensure high standards of arms export controls.

The Common Position does allow EU Member States to operate more restrictive national policies ie to refuse a licence when the Common Position would otherwise allow member states to issue a licence. If cases do come to light suggesting that the Common Position could be interpreted inconsistently by EU Member States, we can and do pursue these through discussions at COARM (the EU Working Group in Brussels responsible for the implementation of the Code of Conduct) or bilaterally with the relevant Member States. The development at COARM of the User’s Guide on the Code of Conduct and the consultation process between Member States on export licence applications that have been denied has helped to reduce the number of such cases. In 2008 there were about 100 consultations between EU Member States to 100 different destinations. While we are making good progress we will give more thought on how the consultation mechanism could be used more proactively to encourage greater convergence between EU Member States.

CRITERION 8 OF THE EU CONSOLIDATED CRITERIA;

The UK approach to Criterion 8 of the EU Consolidated Criteria remains as set out in Annex C (page 71) of the Annual Report on Strategic Export Controls 2007. Since 2006 there have been 68 refusals among EU Member States using Criterion 8 on its own or with other Criteria (63 by France, 3 by Germany and 1 by the Netherlands in 2007, and 1 by Bulgaria in 2009). In 2009 DFID examined 219 licence applications, but did not reject any against Criterion 8.

France is the other EU Member state that routinely takes into account Criterion 8 considerations into their assessment of export licence application. The UK plan to add Criterion 8 in the near future to COARM, and my officials will also discuss with their Dutch, French and German counterparts other ways in which we can raise awareness and use of Criterion 8 amongst EU Member States. My officials will report back to the CAEC at the earliest appropriate opportunity.

ACTIVITIES ON UK ARMS BROKERS: PUBLICATION OF INFORMATION

I have asked my officials to liaise with colleagues in BIS who lead on this whether more could be done to publicise changes in UK law regarding extra-territorial controls on brokering. Officials will update the CAEC shortly. On the proposal for a “Register of Arms Brokers” I am, as I said during the Evidence Session, considering this further.

ARMS TRADE TREATY: WHAT PART DOES THE GOVERNMENT WANT NGOs AND INDUSTRY TO PLAY IN THE FORMAL NEGOTIATIONS OR WIDER DISCUSSIONS TOWARDS THE TREATY?

NGO and industry partners continue to be an important part of the UK team working towards a robust ATT. During a recent meeting with NGOs and Industry we agreed to establish two separate working groups on ATT which will include officials, NGOs and industry representatives: one would focus on technical ATT issues and the other on strategic aspects of an ATT. The first technical meeting has already taken place and a second meeting will take place in the last two weeks of February. The next strategy meeting will take place towards the end of this month.

I hope that you find this letter useful in addressing the issues above we stand ready to provide further information and assistance as required.

8 February 2010

**Supplementary written evidence from Ian Lucas MP, Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills**

Thank you for your letter of 28 January, seeking further information in connection with the Committees' inquiry into strategic export controls. You asked about the following:

Update on the discussions that have taken place with industry and a timetable for introduction of its proposals for an amended EU Military End-Use control

We have continued to discuss the proposal within Government and informally with some of our EU partners. It is important that we take time to get this right because any proposal must win the support of all Member States, the Commission and the European Parliament before it can be adopted. We have not yet held substantive discussions with industry but hope to do so soon. Once we have we will need to consult more formally with all EU Member States and the Commission. It will be for the Commission to introduce a formal proposal. Only then will we be able to advise on specific timescales for the introduction of an enhanced Military End-Use Control.

Update on the timetable for primary legislation necessary to bring in civil penalties for strategic export controls

I am afraid I am not able to provide a detailed update on this subject as there have been issues raised by HMRC which we are looking into. I will however write with further information shortly.

THE UKRAINIAN LIST OF BROKERS

1. *Which of the companies on the list are the four "brass plate" companies?*

A: HMRC have informed me that under the legal requirements of the Commissioners for Revenue and Customs Act 2005 they cannot disclose any information that may identify any entity in respect of HMRC's dealings with them; therefore I am afraid I am unable to provide details of the "brass plate" companies requested.

2. *Would either the legitimate companies or brass plate companies have breached UK regulations if the final destination for the goods had been an embargoed country or destination of concern?*

A: It is not possible to be definitive without a specific case, but if any UK-registered company or UK national traded military goods to an embargoed destination without having a valid trade control licence in place, then they would likely have breached UK regulations. If the destination was not an embargoed destination as defined in the Export Control Order 2008, whether or not a trade control licence was required would depend on the nature of the goods being traded (that is, Category A, B or C) and where the trading activity actually took place. If the transaction did require a licence, then clearly trading without a licence would be a breach of the regulations.

3. *The UK Working Group on Arms told us in evidence that it was aware of UK and overseas brokers using brass-plate companies to arrange shipments to Rwanda and South Sudan. It believes that a pre-licensing registration system, with criteria to be met by the applicant, would help prevent brokering by similar brass-plate companies. What is your view on this?*

A: There is no obvious solution. The problem with so-called "brass plate" companies is that although they are registered in the UK—and indeed there may even be a brass plate with the company's name on an office door somewhere—they typically have no "real" presence here, and no part of their activity is actually conducted within the UK. If that is the case, and unless a UK national working for the company overseas has traded in Category A or B goods or brokered a supply of military equipment to an embargoed destination, they will not have done anything to breach the controls, and consequently there is no enforcement action that can be taken against them.

A pre-licensing registration system where the trader was required to apply for inclusion on the register, and where acceptance onto the register was subject to some form of assessment of the trader's suitability, would not change that situation. It seems to me that if an entity is prepared to trade without applying for a licence then it is highly unlikely that they would be concerned with applying to be on a register. If that entity is a "brass plate" company there would still be no meaningful enforcement action that could be taken against them. If a brass plate company did make it onto the register and then traded without a licence then we would of course be able to revoke their registration. But in practical terms, rejection or revocation of a registration would not prevent them trading; nor would it increase our powers to impose meaningful penalties against them.

The UK Working Group have argued that “a register of legitimate brokers, combined with an active outreach programme to states acknowledged as significant arms exporters in their own right, would alert the authorities in the exporting state of the need to exercise extreme caution (at the very least) where any UK broker was not registered as such in the UK”. But this could already be achieved through the list of all those who have applied for an Individual Trade Control Licence or registered for an Open General Trade Control Licence. Their full details and legal trading history are already known to us and a register is unlikely to tell us anything we don't already know. A more proactive engagement with foreign governments on brokering policy and practice would have significant resource implications, in particular for the FCO and on diplomatic posts overseas.

As the Government has said before, we are not opposed to a register as a matter of principle. There may be benefits to be gained such as increased opportunities for promoting awareness of the regulations. However a register is not a “cure all” for perceived problems associated with arms brokering and there would be considerable costs, both for business and Government, in setting up and administering a register.

JOINT INDUSTRY AND NGO PROPOSAL ON EXTENDING EXTRA-TERRITORIAL CONTROLS

The Government's alternative approach to the joint proposal is to work with both sides to try and address the particular concerns that they have. We have already started the process of engagement and my officials met with representatives of the NGOs on 2 February. I understand the discussion was constructive and wide-ranging, touching on a number of other issues as well as extra-territorial trade controls.

In relation to the trade controls I am pleased to say that we have agreed to add Anti-Vehicle Mines to Category B, so that trading in these items by UK persons will be controlled no matter where in the world the activity takes place. We will bring forward the necessary amendment to the Export Control Order 2008 at the earliest opportunity. As a first step, the NGOs have agreed to consider whether there are any particular goods that ought to be moved from Category C to Category B, based on the risks associated with trade in those specific items; and to consider whether there are particular countries of concern such that trading Category C goods to those destinations ought to be subject to extra-territorial control. We will of course need to be sure that any proposal is workable, based on evidence of risk, and enforceable.

A meeting between officials and industry representatives is scheduled for 15 February.

INDEPENDENT STUDY OF COMPLIANCE IN THE DUAL-USE SECTOR

4. *Why weren't respondents asked questions in order to explore what they understood by the term “compliance”?*

A: We worked closely with the consultants, who have an excellent track record and wide experience of this type of research, on the questions that would be asked, to ensure both that they provided the information we needed, and did not take up disproportionate amounts of interviewees' time. As the questions were asked in the specific context of UK export controls, the meaning of compliance should have been self-evident. However, there was ample opportunity for interviewees to ask for clarification if they felt they needed it.

5. *Only 53% of respondents were aware of SPIRE which seems a very low figure. What is the Government doing to better publicise its on-line resources to the attention of industry?*

A: It is important to remember that, although all respondents produced or supplied dual-use goods, the study deliberately included a proportion of randomly selected companies as interviewees, as well as those who we knew had applied for licences relatively recently. It would not be unreasonable for the randomly selected companies not to have heard of SPIRE if they had not applied for a licence between September 2007, when the system was introduced, and March 2009 when the survey was carried out. In fact, because only 39% of respondents were current or former licence holders the proportion that was aware of SPIRE is not as low as it first appears.

The Export Control Organisation (ECO) operates a series of export control training and awareness activities for companies and organisations which widely promote the use of SPIRE and other on-line resources. In 2009, 41 training seminars and training courses were held nationwide involving a total of 800 people from 360 organisations. Events are promoted in the ECO electronic Newsletter circulated to companies registered on the ECO database and on the ECO website. Companies new to exporting are encouraged to attend the “Making Better Licence Application” seminar providing assistance on the use of SPIRE. The Business Awareness Unit in ECO is looking at additional ways of promoting awareness of export control requirements with the help of representatives across the ECO Network including OGDs and companies. We have also recently launched a user satisfaction survey for SPIRE users to establish how we can further improve SPIRE services.

6. *Business Link is much better known than both SPIRE and ECO website. Has the Government explored the possibility of using Business Link to increase industry's awareness of the export control system?*

A: As part of the Government's Service Transformation programme, by 2011 95% of government website content will be converged onto the following sites: NHS Direct, Directgov and Businesslink. Consequently, the ECO pages of the BIS website will converge with Business Link www.businesslink.gov.uk on 1 March 2010 with the key aim of providing easier access to cross-government information and more efficient ways to interact with government via transactional sites such as SPIRE. Export Control policy and Notices to Exporters will remain on the BIS website www.bis.gov.uk

7. *What could industry be doing to increase exporter's understanding of the export control system?*

A: ECO already works closely with export related organisations and key government departments eg HMRC, MOD, FCO and DfID to raise awareness of export control requirements. Additionally the Export Group for Aerospace and Defence (EGAD) and Cranfield University's Defence Management and Leadership Group at the Defence Academy provides on-line training for the UK defence industry to support responsible exporting.

A key area we will be looking to improve on is working with industry to promote awareness of export control requirements for dual-use goods and, in line with the convergence of the website with Business Link, will be working closer with Business Link and other Business Support Organisations to further increase understanding of the export control system.

DUAL-USE REGULATIONS: TRANSIT AND BROKERING CONTROLS

8. *What is the UK doing to implement the Regulation nationally, what are the challenges you face, and is the UK consulting with other EU Member States about their experiences of implementing the same Regulation?*

A: The Regulation is directly applicable in all EU Member States and entered into force on 27 August 2009. However, provisions for licensing, enforcement and penalties together with national options provided for by the Regulation had to be implemented via national legislation. In the UK this was done by means of secondary legislation in the form of The Export Control (Amendment)(No 3) Order 2009 (S I 2009 No 2151) which also entered into force on 27 August 2009.

The main challenge was the introduction of new Community controls on Transit and Brokering of listed dual-use goods for WMD purposes and to ensure that we removed any overlap with national controls which were already in force in the UK for transit.

The UK issued publicity and guidance material via the ECO website advising exporters of the new controls and included details of the new Regulation in its awareness programmes to exporters around the country.

The UK regularly attends the Council Working Group on Dual Use goods and the Commission Chaired Co-ordination Group set up under the provisions of Article 23 of the Regulation where issues arising from the implementation and operation of the Regulation are discussed. In addition the Commission are arranging a number of "Peer Review" visits in 2010 to discuss implementation and operation of certain aspects of the Regulation. The first of those visits will be to the UK in March where national general authorisations (OGELS) and the Community General Export Authorisation (CGEA) will be discussed.

I trust you find this information helpful.

11 February 2010

Supplementary written evidence submitted by Ivan Lewis, Minister of State, Foreign and Commonwealth Office

I am writing to inform you of the advice the FCO has given to UKTI on whether it is appropriate for country invitations to be issued to attend UKTI exhibitions at the Scientific Development Branch at the Home Office (HOSDB), and the Farnborough International Air Show in March and July 2010 respectively. Prior to exhibitions, it is standard practice for UKTI to seek views from FCO on this matter.

The Committees on Arms Export Controls (CAEC) have previously shown an interest in the invitations issues to delegations of senior government and police officials at security and defence exhibitions, especially those from countries which are currently subject to an embargo or other international sanction. I enclose a complete list of invitations for both exhibitions for your information.

Among the invitations to international delegations that might be of most interest to the Committee are those to china. FCO advised that an invitation should be extended to China despite some caution concerning Chinese invitations in the past around the possible use of China of intelligence gathering opportunities. Our judgment is based on the fact that China has been invited to such exhibitions in the past, the Chinese do have legitimate interests in attending and that their presence could result in significant business for some UK exhibitors. Any Chinese defence purchases would need to be in accordance with the Consolidated EU and National Arms Export Licensing Criteria and the EU Arms Embargo on China.

In common with all the overseas delegations invited to HOSDB, those invited will be escorted throughout their time at the exhibition by a member of UKTI staff. The arrangements for both events will be closely monitored by officials from UKTI and officials from BIS and HMRC/UKBA will undertake standard enforcement controls. We have made it clear in the invitation to overseas delegations that attending one of these exhibitions does not mean that countries can automatically expect to be able to export any of the goods on display or being promoted at the events. As you would expect, all export licence applications will be considered on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria at the time of application.

LIST OF COUNTRIES TO BE INVITED TO HOME OFFICE
SCIENTIFIC DEVELOPMENT BRANCH (HOSDB)

<i>Priority</i>	<i>Reserve</i>
Algeria	Angola
Argentina	Bangladesh
Australia	Botswana
Austria	Bulgaria
Bahrain	Chile
Belgium	Czech Republic
Brazil	Denmark
Brunei	Estonia
Canada	Finland
Colombia	Ghana
Egypt	Hong Kong
France	Ireland
Germany	Kenya
Greece	Latvia
India	Lithuania
Indonesia	Norway
Iraq	Peru
Italy	Serbia
Japan	Slovakia
Jamaica	Switzerland
Jordan	Ukraine
Korea (South)	
Kuwait	
Lebanon	
Libya	
Malaysia	
Mexico	
Morocco	
Nigeria	
Netherlands	
New Zealand	
Oman	
Pakistan	
Peru	
Poland	
Portugal	
Qatar	
Romania	
Saudi Arabia	
Singapore	
South Africa	
Spain	
Sweden	
Syria	
Thailand	
Trinidad & Tobago	
Tunisia	
Turkey	
UAE	
USA	
Vietnam	

FARNBOROUGH INTERNATIONAL AIR SHOW 2010
COUNTRY NOMINATION LIST

<i>Core List</i>	<i>Reserve List</i>
Algeria	Brunei
Australia	Trinidad & Tobago
Austria	Vietnam
Bahrain	EC/EDA
Brazil	NAMSA
Bulgaria	UN
Canada	
Chile	
China	
Czech Republic	
Denmark	
Finland	
France	
Germany	
Greece	
India	
Indonesia	
Iraq	
Italy	
Japan	
Jordan	
Korea	
Kuwait	
Libya	
Malaysia	
Netherlands	
New Zealand	
Norway	
Oman	
Pakistan	
Peru	
Poland	
Qatar	
Romania	
Saudi Arabia	
Singapore	
South Africa	
Spain	
Sweden	
Switzerland	
Thailand	
Turkey	
UAE	
USA	

22 February 2010

**Supplementary written evidence submitted by Ian Lucas MP, Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills**

Thank you for your letter of 8 February, seeking further information about the ban on the export of explosive detectors to Iraq and Afghanistan. You asked the following questions and I will answer them in turn:

Why were electro-statically powered explosive detectors not previously added to the list of dual-use goods subject to UK export control for strategic purposes?

Until 27 January this year, explosives detectors were subject to control as strategic goods if they were specially designed for military use or if they were electronic equipment for detecting explosives. Electro-statically powered explosive detectors do not fall into either of these categories. The devices we have seen are not military goods because they are not “specially designed” for military use. They are described as “substance” detectors capable of detecting anything the user wishes them to detect (but typically illegal drugs, smuggled goods, etc, as well as explosives) and are marketed at police and customs and other civil

bodies as much as at the military. Since they do not contain any functioning electronics they are not “electronic equipment” (the controls were limited to electronic equipment to avoid controlling simple inspection devices, such as mirrors for checking under vehicles for explosives).

The reason for controlling explosive detectors has always been to prevent them falling into the hands of terrorists etc who could use them to develop countermeasures or some means to evade the detectors. Until recently, we had no reason to suppose that devices, which allegedly have no detection capability and therefore would not allow a terrorist to defeat that capability, should be subject to control.

Why will the controlled detectors only require a licence to be exported if they are being exported to Afghanistan or Iraq?

Export Controls operate within the framework of the Export Control Act 2002, which specifies the circumstances in which an item may be subject to export control. In this case, the legal power we have used is based on the risk that the devices could cause harm to UK or other friendly forces; this is one of the very limited numbers of powers we have to impose export controls on equipment that may not work. Iraq and Afghanistan were the destinations where we judged there to be the greatest potential risk. Although there is a more general power to impose temporary export controls (for up to a year) on any items, the need for an affirmative Order would have made urgent action more difficult.

What other countries are these items currently being exported to?

Since the export prohibition was introduced for Iraq and Afghanistan on 27 January, Her Majesty’s Revenue and Customs have taken all reasonable steps to prevent any unlicensed exports of these products. However, it is important to note that the UK is not the only supplier of these products. They appear to be widely available from companies outside the UK (including from USA, Germany and India) but we are, as far as we are aware, the only country to have introduced any form of control over them. The Foreign and Commonwealth Office (FCO) have informed countries where the devices are believed to have been in use of concerns about their effectiveness and, on 5 February, the FCO instructed relevant British Embassies to bring this to the immediate attention of their host governments, making clear that it remains the responsibility of host countries to take appropriate action.

What is your assessment of the damage that has been caused to persons and property by the Iraqi military’s use of these detectors?

The Government cannot make such assessments. It is impossible to chart whether a given explosive device passed through a checkpoint at which detectors were in use. Nor can we assess the extent to which the perceived deterrent effect of these detectors prevented attempts to take explosive devices through checkpoints. We are therefore unable to assess whether anyone has been injured in an incident relating to the use of the detectors; whether Iraqi or other civilians were at risk from the use of the detectors; and the damage caused to persons or property by the Iraqis’ use of the detectors. The British Embassy in Baghdad is not aware of incidents in Iraq in which British citizens were killed or injured by explosives in Iraq in 2008 or 2009.

I hope that you find this information helpful.

10 March 2010
