



Reports from the Defence, Foreign Affairs,
International Development and Trade and
Industry Committees

Session 2005-06

**Strategic Export Controls: HMG's Annual Report for
2004, Quarterly Reports for 2005, Licensing Policy and
Parliamentary Scrutiny**

Response of the Secretaries of State
for Defence, Foreign and
Commonwealth Affairs, International
Development and Trade and Industry

*Presented to Parliament by the Secretaries of State for Defence, Foreign and Commonwealth
Affairs, International Development and Trade and Industry
by Command of Her Majesty
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REPORTS FROM THE DEFENCE, FOREIGN AFFAIRS INTERNATIONAL DEVELOPMENT AND TRADE AND INDUSTRY COMMITTEES

SESSION 2005-06

ANNUAL REPORT ON STRATEGIC EXPORT CONTROLS

RESPONSE OF THE SECRETARIES OF STATE FOR DEFENCE, FOREIGN AND COMMONWEALTH AFFAIRS, INTERNATIONAL DEVELOPMENT AND TRADE AND INDUSTRY

This Command Paper sets out the Government's response to the Quadripartite Select Committee's Report of 3 August 2006 into the Strategic Export Controls: Annual Report for 2004, Quarterly Reports 2005, Licensing Policy and Parliamentary Scrutiny. The Government's response to the Committee's recommendations is set out in bold. Unless otherwise indicated, references are to paragraphs in the Committee's Report.

Conclusions and recommendations

1. We conclude that much has been achieved in the area of strategic export control, but there is still a great deal to do. Drawing on the work of our predecessor Committees and our own experience since the start of this Parliament we intend to make a contribution to the review of the legislation which the Government has announced will take place in 2007. We conclude that this will be a good opportunity to take stock of progress since the Scott Inquiry and the enactment of the Export Control Act 2002. It will also be an opportunity to examine the effectiveness of the legislation and whether changes need to be made to meet the challenge of increased globalisation of the defence industry, the fast pace of technological developments and the threat from terrorists. (Paragraph 5)

The 2007 review will provide a useful opportunity to take stock of existing controls. We welcome any input from the Committee.

2. We conclude that the Government recognises the need to respond to our questions in a timely manner. (Paragraph 9)

We are, as always, committed to answering the Committee's questions as completely as possible in a timely manner. However, the need for wider consultation may mean that a response from the Government to the Committee takes longer than anticipated. We will of course endeavour to keep the Committee updated on progress of all correspondence.

3. In the light of this year's evidence sessions, we conclude that it is necessary for us to take evidence directly from the Export Control Organisation and the Revenue and Customs departments. We intend to repeat this practice next year. (Paragraph 10)

HMRC/RCPO and DTI/ECO have noted this recommendation and stand ready to assist the Committee in its work. The Government welcomes the opportunity to provide evidence direct to the Committee.

4. We have concluded that our approach now should be to send written questions to the Government once we have reviewed each quarterly report on strategic export controls and to raise specific issues as they arise. It is our intention that this arrangement will spread the work and prevent a bottleneck of questions concentrated after the publication of the annual report on strategic export controls. As a consequence of the general election in 2005 and the time it took to establish the Quadripartite Committee in 2005-06 the arrangement has not yet fully bedded down but we expect it to be fully developed in 2006-07. (Paragraph 11)

The Government welcomes the Committee's approach and hopes the systematic requests for information will allow it to respond to written questions from the Committee in a timely manner.

5. While we recognise that, exceptionally, the ministerial reshuffle in May 2006 delayed some replies to our written questions this year, we recommend that, to assist our work, the Government agree to reply fully—other than in exceptional circumstances—to our letters on the quarterly reports within six weeks. We are confident that such an arrangement will allow the Government and us to plan work and to avoid past misunderstandings and difficulties. (Paragraph 12)

The Government is committed to answering all requests for information in a timely manner. Where it is possible to do so, we shall endeavour to meet the Committee's suggested deadlines. However, the Government cannot commit to responding within six weeks on the basis that it cannot know the number and nature of the enquiries to be put to it by the Committee. The Committee will also appreciate that adequate time is needed to respond properly to the large number of questions asked within the available resources. As the Committee acknowledges, a thorough response by all departments takes time, and for this reason, deadlines may occasionally slip. We will endeavour to keep the Committee updated on any delays to correspondence.

6. We recommend that the Government dispense with the use of the "In Confidence" designation when responding to our questions on strategic exports and that it provide a detailed statement, not a general restatement of the criteria, of the application of government security classifications to correspondence on strategic export controls and that it also explain its reasons for changing the classification on the letters concerning exports to Iraq. (Paragraph 15)

The Committee will recognise the Government's responsibility for protectively marking information which could have security and commercial implications should it be released. The application of 'Restricted' or 'Restricted – Commercial' markings is an indicator to the Committee that onward dissemination by the Committee would go beyond what is permissible in security or commercial terms. In this way the Government allows the Committee to continue to receive the sensitive information needed for its comprehensive scrutiny of strategic exports, while protecting the disclosure of the information. The Committee will note that in a letter from Dr Howells of 17 May 2006 to the Committee, he explained that after consultation it was decided that the 'in confidence' security markings would no longer be used on correspondence with the Committee.

All quarterly reports of export licences granted for Iraq to the Committee should have been classified as “Restricted “. We regret this was not done on all occasions. We have always assumed that the Committee would respect the commercial sensitivity of information in the quarterly reports. However, we have added the “ Restricted” classification as a matter of clarity.

7. Building on the useful oral evidence session with the Minister of State at the Department of Trade and Industry we conclude that we should visit the Export Control Organisation in 2006–07, to see it in operation. (Paragraph 16)

ECO would welcome the opportunity to show the Committee how it functions.

8. To assist the Government’s review of export control legislation scheduled for 2007, we conclude that we should carry out, and have completed, a review of the operation of the legislation in time for it to be taken into account by the Government’s own review. To assist our examination of the export control legislation, we recommend that the Government produce and publish its terms of reference for its review of the legislation by October 2006. (Paragraph 17)

As has been previously confirmed, ECO will be taking forward the review of the 2004 export controls in 2007. ECO intends to engage with stakeholders through the Autumn of 2006 to inform the eventual consultation document. The review terms of reference are expected to be settled at the end of this process, ie, around the end of the year. ECO will provide draft terms of reference to the Committee as soon as possible.

9. We conclude that in 2006–07 we should carry out a review of export controls taking the form of post-legislative scrutiny of the Export Control Act 2002 and the secondary legislation made under the Act. (Paragraph 18)

The 2007 review will be conducted according to Better Regulation principles, as set out by the Cabinet Office. The Government will of course be interested in any findings or observations provided by the Committee as the 2007 review proceeds.

10. We conclude that a prior scrutiny model for certain sensitive (or precedent setting) arms export decisions—along the lines suggested by the UK Working Group, on a trial basis for transfers to countries under or recently under embargo—should be developed. (Paragraph 21)

The Government has previously made it clear that it will not introduce a system of prior parliamentary scrutiny of export licence applications both on practical grounds and as a matter of principle. See <http://www.fco.gov.uk/Files/kfile/FACresponse030001,0.pdf> for HMG’s last response on prior scrutiny. As the Committee will know, retrospective scrutiny has been enhanced by the introduction of quarterly information on its export licensing decisions, and also by the provision of quarterly confidential reports.

11. Because of the constraint of time we have not considered in detail the contentions concerning the accuracy of the MoD’s 2003 memorandum refuting allegations that bribes had been paid by the Defence Sales Organisation and we conclude that we should consider the issue further next session. (Paragraph 24)

Following the Chairman’s request for a memorandum responding to allegations about the accuracy of the MoD’s 2003 memorandum, raised in a letter from the Campaign Against the

Arms Trade, a reply was sent on 11 July. That reply additionally made clear that the Government takes very seriously the control of defence exports and behaviour of UK companies and others working in this area. The Government is committed to ensuring that bribery plays no part in the activities of UK companies overseas, including those whose business is defence. DESO does not employ agents or pay commissions.

12. We recommend that the printed version of the annual report on strategic export controls and the CD-ROM containing the accompanying detailed information be published simultaneously, ideally in the future the CD-ROM be enclosed with the annual report. (Paragraph 26)

This is a consolidated response to recommendations 12/14/15. The Annual Report on Strategic Export Controls is an innovation of this Government and illustrates the high level of transparency in our export controls. We continue to improve the design, layout and content of the Report to ensure it is meeting the needs of users. Taking on board comments from the Committee after the publication of the 2004 report, we ensured that the 2005 report was published simultaneously with the CD, and indeed the CD was attached to the inside of the back sleeve. The move to put all the country data on the CD-ROM allowed us to devote the printed report to information on licences and policy analysis. The Government is always looking for ways to improve the content of the Annual Report and will consider these suggestions in the context of the 2006 Annual Report.

13. We recommend the Government evaluate the production and maintenance of a fully searchable and regularly updated database of all licensable decisions with a search facility that would allow the user to sort licences by country and by goods. (Paragraph 28)

ECO is constantly seeking to improve the way in which it provides information on export licensing decisions. Very detailed licensing information is already available in the Quarterly Reports. In the initial stages of implementation of the new IT system, the highest priority would need to be given to addressing the core licence processing requirements so as to ensure the system maintained the quality of decision-making. In the longer term, however, we will consider whether such a facility can be provided whilst still maintaining the integrity of the searchable data, and subject to cost and resource constraints. If this did prove feasible we would have to consider the value and practicality of continuing the Quarterly Reports in their current format.

14. We recommend that, to assist the reader, the data on future CD-ROMs be consolidated into a single document covering the whole year. (Paragraph 29)

See answer 12

15. From our own examination and use of the 2004 Annual Report we conclude that the effect of the switch to quarterly reporting and the production of a CD-ROM to accompany the annual report left the printed annual report, as produced for 2004, largely redundant and on its own to be of little value to the informed reader. (Paragraph 30)

See answer 12

16. We conclude that the Human Rights Annual Report and its objectives provide an exemplary model for improvement to future annual reports on strategic export controls. We recommend

that the Government take the Human Rights Annual Report as a model for making improvements to the content of future annual reports on strategic export controls. (Paragraph 33)

The Government agrees that the Human Rights Report is a comprehensive and useful document. There are elements that may be suitable for incorporation in the Strategic Export Controls Annual Reports but further work will be necessary to determine viability.

17. We recommend that future annual reports on strategic export controls set out in a consistent and systematic manner the resources made available by the Government to implement and enforce strategic export controls and details of enforcement actions. (Paragraph 34)

ECO will provide information in future reports. In terms of enforcement, HMRC officers are multifunctional, covering a wide range of fiscal controls as well as many regimes prohibiting or restricting the import and export of goods. HMRC estimated in broad terms the number of staff years actually deployed on strategic export controls – noting firstly that resources expended fluctuates in response to demand and secondly that deployments can be increased if operational priorities change. HMRC’s central records do not break down the operational time spent into individual prohibitions and restriction regimes as there would be a high cost in recording information in this detail. However, in line with the above recommendation, and to assist the Committee, HMRC is currently undertaking work to identify a more accurate estimate of resource deployed, though for operational reasons it may be necessary to ‘sanitise’ the figures before publication. HMRC agrees to provide details of enforcement actions. In line with its own annual report HMRC’s figures will be based on the financial year.

18. At the time that we are considering this Report the 2005 Annual Report on Strategic Export Controls has not been published. We therefore reiterate here the points which we have made to the Government as well as drawing on the UK Working Group on Arms’ evidence.

- a) We recommend that the section that was section I of the 2004 Annual Report, which provides an overview of policy, be expanded to assist the informed reader to:
 - i. include an assessment of the effectiveness of arms control policy and enforcement during the year covered by the report, including a review of risks and of areas where improvements are required;
 - ii. provide an analysis of trends in, and volumes and values of, strategic exports;
 - iii. identify areas where the Government has concerns about the supply of arms and the adequacy of its controls;
 - iv. set out changes in policy since the last annual report; and
 - v. provide a detailed overview of outreach and assistance to overseas countries.
- b) We recommend that the “country by destination” section of future annual reports provide, for each country, a summary of export policy with tables containing total figures for arms exports and licence applications as follows:

- i. a statement on the general arms transfer control approach or policy toward the recipient state, along with any policy changes that have occurred over the year;
- i. a table providing the total number of applications and value of Standard Individual Export Licences (SIELs) for the previous year and a breakdown by quarter for the current year; and
- i. summary information on the types of transfer authorised during the reporting period and an explanation of how these reflect the Government's stated commitments. (Paragraph 35)

Taking each of the points in turn:

Regarding (a) (i), (ii) and (iv) above, the Government considers that this need is already met through the significantly expanded Section 1 of the UK Strategic Export Controls Annual Report 2005. In addition to this, a form of analysis of licences refused and processing times is already provided in the "Information on Refusal Percentages and Standard Individual Export Licence Application Processing Times by Destination" which is available from the ECO's website. This is published at the same time as the Quarterly reports.

Concerning (a) (iii), although the Government is confident that its export control regime is one of the most robust in the world, the 2007 review will provide an opportunity to look again at the adequacy of its controls.

In relation to (a) (v), the Government has done and continues to do much in terms of outreach. Although the Government would be content to brief the Committee on the detail of its outreach programme, it may not be appropriate diplomatically for this information to be placed in the public domain. The Government will consider the possibility of providing a 'Restricted' report to the Committee.

Turning to the recommendations at (b):

As the Committee is aware, the Government applies the Consolidated Criteria to every destination country. This is the basis of all export licensing decision. The Government also publishes in the Annual Report a list of its International Commitments, setting out country specific policy. Consequently, the Government believes that it already meets this information need.

Information on the value and number of SIELs by quarter is already published. The Government sees no benefit in repeating the previous year's data tables on value and number of SIELs, where that data is already in the public domain.

The Government it is not clear what the Committee means by 'types of transfer' at (b) (iii).

19. We conclude that information on the administrative resources and staff employed to enforce export controls and for outreach in the UK and overseas, which straddles several departments, should be consolidated and presented in future annual reports. We recommend that this information be set out either as a separate chapter in the report or in a revised and expanded version of section II of the current report. (Paragraph 36)

Please see the response to recommendation 17.

20. We recommend that the Government review the presentation of summary data currently set out in section II of the annual report and that the summary data be set out consistently in tables with commentaries analysing the trends to be drawn—or, if necessary, explaining those not to be drawn—from the figures. We recommend the section also include:
- a) tables showing, for the current year and previous year, the number of applications received, applications processed, the number of compliance checks (including visits to companies) carried out and appeals received;
 - b) the refusals information currently set out separately in electronic format, plus summary data for the previous year; and
 - c) details of enforcement action (disruptions, prosecutions, compounding and warning letters, which are explained in chapter 5) with total figures for the current year and previous year. (Paragraph 39)

The Government will look at ways of providing the information requested in future reports.

21. We accept that it is undesirable to increase the burdens on industry to gather data on exports but we consider that the information may be available from other sources. We recommend that the Government investigate whether data could be obtained from a function of the internal compliance programme software, which companies routinely use, in order to minimise the time required to collect and transmit the data. (Paragraph 40)

The Government does not believe that this can be done without imposing sizeable extra burdens on exporters. A number of software packages have been developed by private concerns, to assist exporters in complying with export controls. Their use is entirely optional for exporters, they do not adhere to any common standard, and they were not designed for the purpose of collecting statistical data on exports; so the data recorded varies significantly from company to company. For these reasons, the Government believes that this is not a sound way to attempt to gather statistical data on exports. To have either to gather new data for the ICP software, or to transfer or duplicate existing data to the ICP software from another data recording system, would significantly increase the administrative burden for exporters and might act as a disincentive for them to use the ICP software. It would also constitute a considerable resource issue for the Government’s own administrative process. If the information were to be collected, changes would be required to existing -or any new- IT system to accept the data. For these reasons, the Government is not able to pursue this recommendation.

22. We recommend that the Government review how to improve its reporting of goods exported under open licences, including more detailed and more accurate information on quantities, values, end-use and end-user information and whether the goods are intended for “incorporation”. (Paragraph 42)

The Government cannot accept this recommendation. ‘Open’ licences are designed to cover lower-risk scenarios and reduce the burden on exporters by obviating the need for them to

apply for large numbers of SIELs and to enable Government to direct resources at higher risk transfers. Because open licences cover lower risk exports, exporters are not asked for specific information in their applications on end-users (except where the circumstances of the export warrant this), quantity and value. The ECO carries out stringent audits of holders of open licences to ensure that they are complying with the permissions granted under the licences and their conditions. The Government takes extremely seriously breaches of all licences, including open licences. As open licences are concessionary, in the event that a breach is noted, the licence may be withdrawn or varied by the ECO.

23. We have several concerns about strategic export controls to and from the Channel Islands and the Isle of Man. First, there is a disparity in status: the Isle of Man is subject to the Export Control Act 2002 but the Channel Islands are not. Second, the 2004 Annual Report contains on page 72 an Open Individual Export Licence to the Isle of Man. We assume that this was issued by the Export Control Organisation in error. Third, we are not aware that the bailiwicks in the Channel Islands produce annual reports on strategic export controls. We recommend that the Government clarify that future UK annual reports on strategic export controls cover both the UK and the Isle of Man and require the bailiwicks in the Channel Islands to produce their own annual reports or annex them to the UK report. The reports covering the Channel Islands should explain the criteria against which applications for licences are considered and provide identical data to that provided in the UK annual and quarterly reports. (Paragraph 47)

For clarity, the Export Control Act 2002 does not apply to the Isle of Man. However, the various Orders made under the 2002 Act have, where necessary, been applied to the Island, as part of Island law, using powers found in the Customs and Excise Act 1993 of Tynwald. The Isle of Man authorities assure us that they take their international commitments very seriously and have always made rigorous efforts to ensure that this requirement under the Customs and Excise Agreement is met.

With reference to the Open Individual Licence for the Isle of Man, this was issued in error, but the data was published in line with the Government's commitment to publish all data on all licences issued, refused or revoked. On reflection, it would have been better to footnote this application and, should a similar situation arise in future, the Government will ensure that this is done, although the Government will of course seek to avoid a repetition of the error.

The Export Control (Bailiwick of Guernsey) Law 2006 was approved by the States of Guernsey in June this year and will be submitted to the Privy Council for Royal Sanction once it has been considered by the legislatures in Alderney and Sark. Once this Law is in force, it is planned to make Orders that will substantially replicate those in force in the UK. Similarly, in Jersey updated legislation that will replicate the full provisions of the UK Act is in the final stages of drafting and is approaching enactment.

Regarding the issue of Annual Reports, each individual Government is responsible for issuing its own reporting on its export controls. The Government of Guernsey tell us they expect to address this issue once the new Law is in force.

In response to the claim that 'there is more than a suspicion' that arms had been imported to the Channel Islands and then moved elsewhere, the Guernsey and Jersey Governments have told HMG, that they wish to make clear that they have no evidence or intelligence that

companies are importing arms and re-exporting them. The Island authorities are satisfied that the controls are, and will be, adequate for purpose. The Bailiwick authorities consult DTI before exporting strategic goods.

24. We recommend that, on the request of the Quadripartite Committee for explanation of a decision to grant a licence and therefore, by implication, that the export licence meets the European Code of Conduct on Arms Exports and National Export Licensing Criteria, the Government provide a short resume—under a security classification, if necessary—of the considerations which informed its decision. (Paragraph 50)

The Government values the scrutiny function performed by the Committee and already provides a significant amount of additional, and often sensitive, information to the Committee to assist in its work. The provision of such additional material can consume a significant level of government resources. The Government will, therefore, continue its practice of responding as positively as we can to written questions from the Committee Chairman on individual cases where the need for, and value of, additional background can be clearly demonstrated.

25. We conclude that the work of the Export Control Organisation is so sensitive and critical to ensuring that strategic exports are effectively regulated in the UK that the Export Control Organisation must remain within the public sector under government control. We recommend that the Government endorse this conclusion. (Paragraph 53)

As has been made clear, there are currently no plans to move the work of the ECO outside government control.

26. We conclude that the staff in the Export Control Organisation and other government departments responsible for processing export licences should be congratulated on their achievements during a period of retrenchment which, we expect, was unsettling and potentially distracting. (Paragraph 55)

The Government thanks the Committee for its positive support for the members of the export licensing community.

27. We are concerned that the published median figure of 15 days for the time taken to determine Standard Individual Export Licences for the final quarter (October–December) of 2005 was inaccurate; the correct figure was 13 days. An error of 15% in a key figure which does not appear to have been noticed until we queried it is not acceptable. We conclude that it casts doubt not only on the Export Control Organisation’s systems for recording information but also whether senior management review such data. Furthermore, we conclude, if there is a substantial increase in median times taken to determine applications in 2006, even to a level within the 20 day target, that would be strong evidence of a deteriorating service by the organisation in immediate need of remedy. We conclude that we should continue to monitor the efficiency and effectiveness of the Export Control Organisation’s service to industry. (Paragraph 56)

As the ECO has already explained to the Committee, this was a typographical error which it nonetheless regrets. As is noted in the Quarterly Reports, all data is supplied with a specific caveat that the information is subject to an element of human error, as was the case here. ECO

checks carefully all data presented for publication, and does its best to ensure that the data is accurate. Even so, when dealing with the amount of information that is involved in export control reporting, occasional errors may occur. The ECO seeks to keep these to a minimum.

28. If it is the case that the Export Control Organisation is operating at the limit of its capacity—and given the recent cutbacks we would expect this to be the case—we recommend that the Government give an assurance that additional resources will be found by the Government to deal with any unplanned pressures—for example, an increase in applications for licences. (Paragraph 57)

ECO, like all parts of Government, is not immune from the pressure for increased efficiency and therefore no guarantees can be given that additional resources will be available. The introduction of new IT systems should facilitate more efficient working, and thus enable ECO to maximize the use of resources.

29. We drew the following conclusions from our exchanges with the Government about the statistics on applications for licences received:

- a) they underline the points we have made at chapter 3 on the shortcomings of the presentation of the statistical data about export licences;
- b) the reduction in the number of Standard Individual Export Licences since 2002 appears to have assisted the Export Control Organisation to attain its targets; and
- c) the upward trend in Open Individual Export Licences may not have been as strong as we anticipated last year and we shall review the figures again next year. (Paragraph 59)

Concerning (a), with reference to the response to recommendation 18 above, the Government does not accept that there are shortcomings in its presentation of statistical data. Much effort has gone into explaining to the Committee the limitations on what can and cannot be produced and/or published and more information in a more user-friendly format is now available to the Committee and other export control stakeholders.

On (b), the picture is more complex than the Committee suggests: the reduction in the number of SIELs received by the ECO since 2002 may have been a contributing factor to the ECO attaining its targets, but this can be balanced-out by those SIELs that take much longer than average to process due to the nature of the goods and/or destination. Open licensing has thus removed from the system some of the lower risk applications, allowing the export licensing community properly to devote more time and resources to the more sensitive applications.

Regarding (c), the Government notes the Committee's comments.

30. We conclude that freezing open licences at their current levels and at their inconsistent maximum terms risks directing maximum scrutiny at exports which pose far from the maximum risk to the UK's policies on arms exports. We therefore conclude that a moderate change in the balance between open and standard licences and a change to a consistent maximum duration for all Open Individual Export Licences—for example, three years—is acceptable provided the Government can address, and assure us, on three issues. First, that there will be no softening of the criteria applied to consideration of applications for Open Individual Export Licences.

Secondly, the Government provides assurance that companies are subject to rigorous internal compliance requirements and to regular audits to verify their implementation. Thirdly, the Government will address the lack of transparency in the reporting of open licences in the annual and quarterly reports on strategic export controls. (Paragraph 60)

The Government notes the Committee’s comments on OIELs. As the Committee is aware, OIELs are an important part of the export licensing matrix. Importantly, the ECO has not, and will not, soften its assessment of open licence applications, all of which are subject to close scrutiny against the Consolidated Criteria as well as being concessionary, based on an identifiable business need and a proven compliance track record on the part of the exporter. As the Committee knows, the Government conducts regular audits of exporters to verify that they are using the licences in accordance with conditions.

The Government does not believe that it can provide any further information on Open Licences without introducing an unacceptable burden on exporters in terms of record keeping and reporting.

31. Having taken a decision to keep the Export Control Organisation in the public sector we conclude that there is now a duty on the Government to provide adequate resources for its development and that it would be unacceptable to attempt to muddle through with minimal investment. As a first step we recommend that the Government set out the IT functionality that the Export Control Organisation needs and the investment required to deliver these functions with a clear plan for provision and implementation of the new information technology systems. We request a detailed briefing from the Department on its plans for information technology in the Export Control Organisation. (Paragraph 62)

ECO is happy to provide the Committee with an outline of the new IT system but to do so here would result in too much detail. ECO would therefore be pleased to provide this and a presentation if desired, either to the Clerk to the Committee or when the Committee visits.

32. We recommend that the Government ensure that the proposed upgrade to the information system in the Export Control Organisation meets the current best practice of EU countries and expected changes in requirements for the publication of data in annual reports. (Paragraph 63)

As noted at 31, ECO is looking at changes to its IT systems in order to improve the way in which it processes export licence applications. Part of any new system will be dedicated to providing a reporting tool to simplify the production of the statistical data for the Quarterly and Annual Reports. The Government is however confident that it does and will continue to meet EU best practice standards.

33. We recommend that the Export Control Organisation address and rectify the problems which EGAD has identified with the new Goods Checker. The problem with the Goods Checker also underlined to us that outreach to industry must make clear that the Goods Checker is one of many components of a company’s comprehensive internal compliance programme and cannot on its own provide the necessary assurance to a company that it is complying with strategic export controls. (Paragraph 64)

Prior to the “Goods Checker” tool being launched, exporters had to manually search the control lists to determine licensability and/or apply to ECO for a rating. Importantly, at each

stage of its development, Goods Checker was tested with industry. From the outset, it was made clear, and indeed industry fully recognised, that Goods Checker was an aid to determining licensability and not a provider of a definitive decision.

To ensure that the tool is used correctly, guidance is provided on ECO's website, and a comprehensive training course has been developed for industry with the first course starting in October 2006. ECO is also discussing with industry the possibility of joint industry/ECO delivery of this training.

Further information and guidance is also given to exporters in the course of visits by ECO compliance officers, who also examine and give advice on companies' internal compliance programmes.

Turning to the specific example raised, if a user of Goods Checker types in the incorrect spelling "berillium" the advice shown on the screen is:

'No matches found. This does not necessarily mean that your items are not licensable. See "Making Effective Searches" in How it Works and Quick Help '

Thus the exporter should be in no doubt that a licence may still be required, and the onus is on them to investigate further. The Goods Checker is designed to work in the same way as a dictionary: if one is unsure as to how to spell 'berillium', on entering the first few letters 'ber' and selecting the 'search' option, the tool will return every occurrence of 'ber' it finds, including 'beryllium'. This can then be used to repeat the search with the full correct word.

34. We conclude that integration of the Export Control Organisation's and HM Revenue and Customs' electronic systems, and in particular commodity codes, would strengthen strategic export controls. We recommend that the Government produce a plan to link up licensing and customs processing electronically, to standardise commodity codes and to allow HMRC to access the licensing database and expertise. (Paragraph 65)

Part of the ECO's planned new IT system will allow for an interface between the ECO and HMRC's 'CHIEF'system.

The harmonisation of the control lists and commodity codes is not totally under the Government's control. Those goods described by the Dual Use list (EC Reg 1334/200) are an EC competence.

The first 6 digits of Customs Commodity Codes are agreed on a worldwide basis under the Harmonised System. A further 2 digits are added under the EU Combined Nomenclature (CN) to create a more detailed split for Community trade. These codes were not created for security purposes but as a way of administering trade tariffs, quotas and preferences, and for collecting Overseas Trade Statistics. They are based on the generic make up of the product and not any potential use. This means that there is no direct correlation between Commodity Codes and goods described in the Military and Dual-Use Control.

The CN currently contains almost 10,000 codes. Some parties already consider this too unwieldy for operators to use effectively. For this reason it is extremely difficult to raise new

codes as such proposals need to meet a very strict criteria and be approved by a qualified majority of all EU Member States attending the Customs Code Committee (CCC). A previous effort on behalf of the UK to establish greater details for Military products was met with unanimous opposition from the CCC, primarily because many Member States are entitled to - and do - suppress data in this sector, and also for not meeting some of the other aspects of the required criteria, e.g. clarity of the products, and vastness of the proposal.

Accordingly, HMRC does not consider it appropriate to issue a plan to standardise commodity codes. However, the European Commission has produced a correlation table identifying all the CN codes covering any particular controlled commodity and all the controlled commodities covered by a particular CN code. This table has been reproduced in the Customs and Excise tariff so that the attention of any exporter seeking to classify goods for customs purposes will be drawn to the licensing requirements.

Recognising these challenges, HMRC is currently exploring how it can make use of an additional 3 digit TARIC code to further identify dual-use exports. This work is being considered in parallel with the SAD (Single Administrative Document) Harmonisation project, which is due to be implemented between January and July 2007.

HMRC already has access to the ECO for advice on the licensability of goods leaving the UK in the form of a dedicated phone and fax service available to all HMRC officers.

35. We conclude that outreach to UK industry is critical to the operation and control of strategic exports and we recommend that the outreach programme be expanded significantly. (Paragraph 69)

The Government welcomes the Committee's comments on the value of outreach to UK exporters. The ECO has been running a number of very successful events around the UK, on occasion with the assistance of external bodies such as the Defence Manufacturers Association, raising the awareness of current exporters and also informing those new to export control and licensing. These events have been well attended and received. However, with the current constraints on resourcing, with possible further cuts to come, there can be no guarantee that the same level of events and awareness can be maintained in the long term.

36. We recommend that:

- a) the Government expand the programme of overseas outreach led by the Foreign and Commonwealth Office and supported by HM Revenue and Customs and the Department of Trade and Industry;
- b) review the staff and resources provided for overseas outreach; and
- c) subject to the outcome of any review of the EU pilot programme, press for a full EU programme of outreach.

In addition, to ensure that provision is made for staff and resources for outreach to overseas countries, we recommend that this work be recognised as falling within the core tasks of licensing and enforcement officers and that budgets and resources are provided for this purpose, and set out in the annual report on strategic export controls. (Paragraph 74)

The Government welcomes the Committee's comments on the value of overseas outreach programmes. There is, however, little prospect of any expansion of this programme in the short term due to resource constraints. But in the light of these constraints the Government has made a priority of ensuring effective EU outreach.

37. We recommend that the Government carry out research to establish the volume and categories of the goods falling within definitions on the Military List and in the dual-use regulations but which are being exported in breach of export controls without licences. In addition, we recommend that the Government produce an analysis of the reasons that these goods are exported in breach of export control. We recommend that the results of the research and the analysis are published. We conclude that these estimates and analysis are critical to inform the review of the legislation in 2007. (Paragraph 76)

The Government does not have the resources to undertake such a massive exercise, which in any event could only reach an approximate result and so would be of limited value. There is little if any evidence to suggest that exporters in general have deliberately tried to avoid applying for necessary export licences. This is underlined by the fact that, as has been previously confirmed by the Government, the reviews of, for example, the AQ Khan and Libya situations have not resulted in the identification of any serious weaknesses in UK export controls.

38. We conclude that the Government's response to the challenge of the Internet as an arms emporium is too passive and fails to take account of the role it now plays in promoting and facilitating commerce and exports across the world. We recommend:

- a) that the Government produce a strategy for policing and monitoring potential breaches of export control by companies using the Internet to advertise and facilitate transactions;
- b) that responsibility for policing the Internet be allocated to an agency; and
- c) that members of the public are encouraged to report potential breaches of export control on line using the Internet. (Paragraph 82)

The Government acknowledges the importance of the Internet. It is already used extensively by Government in the context of export control. On the few occasions when potential breaches using the internet have been reported to us, we have investigated and taken appropriate action. Given the nature of the internet, however, comprehensive policing and monitoring would be highly resource intensive. The Government would therefore need to be sure that policing and monitoring actions were proportionate to the risk involved and that the benefits justified the resources required. The Government therefore proposes to consider further and will write to the Committee in due course on this issue.

Meanwhile, members of the public are encouraged to report potential breaches of export control via customs confidential: www.hmrc.gov.uk > individuals and employees > travel information > customs confidential – see also question 43.

39. We conclude that, as is the case with other industries, within the defence industry there are contractors who, either through ignorance or deliberate intent, breach the rules on strategic exports and that the authorities need to seek out these breaches and the perpetrators. We

recommend that, as well as providing guidance and attending arms fairs, the Government actively seeks out breaches of export controls at arms fairs. (Paragraph 86)

HMG will continue to work with organisers of arms fairs to ensure they understand the brokering rules. HMG will also continue to actively seek out breaches of export controls and indeed made checks and followed up enquiries on several stalls at the recent Farnborough Air Show. In this context, however, it must be borne in mind that advertising *per se* is not a criminal activity. To commit an offence the person concerned must do an act ‘calculated to promote the supply or delivery of any restricted goods ... from one third country to another’. A company, whose sole intention is to market items for sale within the UK, for example to UK police, would not have committed an offence. The Government has previously informed the committees of successes in taking action against breaches of export controls at these events and the Government’s vigilance will of course continue.

40. We recommend that the Government establish a pilot programme of end-use monitoring focusing on cases where it has identified some degree of risk—though not sufficient to withhold the issue of a licence—when considering an application for an export licence and to report the outcome of the exercise in 2007. (Paragraph 91)

The Government agrees with the Committee that the end use to which an export is put is a key consideration in assessing export licence applications against the criteria. However, the Government is of the opinion that the introduction of a process that allows for the issue of licenses based on future end use monitoring militates against the effective application of the criteria at the licensing stage. The Government believes strongly that there is no substitute for a rigorous assessment of any proposed export at the time of application. It is not the case that the Government issues licences where it has identified some degree of risk: if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria then it will not be granted. The end user’s record in the use of equipment, whether from the UK or other supplier, in a manner inconsistent with our criteria, is taken fully into account when assessing export licence applications. In this context, detailed end use monitoring of specific UK exports would add little to future assessment of export licence applications.

41. We recommend that the Government draw up a proposal for an EU wide system of end-use monitoring and that it canvass the proposal with other governments in Europe. (Paragraph 93)

Discussion is already on going with our EU partners within the COARM working party on the role of end use monitoring in the licensing process with the view of reaching a more common understanding. The Government view as expressed in response to recommendation 40 is shared by many partners.

42. We recommend that the Government commission research to establish the extent to which dual-use goods not subject to control are exported from the UK and are then incorporated into equipment which had it been exported from the UK would have been subject to export control. We recommend that the results of the research and the Government’s analysis of the results are published. We further recommend that the work is completed in time to inform the review of the legislation in 2007. (Paragraph 100)

The Government acknowledges that there is some concern about dual use goods that may not require a licence but which ultimately find themselves incorporated into military goods.

However, as this could cover an extremely large number of innocuous items, it would in practice be impossible to conduct any reliable analysis of the extent to which this happens. Where there are specific cases, the Government will consider and address them as it has done for recent cases which the Committee is aware of. Views on this would be welcomed as part of the 2007 review.

43. HM Revenue and Customs assured us that the failure to include arms exports on the “Customs Confidential” website was an oversight and that it was not symptomatic of its general approach to strategic export controls. We welcome this assurance and conclude that we should review this matter again next year. (Paragraph 105)

The ‘Customs Confidential’ webpage has been expanded to include a wider range of prohibitions and restrictions and now includes: military equipment or its components; weapons of mass destruction or their components; sanctions and arms embargoes; as well as firearms and explosives. HMRC is working to raise the profile and better integrate strategic export controls into the wider work of the Department. One example of this is that a member of the Prohibitions and Restrictions Policy Group, on 20 September, addressed 200 HMRC officers – including those who have recently attended legal and technical training courses, policy staff, assurance officers and senior business managers - on the subject of strategic export licensing controls at the National Excise & International Trade Conference.

44. We note HMRC’s confirmation that the estimate that five additional staff were needed to implement the legislative changes which came into operation in 2004 has proved to be correct. It raises the question: how significant a change the Export Control Act 2002—and the secondary changes enacted under it—made to the enforcement of strategic export controls? We recommend that those reviewing the controls in 2007 address this issue. We conclude that staffing levels in HMRC are a matter we should continue to review and that, if we return to the question of staffing, it is useful to have established “base-lines” for staffing levels against which future requirements and changes can be measured. (Paragraph 108)

HMRC will participate fully in the 2007 review of the controls. Work currently being undertaken to better estimate resource deployed by enforcement action will enable HMRC to establish baseline estimates against which future requirements and changes can be measured. Once this has been established HMRC will need to consider whether release would compromise operational effectiveness. See also question 17.

45. We recommend that HMRC inform us of the outcome of their discussions on EGAD’s concerns about exporters of dual-use goods who are unaware of the requirements of the Export Control Act 2002. We recommend that HMRC review the effectiveness of their policy on checks to target the exporter who inadvertently but persistently exports dual-use goods in breach of the 2002 Act. (Paragraph 111)

HMRC and EGAD have recently established a working group specifically to focus on export control enforcement issues. The HMRC/EGAD working group had its first meeting in early July 2006 and it is envisaged that the group will meet every six months to review progress. A date for the meeting in January 2007 has already been set. At the meeting in July, HMRC undertook to consider a number of points raised by EGAD concerning unlicensed exports, including those specifically relating to the misuse of DTI’s Open General Export Licences (OGELs).

HMRC would be grateful for further clarification on the recommendation that it review the effectiveness of its policy on checks to target the exporter who inadvertently but persistently exports dual-use goods in breach of the 2002 Act. Clearly, where HMRC is aware of any exporter persistently breaching the rules, it will take action. But where HMRC receives anecdotal reports that unspecified exporters are breaching the rules it cannot target any particular exporter. HMRC is however planning to increase the number of checks made on exporters using open general export licences and is looking for ways to increase checking particular commodities where this can be done without having a disproportionate effect on legitimate exports.

46. We recommend that the Government review the resources that it provides for market analysis and surveillance of dual-use goods and that it explores with EGAD and interested parties the establishment of an industrial export control association in the UK. (Paragraph 112)

With reference to the Government's response to recommendation 42 above, ECO is working increasingly closely with EGAD on a number of initiatives designed to improve awareness amongst exporters. For example, the EGAD Website is now linked directly to key documents in the ECO Website to assist exporters; industry assists in the promotion of the ECO Checker Tools by demonstrating them at industry gatherings; front line industry staff will be closely involved in user testing new IT systems; and EGAD and ECO are committed to working together to produce a basic export control awareness brochure. EGAD is also developing an accredited training programme for export control staff in industry. Further, as the Committee knows, the Government has established the Export Control Advisory Committee to enable dialogue with industry and other stakeholders on export controls. Both Government and industry share the view that the current arrangements are starting to bring real dividends and that there is little to be gained from establishing another industrial export control association. It would of course be open to industry to pursue such a course if it felt current arrangements were inadequate.

47. We are concerned to discover that no agency of government appears to be enforcing the intangible transfer of technical information (so-called intangible technology transfers, ITT) which may be in breach of strategic export controls. We recommend that the Government include the review of the operation of the controls on ITT as part of their review of the operation of export control legislation in 2007. (Paragraph 115)

HMRC is the enforcement authority for breaches involving the intangible transfer of technology from the UK and for the overseas transfer, by any means, of WMD-related technology. Enforcement is intelligence led and subject to the same criteria as breaches relating to tangible goods and technology. The export licensing community conducts a good deal of intelligence led work, with a view to identifying any end users of concern and/or suspect transactions. The thrust of this work is to identify the final result of any suspect transactions, i.e. who got what and how. If an end user of concern has received goods or technology in breach of export controls then that will always concern us and we take appropriate corrective action, regardless of the means by which the transaction took place.

With reference to the response to recommendation 8 above, the Government is able to confirm that the review will include the new ITT controls.

48. We recommend that the Government publish details of the amounts paid in compounding for

breaches of strategic export controls, with details of those who have agreed to pay. We recommend the information be published in the quarterly reports on strategic export controls. We intend to examine further the question of warning letters in future reports. (Paragraph 118)

HMRC will publish details of the number and amounts paid in compound penalties with some generic information about those who have agreed to pay and the circumstances of the case. The circumstances in which HMRC will publish the names of persons who have agreed to pay compound penalties was set out in Hansard on 26 April 1989 (column 560) in a written answer by the then Economic Secretary to the Treasury, Mr Peter Lilley. Where HMRC includes a publicity clause in a compounding agreement, the relevant information will be published in the report.

49. We recommend that HMRC examine how other EU countries' experience in prosecuting export control breaches be exchanged and built upon more systematically. (Paragraph 119)

RCPO will initiate work with Eurojust to examine this issue.

50. We recommend that the review in 2007 examine whether the evidential tests and requirements in the export control legislation are impeding the prosecution of breaches of the controls on strategic exports and whether the Revenue and Customs departments need greater powers to compel questions to be answered and documents produced when investigating alleged breaches of strategic export controls. (Paragraph 124)

RCPO and HMRC will work with the DTI to ensure that they make a full contribution to the 2007 review process.

51. We recommend that the Sentencing Guidelines Council conduct a review of the guidelines on sentences for breaches of export control as a priority. (Paragraph 126)

RCPO will engage with the Sentencing Guidelines Council to see how best it can influence the debate on appropriate sentencing guidelines for what will also be a very specialised offence.

52. We recommend that the Government explain, in general terms, the resources devoted to gathering intelligence and how intelligence is sought and reviewed in trafficking and brokering cases. (Paragraph 131)

The Restricted Enforcement Unit (REU) is the Government's working level group that co-ordinates where possible, intelligence relating to attempted breaches of UK export controls or other attempts to supply sensitive items to countries of concern. This includes intelligence related to trafficking and brokering of military goods covered by trade control legislation. It is chaired by the DTI and includes representatives of counter-proliferation partner departments and agencies. When this legislation was first implemented a trafficking and brokering sub group of the REU was established for a short period in 2004/5 to address intelligence led concerns. DTI and HMRC undertook a series of visits to known arms dealers to promote awareness of the new controls.

The Cabinet Office is the lead department on the 'SCOPE' programme, which is being phased in over the next couple of years and is designed to enhance the distribution, use and reaction to intelligence throughout the Whitehall intelligence community. DTI along with other REU partners including HMRC, is part of this project.

It should also be noted that the export control community does not rely just on material from the intelligence agencies, but also takes account of other material received from other sources, e.g. media reports, the public, information received from embassies or consulates, foreign governments, etc.

The scope of the REU includes trafficking and brokering of military items between third countries as well as the export of controlled goods from the UK.

53. On trafficking and brokering, there are two issues which we conclude that the review of legislation in 2007 should address:

- a) whether the Export Control Act 2002 provides an adequate vehicle for prosecution of trafficking and brokering breaches of export control; and
- b) whether there is a reasonable prospect of obtaining evidence in trafficking and brokering cases to mount a prosecution. (Paragraph 133)

RCPO and HMRC will work with the DTI to ensure that they make a full contribution to the 2007 review process.

54. We recommend that the Government in their reply to this Report give details of the steps that have been taken to implement the EU Common Position on Brokering. (Paragraph 134)

The Government has given effect to the EU Common Position on Brokering through its Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

55. To address the problem of producing evidence in brokering cases, we conclude that there is a case for greater regulation of brokers operating in the UK requiring all arms brokers to be registered, for registration to be dependent upon a broker meeting defined standards and requirements and that, where a person who is not registered carries out any brokering activity, he or she should be guilty of a criminal offence. We recommend that the Government bring forward a proposal to require the registration of arms brokers. (Paragraph 136)

As the Committee is aware the EU Council Common Position on the control of arms brokering, adopted on 23 June 2003, does not call for the registration of arms brokers. Article 4 suggests that Member States “may” establish a register of arms brokers, but that “registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction.” Any broker who carried out licensable activity without the necessary authorisation would already be guilty of a criminal offence.

The Government has long considered that such a register could be used by brokers to suggest that they have official approval, risking embarrassment for the Government should a registered broker subsequently commit an offence either here or abroad. Further, a register would add a layer of complexity by requiring “defined standards” against which registration is assessed. However, the Government is aware of the interest in this issue and will include it in its 2007 review.

56. We conclude that the revisions to the EU Code on Arms Exports as described by the Minister

are welcome and we congratulate the Government for its part in securing the changes to the Code. We conclude that the revisions should strengthen the Code and should ensure greater consistency, responsibility and transparency in the exports of arms across the EU. It is therefore all the more frustrating that the implementation of the revised Code has been blocked by certain EU member states. We appreciate that there is little that the Government can do other than work with other states to achieve the consensus within the EU necessary to allow the implementation of the new measures. We express the hope that during 2006 the revisions will be implemented. (Paragraph 141)

The Government welcomes the Committee's recognition that the proposed changes to the EU Code of Conduct on Arms Exports are a significant step forward. We share the Committee's wish to see the new Common Position adopted and implemented at the earliest opportunity.

57. We conclude that the recommendations produced by the peer review on the implementation of EU Council Regulation 1334/2000 have identified a number of areas which need to be addressed urgently. Specifically, Regulation 1334/2000 needs to be amended to comply with UN Security Council Resolution 1540 of 2004 in respect of transit and brokering controls for weapons of mass destruction and to improve information exchange among EU countries about dual-use licences issued. We shall monitor progress on the implementation of the review's recommendations. (Paragraph 144)

The Government played an important part in the Peer Review. The Review's recommendations are now being assessed by Member States and the Commission. The Government will continue to work hard at the European level to ensure that necessary outcomes are achieved. Separately, UNSCR 1540 is also being considered to ensure that its provisions are adopted as appropriate.

58. We recommend that the Government report the outcome of any measures relating to undercuts that it proposed during its Presidency of the EU in order to increase transparency and coherence. We recommend that the Government publish the total number of UK undercuts along with a summary of the issues in future annual reports on strategic export controls. (Paragraph 145)

The Government pursued no measures relating specifically to undercuts during our Presidency of the EU. However, work completed on Best Practice guidance on the interpretation of the criteria of the EU Code of Conduct can only help to ensure greater coherence in future decision-making across the EU and, by extension, to fewer undercuts. Best Practice guidance is now in place covering Criteria 2, 7, and 8. The text of this Best Practice is reproduced in Annex F of the United Kingdom Strategic Export Controls Annual Report 2005. The COARM working party has also now started work on Best Practice covering Criteria 3 and 4. The Government will explore the feasibility of including an entry covering UK undercuts in future annual reports.

59. Given the Government's assessment of human rights in Saudi Arabia, we recommend that all applications from Saudi Arabia should be considered more carefully. (Paragraph 152)

Export licence applications for Saudi Arabia are considered carefully against our human rights criterion, to the same standard as for all other country destinations. The Government's assessment is that there have been small but significant improvements in the human rights situation in Saudi Arabia. But decisions on all export licences are always made on a case-by-

case basis in the light of an up-to-date assessment including on the potential use of the specific equipment and the specific end user.

60. We conclude that transparency in this important area can be improved if the Government takes two steps. First, as we recommend at paragraph 50, the Government should, on the request of the Quadripartite Committee for an explanation of a decision to grant a licence, provide a short resume—under a security classification, if necessary—of the considerations which informed its decision. We anticipate making such a request where it appears to us that an application may not meet the criteria in the EU Code on Arms Exports. Second, we recommend that in those exceptional cases where the Government decides to attach weight to the National Export Licensing Criteria, in order to issue an export licence, the Government identify the licence in the quarterly report on strategic export controls and explain the factors that justify its decision. (Paragraph 153)

The Government’s response to recommendation 24 is also relevant here. All export licence applications are considered on a case by case basis against the Consolidated EU and National Export Licensing Criteria taking full account of the prevailing circumstances at the time of application and other relevant announced government policies. The Consolidated Criteria are fully consistent with the EU Code of Conduct on Arms Exports. The national considerations listed as “other factors” under Operative Provision 10 of the EU Code of Conduct are taken account of but do not affect the application of the Criteria. A licence will not be granted where to do so would be inconsistent with the Consolidated Criteria. Consequently, the exceptional cases suggested by the Committee do not occur.

61. We welcome the Government’s proposal to provide additional information about strategic exports to countries of concern in future annual reports on strategic export controls. We recommend that in responding to this Report the Government set out the selection criteria for placing countries on a list of those giving rise to concern. In our view the starting point should be those countries listed as “Major countries of concern” in the Human Rights Annual Report but supplemented with those countries that have received a denial from the UK government or any EU government because an export would breach the EU Code on Arms Exports. We recommend that the Government explain in future annual reports the reasons for granting licences for exports to countries on the list. Finally, we conclude that the list may provide a means by which the Government could improve transparency in the reporting of open licences by providing detailed information on dual-use exports to countries of concern. (Paragraph 155)

The Annual Report on Strategic Export Controls 2005 included a new section which sought to clarify the handling of applications to embargoed destinations. The Government is committed to exploring further how we can expand this concept to other cases while not compromising our confidentiality obligations for individual applications. The Government agrees that the countries highlighted under the Human Rights Annual Report are a sensible starting point for such consideration. Countries and goods of concern with regard to dual use exports are not covered by open licence arrangements.

62. We recommend that the Government explain the policy—that no weapons, equipment or components which could be deployed aggressively in the Occupied Territories will be licensed for export from the UK to Israel—in its reply to this Report. It would assist us if the Government gave examples of the equipment to which, in the light of the policy, it has refused to grant export licences. (Paragraph 158)

All applications are considered on a case by case basis against the Consolidated EU and National Export Licensing Criteria. Any licence which we assess is inconsistent with the Criteria will be refused. This includes taking into account Criteria 4, the preservation of peace, security and stability.

63. We recommend that the Government explain how the teams in Tel Aviv and Jerusalem who are observing the use to which exported equipment is put carry out their work and how their work differs from end-use monitoring. (Paragraph 160)

UK Overseas Posts have standing instructions to report any misuse of UK-origin defence equipment. This could be from media/NGO/intelligence reports. If the conditions of a licence were breached, this would be taken fully into account when the Government assessed any subsequent licence applications. The Government may also, if appropriate, revoke other related licences, and consider whether to prosecute if any criminal offence has been committed. The position of the Government remains to issue export licences without end-use conditions, undertaking instead strict risk assessment at the pre-licensing stage and refusing a licence when there is an unacceptable risk of diversion or misuse.

64. We recommend that the Government continue to press for the implementation of the toolbox. (Paragraph 163)

The Government continues to support the adoption of the “toolbox” of measures for countries emerging from an EU arms embargo at the earliest opportunity.

65. As currently envisaged, we understand, the toolbox will only provide for the exchange of information about items on the Military List. We recommend that, in particular if the toolbox were to be applied to China, effective monitoring of post-embargo licensing decisions across the EU cover dual-use items as well as those on the Military List. (Paragraph 164)

The EU arms embargo on China does not extend to the EU dual use control list. It would therefore be inappropriate to include this list in a mechanism designed specifically to increase transparency in the export of military listed items to post-embargo destinations. The criteria of the EU Code of Conduct on Arms Exports are of course applied to the export of dual use items to any destination where a military end use is known or suspected. The Government believes that this is an effective tool in preventing the undesirable export of dual use items.

66. We consider that the political will to maintain the arms embargo against China is weakening within the EU and that rather than lift the embargo it is being allowed to wither on the vine. We are concerned that it has become an embargo in a category of its own, increasingly at odds with the terms and scope of other more recent embargoes. As a first step we recommend that the UK Government clarify the status and scope of the embargo on China. (Paragraph 166)

The European Council text on the embargo is *politically* binding on EU Member States, and does not have force of law, unlike EU embargoes on Sudan, DRC, Burma and Zimbabwe.

Member States have been left free to define the precise scope of the EU embargo on China as they see fit. As detailed in the Quadripartite Committee Report, the UK Government has interpreted the scope of the embargo as follows:

Lethal weapons such as machine guns, large calibre weapons, bombs, torpedoes, rockets and missiles; specially designed components of the above, and ammunition; military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms; any equipment which might be used for internal repression.

This position remains unchanged, and the UK continues to fully implement the embargo. There is currently no consensus within the EU on the issue of embargo lift.

67. We do not downplay the serious dilemma the Government faces in respect of China: how far to engage and make concessions to a government seemingly impervious to calls to respect human rights but which has the potential to undermine arms control across the world. Nor does the Government's 2005 Human Rights Annual Report show a country clearly moving towards the rule of law underpinned by respect for human rights. We share, however, the serious reservations of our predecessor Committees about lifting the arms embargo on China. The embargo may be an imperfect tool and it may be losing its bite but it has a symbolic value which has worth. It was imposed because of the gross abuse of human rights carried out by the Chinese Government in 1989 and we conclude that without clear evidence that China is prepared to respect human rights and behave with responsibility on arms exports the embargo must stay. We recommend that the Government work within the EU to maintain the arms embargo on the People's Republic of China. We further recommend that the Government stay in close contact with its US counterparts on this issue and explain US sensitivities to its EU partners, as part of its broader efforts to strengthen trans-Atlantic ties and to ensure the embargo stays effective. (Paragraph 169)

The European Council in June 2005 recalled the conclusions of Council in December 2004, which 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 in qualitative terms". EU leaders also 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.

We agree with the Committee's assessment that the value of the embargo is now mainly symbolic. The Code of Conduct remains a more effective means of controlling arms to China, and work continues within the EU on strengthening this Code. The overarching objective of the UK Government is to maintain stability in the region. Any future decision on embargo lift would take full consideration of the potential impact on human rights and regional stability.

The Government holds regular high-level dialogue with the US on this issue, as does the EU, including through the EU-US Strategic Dialogue on East Asia. We take US concerns seriously and continue to urge EU partners to address these concerns. We recognise the crucial role played by the US in maintaining security in the region, and would not want to add to their burden or undermine the US role.

68. Having handled some of the items and examined photographs of the others we conclude that thumb cuffs, wall cuffs and sting sticks can have no function other than to be used as instruments of torture or to inflict cruel, inhuman or degrading treatment or punishment. In our view the case for banning these items immediately is overwhelming. Indeed, given these items can be purchased via the Internet the change is overdue. We therefore recommend that thumb cuffs,

wall cuffs and sting sticks be added as soon as possible to the list of items which cannot be transferred or brokered from the UK or trafficked by British citizens anywhere in the world. (Paragraph 173)

As the Committee knows, the Government has been at the forefront of introducing new legislation on prohibiting the sale of goods that may be used as instruments of torture or to inflict cruel, inhuman or degrading treatment or punishment, culminating most recently in the new EC Torture Regulation.

Exports of thumb cuffs from the Community are controlled by the Regulation as are all individual cuffs or shackle bracelets (we understand “wall cuffs” to fall within this definition). In addition the UK has extended its national trade controls to include all goods controlled by the Regulation, thus going even further than required by the Regulation.

The Government will work with its European partners to monitor the implementation of the Regulation, and when and where appropriate to revise it.

69. We conclude that the introduction of EU Regulation No. 1236/2005 prohibiting trade across the EU in items of torture is a significant and welcome development. We are, however, disappointed that the commendable lead which the Government has taken in banning the trade in items of torture since 1997 will, with the commencement of the Regulation, be frozen and the only scope for adding to the list is via the EU. We recommend that the Government explain why it did not obtain a derogation which will allow it to add to the UK’s banned list and that the Government press the EU to add sting sticks to the controlled list as soon as possible. (Paragraph 176)

With reference to the response to 68 above, in the negotiations leading up to the agreement of the Torture Regulation, the UK’s primary concern was to bring other EU states up to the levels of control which were already in place in the UK. This was largely achieved, but in some instances it was necessary for the UK to obtain a derogation to preserve the more stringent controls that already were in place here. In order to achieve this, during the negotiations, the UK managed to get agreement on a number of derogations which were then written into the final text of the Regulation.

The Regulation is intended to harmonise controls across the Community. It would be inconsistent with that intention to have a general derogation within the Regulation allowing Member States to introduce national controls and such derogation would not have been agreed. The Government believes that if the case for any further extensions to controlled items can be proven, then the correct route to implement them would be via negotiation with EU counterparts to extend the existing regulation, since this would ensure consistency of treatment across the EU and avoid displacing undesirable activity from one Member State with stricter regulation to another where regulation is less strict.

70. We recommend that the Government bring forward a proposal for a torture equipment end-use control to apply to items capable of “dual use” as instruments of torture or to inflict cruel, inhuman or degrading treatment or punishment as well as for benign purposes and seek an amendment to the EU Regulation No. 1236/2005 to give effect to the proposal. (Paragraph 178)

The Government refers the Committee to its response to 68 above. The Government accepts that controls on torture equipment, including the potential introduction of an end use control,

are legitimate subjects for the 2007 review, but does not wish to prejudge the result of that review.

71. We invite the Government to respond to the findings in the US Government report that China and Russia have breached undertakings and guidelines on missile proliferation and recommend that the Government explain what action it took during its Presidencies and subsequently to remedy these breaches. (Paragraph 179)

The State Department report is a distillation of information and analysis that, as a public document, cannot reflect the full complexity of the problem of ballistic missile proliferation. In general, however, the UK shares US concerns over missile-related proliferation, and we place similar emphasis on the multilateral and bilateral tools available to us in addressing these concerns wherever they arise.

The UK currently has an active and developing counter-proliferation dialogue with China. Bilateral liaison on specific activities such as interdiction, as well as a general strategic dialogue, have deepened this dialogue.

During the UK Presidency of the EU, funding for a 2-year EU Pilot Project was agreed in November 2005 to further improve export controls in China. China is one of 4 agreed partner countries for the project. A visit to Beijing during June 2006 identified specific needs, with substantive activities being planned in Beijing in November 2006, and in London during January 2007.

The UK maintains a strong strategic dialogue with Russia, regularly meeting senior officials to discuss issues of counter-proliferation concern. Russia regards itself to be fully compliant with the current MTCR guidelines. We actively seek to keep the MTCR relevant by updating both the Guidelines, and particularly the Technical Annex, taking into account recent technological advances that may be of proliferation concern, despite being below MTCR threshold.

72. We conclude that the Government has used its Presidencies of the G8 and EU to achieve solid progress in a number of areas. We are disappointed that there were no significant breakthroughs but this was not the Government's fault; we recognise that progress at the international level in export controls takes time. (Paragraph 180)

The Government welcomes the Committee's recognition of its work in the area of export controls. There was significant progress during the G8 and EU Presidencies, on which we will continue to build.

73. We endorse the Working Group's assessment of the former Foreign Secretary and wish to put on record our appreciation of the part Mr Straw played in promoting the International Arms Trade Treaty. (Paragraph 182)

The Government values the Committee's appreciation of the part the Former Foreign Secretary played in promoting the initiative for an international Arms Trade Treaty.

74. We conclude that the Government has been successful in promoting and helping to build up momentum for an International Arms Trade Treaty and we give it credit for that. We recommend

that the Government build on the impetus that has been achieved and give top priority to achieving a treaty under the auspicious of the UN as a matter of urgency. (Paragraph 183)

The Government welcomes the Committee's support and re-affirms its commitment to securing agreement at the United Nations First Committee this year to a formal process to take the treaty initiative forward.

75. We conclude that the International Arms Trade Treaty must:

- a) be founded on the existing principles of international humanitarian and human rights law, if it is to achieve the objective of setting clear standards for the transfer of arms;
- b) cover the trade in all conventional arms, including dual-use goods and technologies; and
- c) include an effective and transparent mechanism for monitoring and enforcement, if decisions to authorise the transfer of arms are to be taken by national governments.

We conclude that the value of a treaty which does not meet these requirements is open to serious question. Indeed, a treaty based on the lowest common denominator that not only fails to meet some of these requirements but also weakens the export control system in the UK or EU will be of questionable value. (Paragraph 186)

The Government is grateful for the Committee's suggestions over the detail of an eventual treaty. Content will have to be negotiated but the Government has made clear that we see a strong humanitarian case for a treaty. We are also clear that a treaty should address the need to ensure that arms are not used in the furtherance of human right abuses. Furthermore, we envisage a treaty covering the trade in all conventional arms, including wider military equipment, and not just Small Arms and Light Weapons, with an effective mechanism for enforcement and monitoring.

The Government agrees that a treaty based on the lowest common denominator would be of questionable value. The Government is committed to securing an agreement that will make a real difference and put an end to irresponsible arms trading. However we also envisage a treaty which will allow states to enact stricter controls over their arms trade if they wish. Hence whatever the terms of a treaty, it should not compel any country or group to adopt controls weaker than they currently operate.

76. We recommend that the Government produce the evidence to back up its claim that the Export Control Act 2002 is stopping the United Kingdom being used as a base for undesirable arms transfers. We recommend that the review of the legislation in 2007 examine, and report upon, the strength of this claim. (Paragraph 191)

The Government has no evidence to suggest that the Export Control Act 2002 and its secondary legislation is failing to prevent the UK being "used as a base for undesirable arms transfers". The review next year will however present another opportunity to gauge the effectiveness of the new controls. As part of this review, the Government would be pleased to receive from the Committee any evidence that the UK is being "used as a base for undesirable arms transfers"

77. We recommend that the Government set out the terms under which the review of the extra-territorial controls on brokering and trafficking will be carried out in 2007. More specifically, we recommend that the Government detail:

- a) the criteria it will apply to consideration of the case for extending the extra-territorial controls on brokering and trafficking in controlled goods;
- b) the weapons that will be included in the review, in particular, confirm that it will examine the inclusion of MANPADs, rocket-propelled grenades and light automatic weapons as well as small arms; and
- c) whether the review will consider the need for registration of brokers.

We conclude that no logical case can be made for including some controlled goods within the Government's extra-territorial control on brokering and trafficking whilst excluding others. We therefore further recommend that all controlled goods should be included. (Paragraph 195)

The Government accepts that these matters that should be covered by the 2007 review, but at this stage would not wish to prejudge the outcome of the review.

78. We also recommend that the Government detail how it intends to implement the requirements on brokering and trafficking in UN Security Council Resolution 1540. (Paragraph 196)

Export Control Act 2002 Secondary Legislation already controls trafficking and brokering and in doing so gives partial effect to UNSCR1540. However, the Government is continuing to work with its EU partners to determine the best way to implement UNSCR1540 fully.

79. We recommend that the Government bring forward proposals for consideration during the 2007 review of the legislation controls to regulate:

- a) British companies proposing to license the production of weapons overseas; and
- b) exports from overseas subsidiary companies in which a majority shareholding is held by a UK parent or where UK beneficial ownership can be established. (Paragraph 199)

The defence industry, in common with many other industries, is becoming increasingly globalised. The Government recognises that this could prompt concerns if overseas companies which appear to be under UK control or influence produce or sell military goods in circumstances which would breach UK export controls, if those activities took place in the UK itself. The Government is not convinced that this is happening to any meaningful extent, and has serious misgivings about extending UK export controls as suggested above, since problems of definition and issues of jurisdiction would inevitably arise. However, the Government is content to consider the broader issues in the context of the 2007 review of export controls.

80. We conclude that there are grounds for deep concern about the protectionist tendencies of elements within the US Congress. (Paragraph 203)

The Government will continue to underline to the US Administration and to the US Congress

the importance of US-UK defence industrial co-operation and trade to the UK's national security.

81. With the loss of the ITAR waiver, we conclude that the Government's priorities should now be to put in place arrangements which will allow the transfer of goods and technologies from the US to ensure that not only the Joint Strike Aircraft programme is not impeded but also to assist those companies that would have benefited from the transfer of unclassified defence items, technology and services. We request that the Government explain its policy and approach to securing the expeditious transfer of goods and technologies from the US to the UK. (Paragraph 204)

The Government continues to underline, at the highest levels, to the US Administration and to the US Congress, the importance of US-UK defence industrial co-operation and trade to the UK's national security and to further interoperability with coalition partners and other key allies. We are working with the US Administration to ensure more effective technology sharing, through discussion which is aimed at increasing the effectiveness of defence acquisition co-operation, including the timely release of classified and sensitive information.

82. We, like our predecessor Committees, welcome the improvement to the UK's export control as a result of the legislation passed in 2002 and the secondary legislation made under the Export Control Act 2002. We conclude that the review scheduled for 2007 provides a timely opportunity to take stock, to test our assumptions about the improvements that have been achieved and to address areas where changes may be required. We look forward to a full and comprehensive review. (Paragraph 205)

The Government notes the Committee's comments.

83. The next year will be critical for the International Arms Trade Treaty. We conclude that the Government has shown skill in promoting the treaty and can take credit for helping to build the momentum that has been achieved. The treaty offers an important opportunity to prevent what the Government has described as the irresponsible sales of conventional arms, which have resulted in the deaths for thousands across the world. We hope that by our next report we shall be able to report further significant progress. (Paragraph 206)

The Government agrees the year ahead will be critical for the treaty initiative, and it too hopes that when the Committee next reports it will be able to report further significant progress.



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