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

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Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny

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

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REPORTS FROM THE DEFENCE, FOREIGN AFFAIRS, INTERNATIONAL DEVELOPMENT AND TRADE AND INDUSTRY COMMITTEES

SESSION 2003-2004

ANNUAL REPORT ON STRATEGIC EXPORT CONTROLS 2002

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 Committee's Report of 18 May 2004 into the Government's Annual Report on Strategic Export Controls 2002. The Committee's recommendations are set out in bold. Unless otherwise indicated, references are to paragraphs in the Quadripartite Committee's Report (HC390).

We published our most recent Annual Report on Strategic Export Controls on 7 June, which covers export licensing decisions and policy developments in 2003. We look forward to discussing it with the Committee.

Co-operation with Government

1. **We conclude that it is regrettable that we were not provided this year with information matching all refusals of licence applications to the reasons for their refusal and with the level of detail on appeals that we have been used to receiving. We trust that this information will be provided where we request it in the future, in accordance with past practice. (Paragraph 12)**

The Government does not consider that it has provided less information on such cases than in the past. The information provided in relation to refusals cited in the Committee's report (e.g. Evidence Page 75, Israel question) is broadly similar to the level of information provided in previous years. Officials will, however, make contact with the Clerk of the Committee on this issue, to clear up what may be a misunderstanding. In any event, the Government has provided, and is committed to continuing to provide, the Committee with information at a level of detail required for it to effectively carry out its role of scrutinising our export licensing policy and practice.

2. **We recommend that the Government should explain in its response to this Report why it considers that access to the documents requested by the Committee would harm the frankness and candour of internal discussions within Government, given that the documents we have asked to see are not internal discussion documents and do**

not express the points of view of officials, but rather are simply factual analysis and agreed guidance. (Paragraph 17)

The Government is keen to provide the Committee with as much information as possible. The Government acted consistently with the Code of Practice on Access to Government Information in considering the Committee's requests. Regarding the Committee's first request, if this information were to be a balanced summary of the issue, it would not simply be 'factual analysis', but have the character of an internal discussion document. Regarding the second request, the fact that a document assists officials in coming to export licensing decisions does not preclude the possibility that its disclosure would be liable to harm the frankness and candour of internal discussions within Government.

3. **We recommend that the Government should explain in its response to this Report how it intends to publish information on licences which do not involve exports from the United Kingdom, including licences for trade between third countries and licences for the electronic transfer of technology to recipients within the United Kingdom. We further recommend that in the case of trade control licences, the Government should publish both the country of origin and the country of destination. (Paragraph 23)**

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

4. **We conclude that it is unfortunate that the format of the Annual Report makes a licence for a single end user based in a variety of countries look as if it is much more wide-ranging than in fact it is. (Paragraph 32)**

When compiling the Annual Report, it is not cost-effective for the DTI's Export Control Organisation (ECO) to analyse all OIELs for multiple destinations to identify those with a single end-user. However, if the Committee asks for further information on a particular OIEL in the course of its scrutiny of the Government's export licensing decisions, the Government will, where appropriate, seek the permission of the end-user to disclose this information publicly.

5. **We conclude that it would be in the Government's interest to publish more information on end use, because it would enable public debate on export controls to focus on those licensing decisions which are genuinely debatable, rather than to criticise the Government for decisions which appear highly contentious but which are in fact entirely sound. Given the strong support for**

greater transparency in this area shown not only by us, and not only by NGOs, but also by representatives of the British defence manufacturing industry, we recommend that that the Government should reassess its position that it cannot "go any further in publishing end-user information". (Paragraph 43)

The DTI has looked at whether it could provide information on categories of end users (e.g. government/non-government), but concluded that it is not cost-effective within the limitations of its current licensing databases to extract the relevant information. Currently this could only be done manually, taking the information from each of the 10,000 or so SIELs issued each year. This would risk diverting resources from the scrutiny of export licence applications and imposing greater burden on officials. The Government does not consider that this would be a justifiable diversion of limited resources. In order to achieve such a breakdown, application forms would have to be amended and the databases restructured. Neither is feasible at the moment, but, this issue is being considered in the longer term in the context of gradual improvements to databases.

The Government nonetheless continuously reviews what information we can place in the public domain, and the transparency of export licensing decisions. As a result, and as announced in a Ministerial Statement to Parliament on 22 July [Hansard Column WS46], the Government has introduced quarterly reporting, under which information on the Government's licensing decisions will be in the public domain much sooner. The first quarterly report, covering decisions taken from January to March 2004 inclusive, was published on the ECO and FCO websites (www.dti.gov.uk/export.control and www.fco.gov.uk) on 28 July this year. We aim to publish the second quarterly report in October.

We have also taken steps, with the introduction of quarterly reporting, to make the reports clearer to the reader. SIELs data is now published in a clearer and more transparent format, listing the number of licences issued for each destination for each specific goods, instead of listing the aggregated goods items licensed by country, as was the case previously. We footnote those entries that could appear inconsistent with the Criteria and Government policy, for example where Military List items have been licensed to an embargoed destination. Moreover, following questions about licences granted for toxic chemical precursors, whose end-use was entirely innocuous, the Report now provides the stated end-use.

6. **We recommend that future supplementary information provided to us on licence decisions should include information on end use where this is requested, as without this information we cannot properly assess the Government's licensing decisions. (Paragraph 46)**

The Government regularly provides the Committee with information on end-use where this is requested and where to do so would not compromise commercial confidentiality, national security, or international relations.

7. **We recommend that the Government should take a leading role in promoting a joint effort by EU member states and the Commission to establish equivalence between EC customs classification and the lists of controlled dual-use items. (Paragraph 48)**

The Government accepts that to establish equivalence between EC customs classification codes and the lists of controlled dual list items would enable a greater level of transparency and provide a system that would enable easier identification of items under control. The Government has been looking at ways in which this would be possible, but unfortunately, due to the way control lists and customs codes are formulated, we doubt that an equivalence could be reached.

8. **We recommend that the Government should help us to improve our retrospective scrutiny of export licence applications by publishing more timely licensing information than is currently the case, and by making it a systematic part of the administration of export controls to provide us in confidence with further information on these licensing decisions, including information on end use. We do not regard this as a substitute for a system of prior scrutiny, but it would be an improvement on the current situation. (Paragraph 52)**

The Government agrees with the Committee's recommendations. As announced by Baroness Symons on 22 July this year [Hansard Column WS45], we are now publishing enhanced information on the Government's strategic export licensing decisions on a quarterly basis. The first quarterly statistics were published on the FCO and ECO websites on 28 July.

In parallel, we are also systematically providing the Committee with a confidential report containing information that we are not able to provide publicly.

Scrutiny of licensing decisions and implementation of the criteria

9. **We conclude that the Government's argument is credible that its more extensive application during 2002 of criteria relating to internal tensions abroad and the national security of the United Kingdom was caused by events in the wider world, rather than by a change in the Government's application of the consolidated criteria. (Paragraph 57)**

The Government welcomes the Committee's conclusion, which reflects the fact that our export licensing decisions are sensitive to changing circumstances in the wider world

10. **We conclude that the Government should give further consideration to its interpretation of the Sustainable Development Criterion. (Paragraph 60)**

The Government does not believe our interpretation of the Sustainable Development Criterion requires amendment at present. The Criterion 8 methodology was compiled following lengthy interdepartmental discussions and takes account of a large range of factors, economic and social, that have a bearing on sustainable development. However we would be happy to consider any specific suggestions by the Committee in this area.

11. **We conclude that it is a welcome development that for the first time all four relevant Secretaries of State have put their names to the Government's Annual Report on Strategic Export Controls. (Paragraph 63)**

The Government welcomes the Committee's conclusion. This development reflects the Government's joined-up approach to export licensing.

12. **We recommend clarification in response to this Report of whether denial notifications under the EU Code of Conduct are taken into consideration when the Government considers making sales and gifts against the Consolidated Criteria, and whether consultations on proposed Government sales and gifts would be initiated if a denial notification had been issued by an EU Member State for an essentially identical transaction. (Paragraph 67)**

The consultation process under the Code of Conduct, in which a Member State considering licensing an export previously denied by another Member State first consults that State, applies only to transfers of defence equipment which require an export licence. However, the Government will in future check to see if an essentially identical transaction has been denied by another Member State before approving a gift; if it has, we will consult the denying State informally to inquire further into the reasons for its denial, and take this information into account in our decision.

13. **We recommend that the Government should clarify in its response to this Report under what circumstances transfers of military goods to overseas recipient governments are not reported, including clarification of the circumstances in which transfers would not be reported because of sensitivity on the part of overseas recipient governments or confidentiality undertakings. We further recommend that the Government should give an indication of the type, quantity and value of these unreported exports, preferably in public, but in confidence if absolutely necessary. (Paragraph 70)**

There are no transfers of military goods to overseas recipient governments which are currently unreported. Any goods transferred will continue to be reported in the Annual Report within the sections, Export Licence Decisions, and Statistics on Exports of Military Equipment, and also within the table on the value of exports of military goods to individual countries. In addition, any transfers that would be

captured within the scope of the United Nations Register of Conventional Arms would also be reported within that global transparency mechanism.

14. **We recommend that in its reply to this Report, the Government should also set out any circumstances of which the Committee has not expressly been made aware in which information on the type of equipment sold, gifted or otherwise transferred by the Government to other end users abroad does not appear in the Annual Report on Strategic Export Controls, either in the section on export licence decisions or in Tables 7 or 8 of the Annual Report. (Paragraph 71)**

Information on items transferred Government-to-Government is included in the Annual Report in the section on Statistics on Exports of Military Equipment, and also in the tables on the Values of Exports of Military Equipment, on Government to Government Transfers of Equipment, and on Items of Military Equipment Gifted by the Government (when items have been gifted in that year by HMG, as with the Annual Report for 2002), and, as appropriate, in the section on Export Licence Decisions. There are therefore currently no circumstances in which the Annual Report omits information on the type of equipment sold, gifted, or otherwise transferred by the Government, to other end users abroad.

15. **We recommend that where a Government official makes an announcement to the public or media about a proposed sale or gift of military equipment, the Government should inform us and the House at the same time. (Paragraph 77)**

In accordance with established procedure, information on specific gifts is put before Parliament in a Departmental Minute as soon as the decision to make the gift has been formally taken. We do not consider that it would be appropriate to inform the Committee and the House before this time, since at that stage the details of the gift are still to some extent uncertain. It should be noted that gifts are reported to Parliament twice-yearly and recorded in the Annual Report on Strategic Export Controls. Information on sales is also recorded in the Annual Report, in the sections on Licence Decisions and Export Statistics.

16. **We recommend that the Government should continue to keep us informed on a regular basis of occasions on which Ministers promote specific defence sales. (Paragraph 78)**

Information on occasions in which Ministers undertake visits primarily in support of defence exports will now be included in the Annual Report on Strategic Export Controls.

17. **We conclude that, from the information we have seen, Government ministers appear to be promoting defence exports predominantly in circumstances which are unlikely to be contentious. (Paragraph 79)**

The Government welcomes the Committee's conclusion. Where support is given to a specific bid to export an item of equipment manufactured in the UK this is generally after the company has obtained a Form 680 approval, which are considered against the Consolidated Criteria.

End-use assurances: Indonesia

18. We conclude that there has been a serious lack of clarity in the Government's explanation to us of its rationale for allowing the Indonesian authorities to alter end-use undertakings regarding their use of British-built military equipment. (Paragraph 86)

The Government does not accept this conclusion. When the Foreign Secretary wrote to the Committee in October 2002, he brought to the Committee's attention the Indonesian Government's request to use British-built military equipment in Aceh, which would have been in breach of the previously agreed assurances. In assessing the Indonesian request, we took into consideration a number of important factors, including Indonesia's democratic development, past misuse of British-built military equipment, and the fact that the assurances predated the introduction in 2000 of the Consolidated EU and National Arms Export Licensing Criteria. Given these developments, we considered it appropriate for the conditions to be modified so that they fell more closely in line with the Consolidated Criteria.

It is important to bear in mind that, as the Foreign Secretary made clear in his letter to the Committee of October 2002, there was no change in the policy against which export licence applications for Indonesia are assessed when the Government decided to accept the change in assurances. All such applications have been, and continue to be, rigorously assessed on a case-by-case basis against the Consolidated Criteria.

19. We recommend that in its response to this Report, the Government should explain what steps it has taken to find and examine television footage of Indonesian armed forces' operations in Aceh, including local Indonesian television footage, in the course of monitoring the use of British-built military equipment in Aceh; and what the results of any such monitoring were. (Paragraph 96)

Every practical effort has been made to establish the situation in Aceh, with particular regard to the use of British-built military equipment. There have been some reports that British-built military equipment has been seen on television footage. In each case British Embassy staff in Jakarta immediately enquired about the reports. There are nine national and about 45 local television channels broadcasting in Indonesia, and without information about when and on what channel the footage was broadcast it was difficult to locate the specific short few seconds allegedly showing British-built military equipment in Aceh. We asked other journalists and observers if they recalled such footage, and none did. We regularly raise the issue of the use of equipment in Aceh with senior Indonesian

government officials. To date we have no reason to believe that British-built military equipment has been used in violation of the assurances.

20. **We can only conclude that we have seen no evidence that the Government has taken any action (other than talking to the Indonesian authorities) to investigate claims that British built military equipment has been used in violation of human rights or offensively in Aceh. This calls into question the importance of such assurances in the eyes of the Government. (Paragraph 97)**

We are in regular contact with NGOs, journalists and others about the situation in Aceh, including whether British-built military equipment has been used in violation of human rights. There has been no substantiated evidence that would justify other action to investigate claims that British-built military equipment has been used offensively or in violation of human rights. We have repeatedly raised with senior members of the Indonesian Government the importance we attach to British-built military equipment not being used in violation of the assurances. Any substantiated evidence that British-built military equipment has been used offensively or in violation of human rights would be taken into account in our export licence decisions. The Indonesians are therefore very much aware of the importance of the assurances, and what subsequent action we would take in the event of substantiated evidence that they had been breached.

Although there have been a small number of claims that British-built military equipment has been used in violation of the assurances, none have been substantiated. For example, NGOs provided photographs showing British-built military equipment in Aceh. The photographs themselves did not show that the equipment was used in violation of the assurances. British Embassy officials visited Aceh in February 2004, and the British Defence Attaché, with other Defence Attachés, visited in May. Further visits are planned.

21. **We conclude that without more legal or political backbone, end-use assurances are not worth the paper they are written on. (Paragraph 99)**

Please see response to Recommendation 22 below.

22. **We conclude that the Government's reassessment of how it conducts end-use monitoring is welcome. If end-use assurances or undertakings are to have any real value, the Government must be prepared to monitor the end use of the equipment concerned effectively and actively where the suggestion of misuse arises. There is little point in the Government seeking assurances on the end use of equipment if it is not prepared to conduct a thorough investigation when evidence emerges that those assurances may have been breached, or if it is not prepared to take punitive action when assurances have indeed been breached. (Paragraph 102)**

The Government will respond to these two related recommendations together. We agree with the Committee that there would be no point in seeking assurances from a foreign government only then to fail both to monitor the situation to the extent possible and fail to act when such assurances are breached. But this is not the approach taken by the Government.

The preferred position of the Government is 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. Given the difficulty of physically controlling the use of equipment once it has left UK jurisdiction, the use of end-use assurances and conditions (separate from routine end-use certificates) is kept to a minimum. Where we do attach conditions to a licence, we do monitor compliance with them. More generally, we undertake monitoring of equipment in the recipient country when we believe this would genuinely help to minimise the risk of diversion and where such monitoring is practical. In addition, UK Overseas Posts have standing instructions to report any misuse of UK-origin defence equipment. If the conditions of a licence were breached, this would be taken fully into account when the Government assesses any subsequent licence applications. We may also, if appropriate, revoke other related licences, and consider whether to prosecute if any criminal offences has been committed.

European Union: Code of Conduct

23. We recommend that the Government should urge the presidency of the EU to consult as widely as possible on the future of the Code of Conduct on Arms Exports before decisions are taken in the context of the current review. (Paragraph 109)

The Government accepts this recommendation. Officials have made clear to the previous (Ireland) and current (Netherlands) Presidencies our view that there should be wide consultations on the review of the Code of Conduct. The Government's own consultations have been wide, and have included numerous NGOs, industry and the Committee itself.

24. We conclude that the Government's priorities for a review of the EU Code of Conduct are sound, if cautious. We recommend that the Government should seek to ensure that a new commitment is included in the Code of Conduct to publish information on arms exports. This should include information by category of equipment matched to country of destination, as in the British Government's Annual Reports. Convergence should also be sought in terms of how this information is gathered, analysed and presented, so that meaningful comparisons can be made between different countries. (Paragraph 111)

The Government accepts this recommendation. One of our objectives for the review of the Code is to raise transparency standards among all EU Member States,

through the provision of more detailed information to the EU Annual Report and an obligation on all Member States to produce a national annual report on arms exports. An EU meeting involving statistical experts has been arranged for the autumn which will consider the standardisation of Member States' submissions to the EU Annual Report, in order to improve comparability.

25. We recommend that the Government should consider whether raising the status of the Code to that of a Common Position under the Common Foreign and Security Policy would have benefits, in terms of the Code's profile within the EU and the importance that member states would be seen to attach to it. (Paragraph 112)

The Government is considering the legal status of the Code. In our deliberations, we will take particular account not only of the effect on the political profile of the Code, but what changes in the wording of its criteria a change in the Code's status might require, and whether or not these would in practice help achieve the objective of more convergent European export control policies.

26. We recommend that a priority of the review of the Code of Conduct should be to seek to enhance existing systems of information exchange. (Paragraph 113)

The Government considers that, following the implementation of the User's Guide (see response to Recommendation 28 below), the current system of information exchange under the EU Code of Conduct now functions well. Information on licences denied is now shared between countries very soon after denials have taken place, through electronic means, and the majority of consultations and consultation responses are now shared amongst all Member States, thus improving transparency.

27. We conclude that the Sustainable Development Criterion remains the least adequately defined of the EU Code Criteria. We recommend that the Government should seek to reach a mutual understanding with other member states of what the Criterion means in practice, and to refine its definition accordingly in the context of the ongoing review of the EU Code. (Paragraph 114)

The UK is currently working with EU partners with the aim of reaching a common understanding of how best to employ this Criterion in practice.

28. We conclude that the publication of the User's Guide to the Code of Conduct is welcome as a guide to good practice for officials across the EU. (Paragraph 128)

The Government welcomes the Committee's conclusion. The United Kingdom played a leading role in drafting the User's Guide.

European Union: Embargo on China

29. **We conclude that it would seem hard from the litany of continuing abuses noted in the Government's Annual Report on Human Rights to make a strong case for lifting an arms embargo on China which was imposed in the first place because of human rights concerns. We recommend that in current circumstances the Government should resist calls to lift the arms embargo on China. (Paragraph 135)**

The review of this embargo was announced by the European Council on 12 December 2003, and is ongoing. The Government will not pre-empt the conclusion of this review in this response.

30. **We conclude that if the EU Code of Conduct has superseded the arms embargo on China, then it has presumably also superseded other EU arms embargoes as well, given that sales to any embargoed country could equally well be controlled under the EU Code. (Paragraph 136)**

It is true that the concerns which lead the EU to decide to impose an arms embargo on a particular country might be addressed by other criteria in the Code of Conduct, for example a country's poor human rights record (Criterion two) or ongoing armed conflict (Criterion three).

The EU arms embargo on China differs from other EU arms embargoes in that it is politically, but not legally binding on EU Member States. Also, Member States have been free to define the exact scope of the embargo as they see fit - it does not act as a blanket ban on all exports of military list equipment from the EU to China.

The EU's decision to impose arms embargoes can also pave the way for action by international partners. On Zimbabwe, for example, similar measures to those imposed by the EU have also been introduced in full or in part by a number of Commonwealth countries, such as Australia, Canada and New Zealand, and by the US and Switzerland.

31. **We recommend that the Government should encourage its EU partners to seek a clearer joint understanding of the purpose and scope of the embargo on China: not in order to lift it, but in order to define it more rigorously and more effectively. (Paragraph 138)**

Please see the response to Recommendations 32 below.

32. **We conclude that a clearer definition of the terms of the arms embargo on China would allow British industry to compete more fairly for contracts in China with other EU member states. (Paragraph 140)**

The Government will respond to Recommendations 31 and 32 together. The Government does not consider that British industry is at a disadvantage compared with companies in other Member States regarding strategic exports to China. However, no option, including arriving at a clearer definition of the defence equipment to which the EU arms embargo on China applies, is excluded in principle from the present review.

European Union: Role of the European Commission

33. We recommend that the Government should seek to encourage swift agreement to an acceptable Council Regulation on trade in equipment related to torture and capital punishment. (Paragraph 146)

The Government agrees with the Committee's recommendation. We are keen that all member states should implement a ban on the export of torture equipment along the lines of the UK's ban.

34. We recommend that the Government should continue to resist the proposal that the European Commission should have a decision-making role on certain export licence applications for equipment related to torture and capital punishment. (Paragraph 148)

The Government agrees with the Committee's recommendation. The European Commission's revised proposal for a Council Regulation in this area does not provide for the Commission to have such a decision-making role.

35. We recommend that the Government should encourage broad co-ordination between member states, the European Commission and the Council Secretariat on all issues relating to strategic export controls to ensure a strategic approach to counter-proliferation as well as to the prevention of human rights abuse. (Paragraph 150)

The Government agrees with the Committee's recommendation. Good progress has been made in this area recently. With respect to counter-proliferation, the Thessaloniki European Council in June 2003 agreed that preventing the proliferation of WMD should be a priority for the Union, both internally and in its relations with third countries, and agreed an Action Plan for addressing the issue. In November 2003 the EU agreed a model non-proliferation clause to be included in all future EU-third country mixed agreements. The European Council in December 2003 approved a Strategy for preventing the proliferation of WMD, which the EU is in the process of implementing.

The field of defence equipment export controls is relevant to the important objective of preventing human rights abuse. In this area, the EU fora which ensure the co-ordination of the activities of Member States and the EU institutions are COARM, the EU Working Group on Conventional Arms Exports, and COHOM,

the EU Working Group on Human Rights. The Government considers that the activities of these two bodies should be more closely integrated in future.

36. We recommend that the Government should approach the peer review process as an opportunity to share experiences with other countries, not just to give other countries the benefit of British experience. (Paragraph 152)

The Government agrees that the main benefit of the peer review process is the sharing of experiences, and approached the visit programme that was completed in June with this is mind. The visits provided an opportunity to discuss issues surrounding implementation of Council Regulation 1334/2000 (The Dual-Use Regulation) in an informal yet structured setting. Each group of Member States is now agreeing a set of conclusions and recommendations that will be put to the Task Force managing the overall programme. The Task Force envisages producing an overarching report for discussion by Member States in the autumn.

In addition, the Government has proactively been taking steps to compare its licensing processes and performance to that of its counterparts in order to share its own, and learn from other exporting nations', experiences.

37. We recommend that the Government should assess closely whether the controls currently in place are adequate to ensure that exports to new EU member states—dual-use goods in particular—are not at risk of being re-exported under undesirable conditions. (Paragraph 158)

Please see response to Recommendation 39 below

38. We conclude that it is important to the security of the European Union and elsewhere that all EU member states should have effective export controls. We therefore recommend that the Government should consider whether it could usefully make further contributions to helping the new member states to bring their export control systems into line with the EU system, particularly in terms of access to expert assistance and training. (Paragraph 161)

Please see response to Recommendation 39 below.

39. We recommend that the Government should do all it can to encourage acceptance of all new EU member states as members of all of the international export control regimes. We further recommend that steps should be taken to ensure that EU member states not belonging to the regimes do not become weak points in the EU's control of dual-use goods and technology. (Paragraph 163)

The Government will respond to recommendations 37, 38 and 39 together. First, we agree on the importance of promoting effective export controls in the new

Member States. On the defence equipment side, following the successful seminars in Tallinn and Bratislava with the new Member States, we are considering what more the Government, and the EU as a whole, might usefully be able to do in this area. With respect to dual-use exports, the situation is different in that all Member States apply the same legislation, the Dual Use Regulation, which covers the export of dual-use items and technology from the European Community. However, legislation is ineffective without robust licensing practices and the information on which to make well-informed decisions. We are therefore fully supporting the application of all new Member States, to join the multilateral export control regimes, where they are not already members. It is important to recognise, however, that the consensus of all regime partners is essential. The information exchanged within these regimes on proliferation risks will be invaluable to these countries export licensing systems.

All EU Member States have now subscribed to the Nuclear Suppliers' Group following agreement in the NSG Plenary in May on the applications of Lithuania, Latvia and Malta. The UK actively supported the EU Presidency in its lobbying effort before the Plenary. Also, all EU Member States are now in the Australia Group following the acceptance at the AG Plenary in June of the Applications of Estonia, Latvia, Lithuania, Malta and Slovenia. From 1 May, the UK is sending out details of its denial notifications under the MTCR to the seven EU Member States which are not currently members of the regime. We are also in the process of sending information packs to those seven countries listing all extant denials prior to 1 May 2004. The EU Presidency has encouraged all EU Member States to follow the UK's example and distribute similar information packs.

Wider international arrangements

40. We recommend that the Government should continue to press for the introduction of a denial notification system within the Wassenaar Arrangement. (Paragraph 167)

A denial notification system is in place for items on the sensitive list and very sensitive list on the Dual-Use List of Goods and Technologies, although there is no linked obligation to consult the state which issued the denial. The Government will continue to press for such denial notification and consultation systems, including for items on the Munitions List.

41. We conclude that international arrangements on export control need to be made to work as channels through which major arms exporters can share information effectively on proliferation concerns. We further conclude that if this cannot be achieved, it may be necessary to rethink the current arrangements. Failure in this area would bode ill for an effective and truly international approach to counter-proliferation through export controls. (Paragraph 170)

The Government agrees with the Committee that information sharing, leading to effective co-operation to tackle proliferation risks, is of primary importance to multilateral export control efforts. We are not complacent in this regard and the UK is one of the major contributors to this information sharing. The regimes, which depend entirely on the contributions of the members, are improving in this regard, including by addressing new challenges such as the diversion of items to terrorists.

42. We conclude that the proposed International Arms Trade Treaty has received disappointingly little international support. (Paragraph 176)

Please see the response to Recommendation 43 below.

43. Small arms proliferation is a major and increasing threat to human security in many parts of the world. Given the limited progress that the proposal for an arms trade treaty has made, and the clear need for an international solution to this problem, we conclude that the Government must do everything it can to promote workable and effective measures to prevent further proliferation of small arms, including those exported from western countries. We recommend that the Government should use its position as a Permanent Member of the UN Security Council, its forthcoming chairmanship of the G8 and presidency of the European Union to further international consensus in this area. If the proposed treaty is not the right solution, another one needs to be found, and found urgently. (Paragraph 183)

The Government will respond to the Committee's Recommendations 42 and 43 together.

The Government strongly supports measures to raise export control standards internationally. It is important to bear in mind that legally-binding arms control instruments are not the only way to help achieve this objective. The Government, for example, has taken the lead in developing multilateral action to address the problem of the misuse of Small Arms and Light Weapons. Through the Transfer Controls Initiative, we are encouraging a number of regions of the world (South and Central America, East Africa and South-East Asia) to strengthen their controls on Small Arms and Light Weapons transfers. This initiative seeks to prevent irresponsible transfers, such as those that might exacerbate instability, conflicts or repression. It is important to build consensus in these key regions on the type of approach best suited to their particular concerns and draw out any common issues to secure consensus at the UN meeting on Small Arms in 2006.

44. We conclude that UN Security Council Resolution 1540 is a welcome first step towards truly international co-ordination of export controls on nuclear, chemical and biological weapons and their means of their delivery. We recommend that the Government should seek to encourage implementation of the Resolution in states

where such controls are weak, and that the Government should explain in its response to this Report what assistance it is prepared to offer to states lacking the legal and regulatory infrastructure, implementation experience and/or resources to enable them to fulfil the provisions of the Resolution. (Paragraph 186)

The Government agrees with the Committee as regards the vital importance of UN Security Council Resolution 1540, of which the UK has been a leading advocate. We are also fully committed to the work of the 1540 Committee in ensuring global implementation of this resolution, including (where appropriate) by providing assistance or advice to others.

The United Kingdom already offers a range of technical and other assistance to states and international organisations. The Government has committed up to $750m over ten years to the Global Partnership, launched at the 2002 G8 Summit in Canada to give renewed impetus to the co-operative threat reduction efforts of all the G8 countries. The G8 Summit at Sea Island in June 2004 extended the Partnership to include non-G8 contributors. The UK is currently supporting projects to:

- dismantle nuclear submarines in North-West Russia and make safe their spent nuclear fuel;
- construct a new Spent Nuclear Fuel storage facility at Murmansk;
- secure the eventual safe removal of some 20,000 Spent Nuclear Fuel Assemblies from Andreeva Bay;
- dispose of 34 tonnes of plutonium in Russia;
- destroy Russia's stocks of chemical weapons (a total of 40,000 tonnes); and
- create sustainable employment for former Soviet weapons scientists.

The United Kingdom has developed a detailed strategy for enhancing nuclear security at key buildings and infrastructure in the Former Soviet Union (FSU), which will identify a portfolio of high priority projects in collaboration with the Russian authorities and other G8 Global Partnership donor countries. The first project in this area is expected to get underway this Autumn once the necessary changes to the UK/Russia bilateral Agreement are in place.

We are also taking forward with the Libyan authorities a scoping study for the re-direction of Libyan former WMD scientists.

The UK also contributes to the IAEA Nuclear Security Fund. The Fund supports programmes aimed at security of nuclear and radioactive sources including those in the FSU and those which have universal application and specific benefit to the FSU. In 2004 we have contributed £450,000, bringing our total contributions since the Fund's inception in 2002 to £950,000. The UK provides substantial extra-budgetary support to IAEA safeguards through a technical support programme designed to support the IAEA in the attainment of its safeguards goals, e.g. by helping to equip the IAEA to be able to effectively and efficiently undertake its verification tasks. In particular, the UK has made very substantial contributions to

the project to re-engineer the IAEA Safeguards Information System and is very active in providing specialist training for IAEA inspectors.

The Government has provided advice on Chemical Weapons Convention (CWC) and Biological and Toxins Weapons Convention (BTWC) implementation to a range of States Parties and potential States Parties, either nationally or in conjunction with the OPCW Technical Secretariat. At the 2003 BTWC Experts' Meeting the UK circulated a list of governmental experts who could provide advice on BTWC implementation and biosecurity measures.

Lastly we have an active export control outreach programme, to both exporting states and trans-shipment hubs. During these visits we provide advice on export control matters, promote the objectives of the export control regimes, and build the links that facilitate the easy flow of information and specific advice on cases.

45. We conclude that international agreement to control man-portable air defence systems (MANPADS) is an important step in limiting the prospects of their use by terrorists and insurgents. (Paragraph 189)

The Government agrees with the Committee's conclusion. In December 2003, Participating States of the Wassenaar Arrangement agreed "Elements for Export Controls on MANPADS". The United Kingdom was instrumental in the adoption of these guidelines, and played a major role in their recent adoption by all OSCE countries. At the G8 meeting in Sea Island in June 2004, the UK played a central role in securing agreement to the section of the Secure and Facilitated Travel Initiative which deals with measures to reduce the threat of MANPADS, which we will follow up during our G8 Presidency. The Government further welcomes the G8 decision to promote the adoption of the Wassenaar 'Elements' as an international standard.

46. We conclude that the Proliferation Security Initiative is an essential tool, but that its use should be limited to extreme and urgent circumstances. We recommend that care should be taken that its use does not undermine efforts to promote an effective multilateral approach to export controls. While it is true that current international agreements in this area are inadequate, we conclude that it is unlikely that a unilateral attempt to control other countries' exports for them by force would be successful in the long term in preserving international stability and preventing the proliferation of weapons of mass destruction. (Paragraph 193)

The Proliferation Security Initiative (PSI) aims both to make the case internationally for action to prevent WMD proliferation and to provide a basis for such action among states through, for example, improved domestic legislation, enhanced intelligence co-operation, and law enforcement/military preparations. As the conclusions of the London PSI meeting make clear (October 2003), the PSI does not target any country or countries in particular. Rather, the goal is to prevent

the development or acquisition of WMD by all non-state actors (such as terrorists) and states of concern, together with those who supply such programmes through trafficking in sensitive materials, equipment and technology – whether states, individuals, private companies or other entities.

The Statement of Interdiction Principles makes clear that PSI aims to build on existing mechanisms to prevent the proliferation of WMD and their means of delivery, not to supplant them, and that all action will be consistent with existing national legal authorities and international legal frameworks. There already exists a large body of authority for undertaking interdiction operations, such as those involving actions in territorial waters, airspace, or on land, or by flag states against vessels operating under their flags. PSI is also consistent with United Nations Security Council Resolution 1540 which, inter alia, "calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take co-operative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials."

To extend further the legal base of interdiction operations, the UK has opened negotiations with a number of major flag states with a view to concluding bilateral boarding agreements. We hope to conclude the first of these agreements shortly. Other PSI participants are looking at similar action. The US, for example, has concluded bilateral boarding agreements with Liberia and Panama. Separately, we are supporting proposed amendments to the Suppression of Unlawful Acts At Sea Convention (SUA) which would make it a criminal offence to transport WMD by sea.

PSI activities sit within these existing national and international frameworks. Its main goal is to raise awareness of the threat posed by WMD proliferation and to build capacity in participating countries to tackle that threat. It is founded in effective multilateralism: to date more than 90 countries have expressed support for the PSI principles, with 40 offering practical support.

Enforcement in the UK

47. We recommend that the Government should seek actively to disseminate greater understanding of the export control system, to limit the possibility of companies inadvertently exporting or trading in controlled equipment or technology without a licence. (Paragraph 196)

The Government agrees that awareness of strategic export controls is key to good compliance. The DTI's Export Control Organisation website (www.dti.gov.uk/export.control) contains comprehensive information on the UK's strategic export licensing regime, e.g. on the legislation governing strategic exports, current licensing policies (i.e. embargoes and policy restrictions), the licences available under the UK's export licensing regime, and detailed guidance on the controls and how to apply for licences under them. The ECO regularly holds seminars on UK export controls (10 were held in 2003), runs an export control

Helpdesk (020 7215 8070), and has produced a DVD giving an overview of the export licensing process and providing more detailed guidance on specific subjects (available from DTI Publications Unit; tel: 020 7215 6024; web: www.dti.gov.uk/publications). In addition, the ECO's Compliance Team visits companies to ensure they are complying with the terms of open licences. Visits from the ECO's Compliance Officers also include an assessment of how well companies have prepared for the recent changes to the legislation and of the effectiveness of the procedures they have put in place to comply with this legislation. Compliance Officers may also, if appropriate, offer advice on how industry can improve their processes.

During the 6-month period prior to the coming into force of the Export Control Act the Government held a special series of seminars and workshops jointly with the Defence Manufacturers Association around the country to raise awareness and understanding of the new controls. Building on the success of these seminars and workshops, the ECO is trialling a policy of holding seminars on a regional basis, instead of only in London. The ECO has also set up an Export Control Advisory Committee (ECAC), consisting of representatives from the major trade associations, whose members are users of the export control system, in order to create a structured dialogue between the Government and exporters.

48. We conclude that if the evidence given to us by industry is correct, then British exporters are losing business to European competitors either because the British export licensing process is unacceptably slow and bureaucratic or because the systems of other European countries are unacceptably lax. We recommend that the Government should examine industry's allegations closely, and should answer them in its response to this Report. We further recommend that the Government should ensure that any discrepancy is minimised between the time taken to grant an export licence in the United Kingdom and the time required to acquire a similar licence in other European countries; and that the Government should seek harmonisation across the EU of types of police equipment subject to export licensing requirements. (Paragraph 203)

We regret the Committee did not take evidence from the Government on these points before making its recommendations. The Government would therefore like to address in some detail some of the specific points raised with the Committee by industry, as follows:

(a)*"The alleged discrepancy in licence turnaround time between the United Kingdom and other European Governments is startling……while the British Government typically takes six to eight weeks to issue a licence, the German Government can indicate whether a licence will be approved in the course of a single telephone conversation"* [paras 199 &200, p.55 HC 390].

Position in the UK: The UK publishes targets for processing Standard Individual Export Licence applications (70% within 20 working days) and our performance against these targets. We exceeded these targets in 2003, and so far this year we have completed 80% of SIEL applications within the 20 working day target. The average (median) processing time for all cases, both those within and outside the 20-day target, is 12 working days[1]. We have also introduced a target of completing 95% of SIEL applications within 60 working days to give greater incentive to deal with cases which miss the 20-day target and to give exporters a fuller picture of our performance. So far this year we have met this target in 98% of cases. The average (median) processing time for cases that have missed the 20 working day target is 29 days[2].

In addition, we have also decided to publish on our website more information to help exporters, for example, average processing times and refusal rates by destination.

There is therefore transparency of processing times in the UK. Comparable statistics for our major counterparts are not readily available:

- France does not publish any licence processing targets in respect of military or dual-use goods, nor statistics for actual performance. No published data is therefore available for comparison against UK performance.

- Germany does publish some general guidance on processing times, but it is not specific. For example, they state that the time required to process dual-use items to non-sensitive countries (e.g. those in Annex II Part 3 of the EC Regulation) is about two weeks, and that for other exports it is about one month. However, again Germany does not publish any statistics on actual performance, and therefore comparison against the UK's performance is difficult.

- The US publishes targets for processing export licence applications and its performance against these targets, but it is not possible to easily draw a direct comparison to the UK because the US separates its statistics on processing dual-use applications from those on military applications and uses a different measure of performance, recording the median processing time for military applications and the mean for dual-use applications.

We have recently had discussions with our above counterparts to better understand their systems and their approach to processing licence applications. These discussions suggest to us that actual performance in these countries is not significantly, if at all, quicker than in the UK.

Even were published statistics on French and German licensing targets and performance available, direct comparison would nonetheless still be difficult owing

[1] Statistics for the period January to end August 2004.
[2] Statistics for the period January to end August 2004.

to differences in the type of licences offered by each country, and the type of items that can be included on each licence (e.g. in France licences for dual-use and military goods are applied for and licensed separately). Ongoing work to understand better our counterpart's practices should in time enable fuller and more definitive comparison.

(b) *"In 2001 the OSCE cancelled a contract with a British company for peace-keeping equipment to be used in Macedonia due to the length of time that the licensing process was taking. French and Italian replacement suppliers were able to start delivering equipment within 36 hours"* [para 200, p.55, HC 390].

The position on this case is that the licence application for the export of armoured vehicles was received on 25 October 2001, with the exporter seeking to ship the goods on 1 November. The licence was issued by the DTI on 29 November 2001, i.e. 21 working days later, excluding the time the application was returned to the exporter (26-31 October 2001) for further information.

The ECO made clear to the company at the time that applications for licences to supply sensitive equipment to sensitive destinations such as Macedonia have to be closely scrutinised at a senior level both by the DTI and its advisers in other relevant Government departments. There were therefore no guarantees that the application could be fast-tracked.

The Government aims to process 70% of licence applications within 20 working days, but also makes clear that sensitive applications may take longer. We make no commitment to process licences more quickly than 20 working days and we cannot fast-track applications at the expense of others which may be equally urgent, or where to do so would compromise the scrutiny of the application. Exporters should factor the time needed to obtain licences into their business planning.

In respect of the assertion that the contract was given instead to a French company which was able to start delivering the goods within 36 hours, our French counterparts have confirmed that, for controlled exports, they do not operate any derogation for peacekeeping operations, and that in a case such as this it would not be possible for the French licensing process to be completed within the timescale suggested. Licences for military exports from France can require separate applications for three successive permissions: first to negotiate; secondly to conclude the sale (sign the contract); and finally, to export the item. Even if the first two stages of the process had already been completed in this case, the French authorities have told us that a 36 hour turnaround for the final stage (permission to export) alone would be rare.

We understand that the French have a streamlined procedure for some exports where all three of the necessary permissions can be applied for at once. However, discussion with the French authorities suggests that this streamlined procedure is no quicker than UK average processing times. Our French counterparts have told us that a processing time of 36 hours would be impossible for streamlined applications.

The Government is therefore sceptical that French suppliers would have been able to deliver equipment within 36 hours.

(c) *"German companies unlike British companies do not require licences to export goods temporarily for display at exhibitions overseas"* [para 201, p.56, HC 390]

We have approached the German authorities, who dispute this claim, stating that, for controlled goods: "there are no essential differences between final and temporary exports intended for trade fairs. Both types of export are equally controlled and require the prior granting of an export licence."

(d) *"In France, some equipment requires a licence to be exported if it is painted green (for military use), but not if it is painted blue (for civilian use)"* [para 201, p.56, HC 390].

The French authorities have confirmed that all NBC detection equipment is controlled under their standard export licensing procedure (with the exception of dosimeters or Geiger detectors used in nuclear power plants or any civilian application, as is also the case for the UK). In the case of equipment specially designed for military use, the colour of the equipment has no impact on its licensability.

(e) *That there is a "lack of 100% consistency in the various EU Member States' control lists of all controlled technology. For instance, the UK is, we understand, one of the few EU Member States that regards riot shields as being export licensable"* [p.3, Appendix 23, HC 390], & "*discretely armoured 4x4 VIP vehicles require UK export licences"*, [p.3, Appendix 25, HC 390].

EU Member States are obliged to adopt into their national legislation controls, at a minimum, on the goods contained on the EU Common Military List (EUCML). Member States may introduce controls on additional goods as they see fit, according to their national policies and objectives. This EUCML is essentially based on the Wassenaar Arrangement (WA) control lists. Discretely armoured 4x4 VIP vehicles were recently added to the WA control lists and this, in turn, is now reflected in the EUCML. All Member States are now obliged to control the export of these goods. There is therefore a high degree of commonality between EU Member States' control lists, but we consider it appropriate to retain the flexibility to supplement our national list with additional items.

It is true that anti-riot shields are not included in the EU Common Military List. However, we are considering whether these and similar items should nevertheless be subject to a common EU licensing requirement.

(f) *"The company can get approval for a rapid despatch of goods or intangible information by a simple telephone call to the German authority, which will issue an approval number immediately with paperwork to follow"* [p.2, Appendix 24, HC 390].

Our German counterparts have told us that "export licences are exclusively granted in written form based on a previous written licence application. Thus, licences are neither granted informally nor by telephone. The same applies to information about the probability of granting a licence. Such information is possible, however is only provided in a written procedure."

(g) *There is less predictability now in the UK's export licensing system.* [Q.113 & Q.116, HC 390-ii].

The Government assesses ELAs on a case by case basis against the Consolidated EU and National Arms Export Licensing Criteria, taking into account circumstances prevailing at the time and other announced Government policies. As such, it is inevitable that licensing decisions will depend on the assessment of a range of factors at the time of each application, and to this extent predictability, in the sense of automaticity, cannot be guaranteed. We maintain that case by case analysis offers greater flexibility for exporters than would a system based more on embargoes and automaticity, which would undoubtedly lead to fewer opportunities for exporters.

We are taking steps to improve the information we make available to exporters about the licence assessment process in order to help them judge the likely decision and timetable. For example, the ECO has produced a DVD giving an overview of the export licensing process and providing more detailed guidance on specific subjects. We are also, where possible, giving exporters more detail about the reasons their licences are refused; are publishing refusal rates and average processing times by destination on the ECO website; and are reviewing our guidance so as to give exporters as much information as we can about how applications are assessed.

(h) *"According to the Defence Manufacturers' Association, 'there is a general perception within UK industry that the British Government's interpretation of the EU Code of Conduct (and EU Embargoes) is amongst the strictest of EU Member States'. One of our witnesses from industry told us along similar lines that 'virtually the whole of the EU is more liberal in its interpretation than the UK is'".* [para 116, p.35, HC 390].

No evidence has been produced to substantiate the claim that the UK adopts a stricter approach. All EU Member States are committed to assessing all export licence applications against the EU Code of Conduct on Arms Exports. It would be impossible to expect all Member States to reach identical decisions on every licence application, but there are mechanisms in place to ensure that all Member States are applying common standards. For example, particular export destinations are regularly discussed in the EU Working Group on Conventional Arms Exports, COARM.

Evidence suggests that the UK's refusal rate is comparable to that of our European counterparts. Specifically data from the 2003 Annual Report of the EU Code of Conduct ('Fifth Annual Report According to Operative Provision 8 of the

European Code of Conduct on Arms Exports'. 2003/C 320/01) shows that in 2003, 0.91% of the UK's decisions were to refuse, compared with 1.57% for France and 0.57% for Germany. These figures do not constitute an absolute comparison in the sense that there may be different national procedures and licence types, but they nonetheless indicate that the UK is not markedly out of line with France and Germany.

(i) *"We believe that greater efforts should be made with regard to the adoption of a more consistent interpretation of the criteria within the Code of Conduct between nations,"* [p.6, Appendix 25, HC 390].

A review of the EU Code is currently underway. However, each Member State is, and will remain, responsible for taking its own decisions on the export licence applications it receives, and, as noted above, it would be unrealistic to expect that each MS would adopt exactly the same approach and reach identical decisions on every export licence application.

(j) *"There is a certain amount of misinterpretation occurring in relation to the export of components.....a UK company might export components to a company overseas and that is simply for a manufacturing process to be carried out overseas and the components to be returned to the UK. It is still classed as a permanent export because the material that is returned is materially different from that which was exported so it does not show up as a temporary export, it shows up as a permanent export, but looked at from a pragmatic sense it was in fact a temporary export in the process of manufacturing a product,"* [Q.153, HC 390-ii].

The Government does not agree that all components exported from the UK but to be returned eventually to the UK should be classified as temporary exports. Components exported from the UK are generally exported for the purpose of being incorporated or to form part of a manufacturing process. If the goods are eventually to be returned to the UK, as industry acknowledges, they will often be returned in a materially different form, potentially unrecognisable from the product licensed for export. Clearly, to define these goods as temporary exports would create an opportunity for the controls to be evaded.

(k) *"British firms will seek 680 guidance from DESO as to whether a licence would be issued or not and if the answer is negative, walk away from pursuing the potential business involved. Because the 680 system is (for the most part) a non-regulatory, voluntary system, an indication that a licence would not be issued has no force under the anti-undercutting provisions of the Code of Conduct, and UK suppliers may have been walking away from potential business that is then picked up by EU competitors, without even bothering to apply for licences, knowing that these would be refused"* [p.3, Appendix 23, HC 390].

Exporters who are not seeking to release information covered by a security classification are not obliged to use the F680 procedure. If F680 permission is refused, exporters are not prohibited from subsequently applying for a licence. While the F680 decision can give an indication of the likely eventual licensing

decision, it is only after actually applying for a licence that a definitive decision can be given. Whether or not to pursue the business after an F680 refusal is necessarily a commercial decision for the exporter.

(l) *In relation to F680's, "Tim Otter referred in his evidence to two particular programmes where there has been more interest – for the disposal of huge stocks of ex-World War Two Japanese chemical warfare munitions, and for the supply of security equipment for the 2008 Olympics in Beijing. At present most UK firms appear to be standing back from pursuing the potential requirements associated with the latter of these opportunities, due to the uncertainty as to whether licences would be issued and a general perception that this would be unlikely, whilst we are aware that EU competitors are actively pursuing this market, and have been since the Games were awarded to Beijing,"* [p.4, Appendix 23, HC 390].

An MOD-chaired Beijing Olympics Security Committee, attended by MOD, FCO, UK Trade and Investment, as well as industry, has met on three occasions this year to assist industry in planning the possible provision of UK security equipment and services to the Beijing Olympics. In considering applications for export licences the UK, like other EU states, must take account of its obligations under the EU Arms Embargo on China and the EU Code of Conduct on Arms Exports.

(m) "*Something that would make life a lot easier is if we could share goods and technology with companies within our own supply chain under open licensing systems. We can do that in the bulk of the defence industry but it seems to be ruled out for particular areas such as restricted goods and NBC defence,"* [Q.154, HC 390-ii].

The Government has made clear that companies may submit Open Individual Export Licence applications for such transactions. However, owing to the inherent sensitivities of the goods in question, the Government does not consider that Open General Licensing is appropriate.

n) *Loopholes exist in the legislation implemented under the Export Control Act (1) "The legislation explicitly (Articles 6 & 7) purports to control the electronic (intangible) transfer of software. However, it fails in this objective, for technical reasons. Since software is defined for the purposes of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 as, 'means one or more programmes or microprogrammes fixed in a tangible medium of expression', it is axiomatic that anything which is intangible cannot be 'software' for the purposes of this Order," [p.2, Appendix 19, HC 390]; (2)"Article 11 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 exempts from controls 'the exportation of any aircraft which is departing temporarily from the United Kingdom on trials'. According to the DMA, this is probably intended to cover flights beginning and ending in the United Kingdom. But because this is not explicitly stated, it may be a loophole which could be exploited by illicit exporters,"* [para 238, p.66 HC 390].

(1) The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, under Article 2, defines software as 'one or more "programmes" or "microprogrammes" fixed in any tangible medium of expression'. Software in order to exist within this definition must therefore be fixed in a tangible medium. The tangible medium may take many forms e.g. the hard drive or ROM chip on a computer, a disc, or a tape. The definition of 'transfer by any electronic means' refers only to the method by which the transfer takes place, without attempting to redefine 'software'. For a transfer to take place by electronic means the software is simply transferred or copied from one tangible medium of expression to another tangible medium of expression. Copying or moving controlled software from one place to another requires an export licence if an electronic or non-electronic transfer has been undertaken in accordance with Articles 6 or 7 of this Order.

(2) The Government does not agree that there is a loophole in the legislation in respect of exports of vessels or vehicles for trial. The legislation clearly sets out the goods that are subject to control and in what circumstances. Should an exporter purport to be exporting the goods for trial or for temporary export while in fact exporting the goods permanently, this would constitute a breach of controls.

(o) *"Under the new regime our record keeping is much more onerous than theirs" [Q.120, HC 390-ii], and " One company estimates that the training needs alone, associated with the new Export Control Act, will have increased the company's overheads by at least 1-2%"* [p.2, Appendix 23, HC 390].

Initial indications from companies suggest that the extent of staff training and awareness is in line with the estimates in the final Regulatory Impact Assessment (RIA) and that information to demonstrate compliance with the new controls is available from normal business records.

Industry has confirmed that the record keeping requirements under the Act are less onerous than they had first believed. Any record keeping requirements for open licences should be seen in the context of the fact that open licences offer UK exporters a great deal of flexibility which is less available in other countries.

(p) *"Evidence which is starting to emerge from Libya on its nuclear weapon development programme would appear to demonstrate that a lot of our EU partners were involved in facilitating these development"* [p.2, Appendix 23, HC 390].

The information from Libya is still being studied and it is too early to draw conclusions on whether any of our EU Partners were involved in facilitation. Even if this were the case, it would not necessarily mean that our Partners have a generally more lax export control regime than the UK, depending on the nature of the goods, whether approvals were obtained, etc.

(q) *"the UK's interpretation of the EU embargo [on China] is much stronger than in some other EU Member States"* [p.3, Appendix 23, HC 390].

The Government would be interested in any evidence in support of the claim. It is a fact that in 2003, only the UK, France, Germany and Italy, of EU Member States, granted strategic export licences to China

Conclusion to recommendation 48

On the basis of the evidence brought to our attention, the Government does not agree that the UK compares badly with other licensing authorities, either as regards the speed with which licences are processed or the strictness of our decisions.

We are not complacent about the service we offer to exporters, and we have been working hard to reduce processing times. As a result of these efforts we exceeded our targets in 2003 for processing export licence applications for the first time since they were introduced. In addition, the number of long-outstanding cases is at the lowest it has been for some time. The Committee has acknowledged this achievement elsewhere in its report.

The Government wants to ensure that this performance is sustained and improved upon. As the Committee is aware, we have carried out a comprehensive review of the export licensing process, and, in light of the conclusions of this review, are introducing additional measures to streamline further the export licensing system and to consolidate efficiency gains. At the same time, we are also working to improve awareness of, and compliance with, the new controls.

The Government will consider further the Committee's recommendation on harmonising the list of police and security equipment controlled by EU Member States.

There is however an issue for the Committee. The British system does involve a much higher level of scrutiny of arms exports by Parliament, which results in a much higher level of transparency in the UK system (no other EU Member State has a system of Parliamentary involvement anywhere near as substantial as does the UK). The large numbers of detailed supplementary questions submitted by the Committee consumes resources which might otherwise be applied to the processing of licence applications.

49. We conclude that the introduction of a shared IT base for Government Departments involved in export licensing is long overdue, and we recommend that its development should be made a priority. We further recommend that consideration should be given to whether a system able to manage information above the lowest level of classification (RESTRICTED) would be more useful, given the information sharing needs of Government Departments in this field. (Paragraph 206)

The Government is committed to maximising efficiency in the export licensing process. We introduced the web-enabled application form (WEAF) to facilitate electronic working. The WEAF generates export licence applications in a format

that can then be submitted electronically, either via the Government Gateway, on disc or on CD. The Government has also carried out a review of the export licensing process with a view to improving co-operation between the various Government departments involved. The aim is to deliver, collectively, a more efficient service to exporters consistent with achieving the Government's export control policy objectives through the licensing system. The JEWEL (Joined-up and more Efficient Working on Export Licensing) review recommended the introduction of a shared IT base for Government Departments. The Shared Primary Information Resource Environment (SPIRE) is now being developed: it will store and manage export applications and supporting information, accessible to the relevant Government Departments through the Government Secure Intranet (GSI). A Project Team, operating in accordance with DTI project working guidelines, is in the process of seeking tenders from potential suppliers with a view to putting deliverables in place by March 2005. Further development may take place depending on the outcome of this first phase of work.

We have reviewed the security level of the system and found that the majority of material passed between Government Departments is being done and can be done within the RESTRICTED marking. The additional costs and significant organisational changes required to develop a higher classification system to support the remaining material would not be justified. The RESTRICTED level system will provide us with the IT necessary to continue to improve licence processing efficiency.

50. We conclude that changes in performance targets introduced as part of the JEWEL review may help to encourage those in Government involved in export licensing to apply some urgency to the processing of licence applications which have already missed the basic 20-day processing target. (Paragraph 207)

The Government agrees with the Committee's conclusion; and refers the Committee to part 'a' of HMG's Conclusion 48 for information on the Government's success against these targets.

51. We welcome the improvements made in processing export licence applications against published targets, and we particularly welcome the new emphasis on clearing the backlog of outstanding cases. We recommend, however, that the Government should seek to improve its performance on appeals as a matter of priority. (Paragraph 209)

The Government recognises that improvement is required on appeals performance and to this end has introduced a new appeals procedure to expedite the processing of appeals. Since 1 July this year, where no new relevant information has been received and there has been no change in circumstances in the end-user destination, a senior ECO official may refuse the appeal without circulating it to advisory Departments. The new procedure has resulted in a number of appellants receiving responses to their appeals shortly after the appeal was submitted, and in more

efficient processing of the reduced number of appeals circulated to advisory Departments.

New controls under the Export Control Act

52. Our suggestion that the Government should take a fresh look at the export control system as a whole has received support from both industry and NGOs. We recommend that the Government should take heed of this and not ignore the possibility that more radical reform of its export and trade control system might allow it to target more accurately those activities of most proliferation concern. (Paragraph 212)

The Government made clear in our October 2003 response to the Committee (Cm 5988) that it was not appropriate to go back to the drawing board on the export control system as a whole. The new controls implemented under the Export Control Act mark the conclusion of the most comprehensive overhaul of the UK's export licensing system for over 60 years. There has been extensive consultation on the new legislation since 1998 and it is important that we allow the operation of these new controls now to bed down. Industry has invested in training and new compliance procedures to operate the new controls and we doubt it would want this investment negated by further radical reforms. This is therefore not the time to be undertaking a 'blue skies' review. Moreover, the suggestions made by the Committee would be unlikely to reduce the burden on exporters, as there is no easy way of applying controls to some exporters but not others. Exporters already enjoy considerable flexibilities through the UK's open general licensing system, which facilitates less sensitive exports.

Our October response informed the Committee that we will keep the operation of the new controls under review to ensure that they meet the strategic objective of promoting global security while facilitating responsible strategic exports.

53. We conclude that in applying extra-territorial control to categories of transaction which are supposedly internationally recognised as undesirable, the Government has not only failed to target its legislation at those transactions which are of most concern—in particular the trafficking and brokering of small arms; it is also in fact meeting with precisely those problems which it claimed would make extra-territorial control of trade in small arms unenforceable. (Paragraph 221)

Please see response to Recommendation 54 below.

54. We recommend that the Government should reconsider which types of trafficking and brokering activity it subjects to extra-territorial control to identify more accurately those which are of most pressing and genuine concern — in particular those weapons most likely to be used by terrorists or in civil wars. We recommend that trade in

such weapons, including MANPADS, rocket-propelled grenades and automatic light weapons, should be subject to extra-territorial control where they are intended for end use by anyone other than a national government or its agent, and where the country from which the trade is being conducted or from which the export will take place does not itself have adequate trade or export controls consistent with the British Government's policy on arms exports. We further recommend that the Government in its response to this Report should explain more clearly how it can justify permitting British individuals and bodies to engage in arms exports outside the UK which if made from within the UK would not be permitted. (Paragraph 224)

The Government will respond to the Committee's recommendations 53 and 54 together.

The Government's policy is that extraterritorial jurisdiction should be applied only to the most sensitive transfers. The export of torture equipment from the UK is banned, as are exports to embargoed destinations, except in exceptional circumstances, according to the terms of the embargo. It is therefore appropriate to impose strict controls on trafficking and brokering in torture equipment and to embargoed destinations to prevent UK persons overseas from being able to circumvent the UK ban. The Government also believes it is right to apply extraterritorial controls to other categories of goods which are not necessarily banned for export from the UK but which are extremely sensitive, i.e. to intangible transfers and technical assistance related to WMD and also to trade in long-range missiles.

However, at this stage the Government believes that it is important to keep this second category of control to a minimum, given the difficulties associated with conflicts of jurisdiction and with the administration and enforcement of extraterritorial controls. Moreover it is also important to bear in mind that the control on 'Restricted Goods' is different from that on 'Controlled Goods' in that it applies to "any act calculated to promote their supply or delivery". This is extremely wide-ranging and must be used sparingly, particularly in respect of goods in which there is a vast legitimate trade.

The Government fully agrees that illicit trade in small arms and light weapons (SALW) is a major concern, but as we have repeatedly made clear, multilateral action is the most effective way of addressing this. We are working at international level to introduce measures to help prevent illicit trade in this area, and would of course fully implement any international embargoes on trade in small arms. Our national controls on SALW brokering are nonetheless extremely robust, making UK involvement in overseas trade in controlled goods licensable where <u>any</u> part of the activity takes place in the UK. Licence applications for such trade are considered in the same way as direct exports, against the consolidated EU and National Arms Export Licensing Criteria. Assessment of the applications would

also take account of the efficacy of the export control regime of the exporting country.

In relation to 'those weapons most likely to be used by terrorists', the Export Control Act has introduced comprehensive and effective controls on the brokering of all equipment on the UK's Military List, including on MANPADS, rocket-propelled grenades and automatic light weapons, where any part of the activity takes place in the UK. This represents a very significant step in helping to prevent the UK being used as a base for undesirable arms transfers. As noted in Denis MacShane's statement of 18 May 2003 (Hansard 29WS), the UK is fully compliant with the commitments agreed multilaterally in the G8 and the Wassenaar Arrangement in relation to MANPADS in the context of their potential use in terrorist attacks.

As the Committee will appreciate, Section 57 of the Terrorism Act 2000 makes it an offence for a person to possess an article for a purpose connected with the commission, preparation or instigation of an act of terrorism. This legislation includes extraterritorial provisions following the coming into force on 26 April 2004 of Section 52 of the Crime (International Co-operation) Act 2003. Furthermore, there are already UN sanctions in place to prevent brokering to Al-Qaida members and their associates. These measures apply to the activities of UK nationals abroad as well as to any person in the UK. The Government, however, is keeping controls on MANPADS under review, along with all other provisions of the new legislation.

55. We conclude that close co-operation with the Government appears to have resolved some of industry's concerns about the regulatory impact of the introduction of the new controls. (Paragraph 227)

The Government welcomes the Committee's recognition of our efforts and success in carrying out comprehensive consultation and awareness raising activities with industry, Trade Associations, and representatives of the academic community. This has helped those affected to understand the impact of, and prepare for, the new controls. Where appropriate, officials also worked effectively with industry to develop a range of open licences and practical compliance measures. This work has not stopped now that the controls are in force, and officials continue to work closely with exporters to help them operate under the new controls.

56. We conclude that to require British companies to apply for a licence to enter into discussions with the British Ministry of Defence would be a manifest absurdity, which cannot have been the intention of those devising the legislation. (Paragraph 230)

There is no specific provision in the legislation which requires an exporter to obtain a licence "to enter into discussions with the British Ministry of Defence". Articles 8 and 9 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 require, inter alia, a licence to be obtained where it is proposed to transfer in the UK software or technology which has a "relevant

use" (i.e. is WMD-related) and where the transferor has reason to believe the technology or software may be used outside the EU. This could apply in certain circumstances to transfers of technology to the UK MOD, if the MOD intends to use that technology outside the EU.

However, this will only be the case where technology is actually transferred. It does not apply to routine sales and marketing discussions which may have a technical element, e.g. if the British MOD discusses with a supplier the general capabilities of particular types of equipment, contractual arrangements, etc. Also, discussions prior or subsequent to a transfer are not in themselves licensable and so would not need to be recorded. Furthermore a licence would not be required for the transfer in the UK if the subsequent use outside of the EU by UK MOD is of hardware which incorporates that technology/software (e.g. NBC detection equipment), rather than of the technology per se.

We therefore believe the number of situations which are licensable are in practice relatively few. Where they do arise, they may be covered by the Government Defence Contracts OGEL, the coverage of which has been extended, or where this is not applicable we can issue appropriate Open Individual Licences, as we have done in some cases.

Article 10 of the Order requires a licence for the provision of technical assistance related to anything with a "relevant use" outside the EU. Again, in certain circumstances this could catch the provision of technical assistance to UK Armed Forces, e.g. where a UK supplier is providing assistance directly from the UK by telephone or e-mail. The Government is putting in place an Open General Licence to cover all such assistance to UK Forces on deployment which we believe will facilitate this assistance without the need for individual licences.

It should be noted that it is not a new principle that dealings with the Ministry of Defence or UK Armed Forces in theatre may in certain circumstances be licensable. It was the case before the new legislation, and remains so, that exports made pursuant to UK Government defence contracts are subject to control. We recognise the need for flexibility in such cases, but our approach is to craft open licences which can be tailored to facilitate specific types of transaction as they arise, rather than create exemptions in the legislation which risk becoming loopholes and would be more difficult to keep up to date. The Committee will also recognise the importance of keeping a tight control on WMD-related equipment, whatever its source and its intended use.

57. We conclude that the new controls as they stand risk imposing an unacceptable bureaucratic burden on reputable companies which the Government should be seeking to support, albeit that they are operating in fields of potential concern. We recommend that the Government should, as a matter of urgency, take action to ensure that the bureaucratic burden of complying with the new controls for companies such as Smiths Detection and MBDA is reasonable, predictable and well understood. (Paragraph 231)

It is inevitable that 'reputable' companies will be caught by export controls, as they are the manufacturers and suppliers of the sensitive equipment which the Government needs to regulate. This has always been the case. We do not, however, accept that the new controls give rise to excessive bureaucracy. Officials from the ECO have met with those most affected by the new controls and have advised them of how to make use of the considerable flexibilities offered by open general and open individual licences, as noted above. Also, those applications for individual licences which we have received are being processed increasingly quickly.

The Government has also issued appropriate trade control licences to companies engaged in legitimate trade in long-range missiles in accordance with international regimes.

We accept that some of the new controls are not entirely straightforward in their scope and application and we need to maintain a close dialogue with industry to deal with any problems as they arise. This will be an ongoing exercise. At the time of writing, however, the Government is not aware of any practical problems relating to procurement or technical assistance for UK Armed Forces arising from the new controls which have not been resolved promptly.

58. We recommend that the Government should explain in response to this Report what action it is taking to identify and inform British citizens abroad who may be caught by the new controls. We further recommend a degree of lenience where British citizens abroad are found to have inadvertently committed insignificant breaches of the new controls. (Paragraph 232)

The FCO has informed its overseas posts of the changes to the UK's strategic export control legislation. The ECO's website can be accessed from anywhere in the world and individuals are being made aware of the new controls as they come to the Government's attention. However the Government does not have the resources to undertake a world-wide awareness campaign. This was a contributing factor in the Government's decision not to extend the scope of extraterritorial controls under the Act.

In deciding whether a prosecution is justified the Customs and Excise Prosecution Office has to consider the strength of the evidence and the public interest. A prosecution would only be commenced if the evidence was such that there was a realistic prospect of conviction and it was in the public interest for such a prosecution to be brought. Each case is considered on its own merits and the degree of knowledge of the defendant would be one of the many factors to be taken into consideration.

59. We recommend that the Government should explain in its response to its Report what steps it is taking to ensure that foreign nationals visiting the United Kingdom understand their obligations under the new trade controls, and how it intends to investigate suspected

breaches of these controls by visiting foreign nationals. (Paragraph 233)

As the ECO becomes aware of events, conferences, exhibitions and trade fairs, it will circulate guidance on UK export controls to organisers to cascade to exhibitors. This approach was adopted for example, for Farnborough International 2004. On UK licensing requirements, the ECO worked closely with the Society of British Aerospace Companies (SBAC) in the run up to Farnborough, made guidance available to the Farnborough organisers, and provided material for exhibitors on the UK Trade and Investment stand. Equally, foreign visitors, reasonably, have a responsibility to enquire for themselves about relevant UK controls and regulations.

Customs' officers were present at the recent Farnborough Air Show. If a breach was discovered, HMCE would adopt the same investigation techniques as for any other suspected export control offence.

60. We recommend that the Government should take on board complaints from industry about inconsistency and uncertainty, and should seek to provide as consistent an interpretation as possible of what the new legislation means for business. Companies and individuals should not be penalised for inadvertent lack of compliance where the Government has been unclear or inconsistent about what the law means. (Paragraph 237)

The Government does not accept that we have given unclear and inconsistent advice. It is inevitable that guidance given before the legislation entered into force on 1 May has had to be supplemented, as companies have sought advice on increasingly specialised situations. These requests have included a wide range of hypothetical cases, and different exporters have raised similar but not identical points, to which every effort has been made to give consistent advice.

Industry appears to have based this assertion on one instance of alleged inconsistency, i.e. in relation to advice on whether organisers of trade fairs would require licences. It is only possible to finalise any advice once the precise details of the case are known, normally when a licence application is submitted. In certain cases initial advice may be modified as the full picture becomes clear. Nonetheless, advice on the licensability of trade fair organisers has been consistent i.e. that trade fair organisers need a licence if their activity constitutes an act calculated to promote the supply or delivery of 'Restricted Goods' or of Military List goods to embargoed destinations. The ECO worked very closely with the SBAC in the run up to the Farnborough Air Show in relation to the SBAC's own activity and also to ensure that exhibitors and attendees were aware of the new controls and what licences they required.

If a company is in doubt about the licensable status of a transaction, it should obtain a rating in writing from the ECO. Moreover, with a constructive spirit on both sides, the Government and exporters can work through any remaining issues.

61. We recommend that the Government should re-examine the drafting of the secondary legislation in the light of comments from industry, to ensure that the Orders have the intended legislative effect. If they do not, amending legislation should be urgently made and laid before Parliament. (Paragraph 238)

We are monitoring the impact of the legislation including with the Export Control Advisory Committee, a government-industry liaison body. Realistically, we shall only be able to make an initial assessment after the new controls have been in operation for a longer time, once any remaining misunderstandings about its interpretations have been cleared up, and we have received a significant number of licence applications. It is far too early to contemplate changes to the legislation. We are committed to carrying out a review of the legislation in three years time, in keeping with the Cabinet Office guidance on Better Regulation. So far, the issues raised with the Committee by industry have been addressed and most of the perceived problems are hypothetical rather than real. However, if any real defects in the new system of controls become apparent, we would seek to address them through changes to the secondary legislation, subject to public consultation.

Role of Customs and Excise

62. We conclude that it is surprising how few prosecutions have been brought recently for breaches of export controls, given the concern expressed by the Intelligence and Security Committee that a small number of UK companies and individuals are trying to breach export restrictions. We recommend that the Government should explain in its response to this Report what efforts it is making to bring those who deliberately breach export restrictions to justice. (Paragraph 244)

HM Customs and Excise has access to sensitive intelligence relating to illegal activity both in the UK and overseas by UK persons. It has close links with the intelligence agencies and attends meetings of relevant Government inter-departmental intelligence Committees.

HMCE investigates all cases where there is evidence of a deliberate breach of export controls that involves sensitive destinations or particularly sensitive goods. However, as with all law enforcement agencies, not all investigations result in prosecutions. When deciding to initiate a prosecution the Customs and Excise Prosecution Office, has to be satisfied that the admissible evidence is strong enough to indicate a realistic prospect of conviction and that, in accordance with the Code for Crown Prosecutors, it would be in the public interest to prosecute. When initiating a prosecution the prosecutor has to be mindful of the Crown's disclosure obligations under the Criminal Procedure and Investigations Act 1996. The Attorney General is informed of all arms control prosecutions and is given monthly progress reports.

HMCE have reviewed their prosecution policy and analysis of the public interest in relation to regulatory breaches where deliberate evasion cannot be proved. Where there is sufficient evidence to secure a conviction for a regulatory breach and it is in the public interest to do so, then HMCE will seek to prosecute. HMCE believe that this will serve notice to exporters that a more active enforcement strategy is being pursued and that this new approach will provide further deterrence against those who seek to breach UK export controls.

The new controls on intangible transfers of technology and trade will provide further opportunities for customs investigations and prosecutions. However expectations need to be realistic to reflect the challenging nature of enforcing export controls based on services, as distinct from the export of goods.

63. Given the quantity of communications in the ether and advances in encryption which make such communications difficult to interpret even if they are successfully intercepted, on the very limited evidence available to us, we conclude that it is likely to be very difficult indeed to bring successful prosecutions for illegal exports of technology by intangible means or to successfully disrupt such transfers. (Paragraph 245)

The Government accepts that it will be challenging to mount a successful prosecution for the illegal transfer of technology by intangible means. However, such transfers often leave a footprint; and the legislation provides a framework to take investigation action in those cases where sufficient evidence to support a prosecution is found. Moreover, the control has a deterrent effect by controlling exports of sensitive technology by companies and other entities.

HMCE have been involved in the Government's regional awareness strategy for UK industry, explaining in a series of events across the country the new export controls including intangible transfer controls for military items. HMCE can give an assurance that where there is intelligence or evidence of a deliberate breach of intangible transfer of technology controls involving sensitive destinations or particularly sensitive technology then HMCE will actively investigate the case. The Committee will be aware that for dual use goods, intangible technology transfer controls have been in force since September 2000.

64. We conclude that the Government must ensure that HM Customs & Excise and the Intelligence and Security Agencies are adequately resourced to detect and prevent the illegal export of controlled goods if the country's export control system is to function effectively as a tool in the fight against proliferation. (Paragraph 246)

HMCE allocates their resources in accordance with the agreed priorities as set out in their Public Services Agreement and Service Delivery Agreement. HMCE have a responsibility to manage their resources in the most efficient and effective way and this approach extends to the enforcement responsibilities for export controls.

Export controls are a high priority for Customs enforcement. HMCE have specialist investigation and intelligence teams specifically dedicated to export controls, and all serious breaches are investigated. HMCE can give an assurance that where there is specific intelligence suggesting an attempted breach involving a sensitive destination or particularly sensitive goods or technology an investigation will be undertaken. Also, where evidence is required from abroad as part of an on-going investigation into illegal extraterritorial activity by UK persons, resources will also be made available.

Preventing the illegal export of controlled goods is also high on the agenda of the Security and Intelligence Agencies, who are tasked accordingly.

Conclusion

65. **Limiting the proliferation of weapons, from small arms to biological agents, is one of the major political issues of our time. It is, quite literally, a matter of life and death. Export controls are only a part of the solution, but are a crucial part of it. To be reasonably effective, such controls must be applied internationally, and countries must have the skills and resources to identify and to stop illicit exports. But, as international drugs trafficking shows only too clearly, it is unrealistic to expect legislation and border controls to do more than slow proliferation. (Paragraph 247)**

66. **Over the last five years, we have probably given more sustained and detailed attention to the Government's policy and administration in the area of export controls than any parliamentary select committee has previously given to any specific area of policy. But few areas of policy have so deserved to be subjected to the searchlight of parliamentary scrutiny. Decisions in this area can affect the national security of our country, the ability of industry to trade competitively, whether distant parts of the world live at peace or at war, whether individuals live or die. (Paragraph 248)**

67. **Before we began our inquiries, this was an area of government best known for its secrecy. With the publication of Annual Reports on Strategic Export Controls, a little light has been visible from behind the closed door. But sometimes the impression of openness is misleading, and information has been published which has led commentators, quite reasonably, to the wrong conclusions. (Paragraph 249)**

68. **Our task has been to ensure that secrecy is only maintained where it is genuinely justified. Secrecy engenders mistrust, and it is in the Government's interest to be as open as it can be in this area. As the Government has discovered, negative public comment will not be prevented by a lack of openness, or partial transparency. Our confidential investigations into the Government's decisions have**

suggested to us that the Government has little to be ashamed of. The prize of greater transparency is therefore one worth winning: the prize of public trust. (Paragraph 250)

The Government agrees that the Committee has applied a very high level of scrutiny to this area of our activity. We also agree that export control policy has a crucial role to play in preventing the proliferation of weapons of mass destruction, the means of their delivery, and related materials and technology, as well as to prevent irresponsible exports of defence equipment. Accordingly, the Government has invested considerable effort and resources over a number of years to ensure the UK has an export licensing system that is as effective and transparent as any in the world.

In 1997 the Government pledged to make improvements to the transparency of UK export controls. We began by publishing in that year the first Annual Report on Strategic Export Controls, and since then have given increasingly more detailed information on our export licensing decisions and policy. We have been grateful for the Committee's support for our approach since its first Report in February 2000. We hope that the recent move to Quarterly Reporting will further underline our commitment to the timely provision of information, which will allow the effective scrutiny of our licensing decisions. Given this, we do not consider that the Committee's conclusion on transparency, that "a little light has been visible from behind the closed door", does justice to our efforts. The constraints on our ability to provide all details on export licences are real, and relate to commercial confidentiality, diplomatic relations and intelligence matters, among others. It may also be worth recording that the Committee, with access to extensive information on these decisions, considers that the Government, "has little to be ashamed of" in the area of export controls.

We thank the Committee for another thorough and comprehensive report.

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