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

Session 2002–03

Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny

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

Presented to Parliament
by the Secretaries of State for
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REPORTS FROM THE DEFENCE, FOREIGN AFFAIRS, INTERNATIONAL DEVELOPMENT AND TRADE AND INDUSTRY COMMITTEES

SESSION 2002-03

STRATEGIC EXPORT CONTROLS: ANNUAL REPORT FOR 2001, LICENSING POLICY AND PARLIAMENTARY SCRUTINY

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

Conduct of the inquiry

1. **We recommend that the Government should suggest how it might provide information to us on licence applications in ways that would reduce the administrative burden of doing so.** (Paragraph 15)

The Government remains committed to its work with the Committee to ensure the efficient and effective retrospective scrutiny of its export licensing policy and practice. Officials have corresponded with the Clerk of the Committee suggesting ways of reducing the administrative burden. But the Committee will recognise that there is a finite limit to the number of detailed questions which can be handled at any one time without causing delays in the processing of applications themselves.

2. **We welcome the Government's acknowledgement that it is appropriate to supply information in confidence to select committees which would not be disclosed to the public. We would expect the Government to refuse to supply information to us only where there are very strong reasons for doing so. We recommend that where the Government refuses to make information available to us in confidence, it should provide a clear explanation of the reasons for that decision rather than rely on effectively meaningless references to the Code of Practice on Access to Government Information. We recommend that the Liaison Committee should take this matter further.** (Paragraph 18)

The Government will continue to supply, the Committee with the information it requests whenever possible. This will include the supply of information that cannot be disclosed publicly, on an in-confidence basis. The Government's presumption is that information requested by the Committee will be made available. But the Government will not be able to supply information when very strong reasons against disclosure apply.

In the event that the Government refuses to disclose information, it will explain its reasons for doing so clearly, with reference to the Code of Practice on Access to Government Information. The Ministerial Code states "Ministers should be as open as possible with Parliament and the public, refusing information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes and the

Government's Code of Practice on Access to Government Information". The Code is not "meaningless" and the Government will try to ensure that any references to it are made clear.

3. **We conclude that although retrospective scrutiny occurs too late to prevent a particular export from taking place, it can and should inform future decisions by the Government.** (Paragraph 21)

The Government appreciates the value of retrospective scrutiny that the Quadripartite Committee provides. We take the Committee's views seriously and will make changes to export control policy as appropriate where we accept the committee's recommendations.

Export licence decisions during 2001

4. **From the information we have received, including responses to our further written questions, we conclude that the Government operates a highly specialised and focused licensing system which ensures, probably as well as any licensing system could, that equipment at risk of being used in India or Pakistan (or indeed anywhere else in the world) for the development of weapons of mass destruction does not receive an export licence.** (Paragraph 38)

The Government welcomes the Committee's finding on the strict scrutiny we apply to all exports where there are Weapons of Mass Destruction (WMD) concerns. The Government takes the proliferation of WMD very seriously and makes every effort to counter the threat. We understand that this is not a strategy that the UK can pursue alone. Proliferation poses a global challenge and requires a collective international response. We are working with partners and allies bilaterally, in the EU and G8, through the multilateral export control regimes and through other relevant international bodies to strengthen international controls further.

5. **We recommend that the Government should explain in its response to this Report how the supply of military equipment to the United Kingdom's allies conducting military operations overseas can be supported without conflicting with the terms of the consolidated criteria.** (Paragraph 43)

The Government believes the export of strategic goods to allied forces conducting such military operations is consistent with the Consolidated Criteria.

In the case mentioned by the Committee, allied troops were engaging terrorist groups and conducting peacekeeping duties. Allied forces have also taken direct military action abroad, but consistent with international law such actions cannot be characterised as infringements of human rights as defined in Criterion 2, or as 'external aggression' as defined under Criterion 4.

6. **Given the ongoing tension between India and Pakistan over Kashmir, we recommend that the Government judge with great rigour whether a proposed export is likely to be used aggressively. Without seeking to reach a judgement ourselves on whether it would be right or not to allow the export of Hawk aircraft to India, we recommend that decisions on whether to allow or refuse licence applications in the case of Hawk and other designated training equipment should take into account the actual and potential capabilities of the equipment, as well as their intended role.** (Paragraph 56)

All decisions are taken by reference to the Consolidated Criteria.

With respect to the broader Kashmir issue, the Government welcomes the positive steps that have recently been taken to reduce tensions in the region. We will continue to work with India and Pakistan to achieve a lasting peaceful solution in this area.

7. **We recommend that the Government clarify in its response to this Report under what circumstances it permits the export of production equipment where it would not be prepared to license the export of the end product.** (Paragraph 58)

The Government would, in general, grant or deny licences for the proposed export of production equipment in exactly the same circumstances that it would the final product. However, we recognise that in some circumstances the export of production equipment may give rise to *greater* concerns than the export of the end-product itself, given the former's greater scope for exports to undesirable destinations. This is fully taken into account in the Government's approach to licensed production overseas.

The Government is able to exert a significant degree of control over the supply lines on which overseas licensed production arrangements depend. This is because the establishment and operation of such overseas production arrangements typically require an initial and often continuing supply of component parts, and/or production and design technology from the company licensing the manufacture of its products to the overseas producer.

Where such products have a military end-use, an export licence for the necessary component parts and technology will usually be required before they can be delivered to the licensed production facility. The Government has made clear that in deciding whether or not to grant a licence for such exports, it will take fully into account whether there is a risk that the finished products of the licensed production arrangement could be delivered to an undesirable end-user.

The entry into force of the Export Control Act 2002 will strengthen our ability to control the flow of military technology to overseas licensed production facilities by enabling controls to be introduced on electronic transfers of such technology, as well as upon their export in physical form and the trafficking and brokering of controlled goods.

8. **We conclude that the failure of officials to identify for a period of more than a year that fact that an open licence had been issued for the export to India of Hawk components and production equipment suggests that the information systems used for retrieving licensing information are inadequate. We recommend that the Government investigate how this oversight was possible, and that it report back to us on what steps have been taken to ensure that such an error cannot recur.** (Paragraph 62)

As soon as the link between the Foreign Secretary's statement on the export of Hawk aircraft and an export licence for components and production equipment was established, Ministers were informed and an apology made to Parliament. The Government, as part of a continuous improvement process, carried out an internal review of the way briefing is prepared and cleared across Whitehall. The Government has since sought to improve the way briefing is prepared and cleared across Whitehall, to minimise the risk of such an error recurring.

9. **We conclude that it is doubtful whether the Government should have granted a licence for oversized handcuffs in one particular case, given the nature of licence applications which the Government had previously refused. We do, however, accept that in this case a judgement was reached after detailed and proper consideration. We have been asked by the Government not to identify the destination of the cuffs.** (Paragraph 67)

As the Committee acknowledges, the Government has given an account of the factors that informed our decision to approve this licence. Due to legitimate commercial confidentiality requirements, this account was given in confidence. The Committee accepts that we reached a decision only after "detailed and proper consideration". We stand by our decision.

10. **In another case, we conclude that oversized handcuffs should not have been licensed during 2001 for export to a particular destination (which we have been asked by the Government not to identify). Basic checks on the end-user of this equipment from information easily accessible in the public domain would have revealed concerns about how the oversized cuffs might be used. We therefore conclude that basic checks were not conducted. We regard this as an administrative failure that should be investigated.** (Paragraph 71)

The Government rigorously assesses all export licence applications for the proposed export of over-sized handcuffs against the Consolidated EU and National Arms Export Licensing Criteria, and the then Foreign Secretary's statement of 28 July 1997. The Committee will recognise that there is a legitimate need to escort and restrain prisoners with larger wrists. However, we are aware of the risk that they could be used as leg-irons, which is why the export of over-sized handcuffs is controlled and each application is considered carefully on its merits.

In this regard, the Government is grateful for the information received from Mr Chidgey MP. This will be taken into account in assessing any future such licence applications. The Government has written to Mr Chidgey on this subject.

11. **We recommend that the Government explain in its response to this Report the apparent discrepancy between the value of the licences issued in 2001 for export to Tanzania, and the reported total value of the air traffic control system being sold to the Tanzanian Government.** (Paragraph 73)

The Committee has rightly recognised that not all aspects of the Tanzania air traffic control system agreement were licensable. It is this that explains the apparent discrepancy in the figures – only the value of the licensable elements would have been on the licences.

12. **In its response to this Report, the Government should explain what links exist between Customs and Excise concerning the actual export of military equipment, and other Government departments concerning the legality of their export.** (Paragraph 75)

Customs and Excise enforce the Government's export controls on military goods at UK ports and airports. Military goods being exported without a valid export licence would be intercepted and seized. Customs are informed of all denials of export licences for military goods and also attend interdepartmental meetings about arms export issues. Customs are made aware at an early stage of any potential breaches of export controls and Government departments are informed of any prosecution in this area.

13. **It is unacceptable that it has taken the Government well over a year to decide whether to provide us with analytical information about the application to export an air traffic control system to Tanzania.** (Paragraph 76)

The Government wrote to the Committee on 28 August about their request for further information on the analysis of the Tanzania export licence application. The Government regrets the amount of time taken to respond to the Committee on this subject.

14. We recommend that the Government should continue to take measures to minimise the risk that military equipment supplied to the Sri Lankan armed forces from the United Kingdom will be misused. (Paragraph 79)

The Government remains committed to measures that minimise the risk of misuse and diversion of military equipment supplied to Sri Lanka. We monitor the peace process and human rights issues closely. Since the signing of the cease-fire agreement on 22 February 2002 the security forces have not been involved in offensive operations, and reports of human rights violations by the army have decreased dramatically. However, there continue to be reports of abuses by the security forces, and there have been infringements of the agreement and occasional clashes between security forces and civilians (7 civilians were killed in an incident involving the Special Task Force (STF) in October 2002). We do not believe any equipment of UK origin was misused, and we have made the STF aware of our concerns. Any evidence of misuse, or human rights abuses, will be fully taken into account when the Government assesses future licence applications.

For the past 19 years there has been internal conflict in Sri Lanka between the Liberation Tigers of Tamil Eelam (LTTE). Over 64,000 people have been killed. Sri Lanka is a democratic country and has a legitimate right for equipment to defend itself against the LTTE, as long as it acts within international humanitarian law and in accordance with international human rights standards.

15. We regret that gifts of military equipment were made to Nepal without Parliament having been informed beforehand. We trust that procedures are now in place to ensure that this oversight does not recur. (Paragraph 86)

Regulations governing the Gifting of Public Property are published in a Joint Service Publication of the Ministry of Defence (MOD). These regulations make clear that no undertaking to make a gift may be given without formal approval. The thresholds for formal approval are defined and the approving authority identified. In the instance of gifts over £100,000, or those that are of an unusual nature, the approval of Her Majesty's Treasury and Parliament is required. Parliamentary approval is sought by means of the laying of a Departmental minute that must lie for 14 sitting days to allow Parliament opportunity to object and have any objections addressed.

The gifts made to Nepal in December 2001 and March 2002 should have been notified by means of a Departmental Minute, but due to an oversight, were notified retrospectively in the Departmental Minute laid on 22 July 2002. The oversight, which is regretted, occurred because of confusion over whether equipment funded from the Global Conflict Prevention Pool needed to be treated as a gift. That misapprehension has now been corrected.

16. **While we support the Government's decision to provide military support helicopters and other equipment to Nepal, and the conditions attached to the use of the helicopters, we conclude that the Global Conflict Prevention Pool should not have been used to fund the gifting of this equipment.** (Paragraph 90)

The Government does not accept this conclusion.

In 1996, the Nepal Communist Party (MAOIST) declared a 'People's War' aimed at establishing a Maoist republic in Nepal. To date, the conflict between the insurgents and government forces has left over 5,000 people dead. The government has effectively withdrawn from many rural areas, where the Maoists have most of their support.

The conflict is characterised by human rights abuses on both sides, and has had a devastating effect on the country's economy. It poses a significant threat to the stability of the region and, if not resolved, could lead to Nepal becoming a failed state reliant on international aid. The UK Government, which has long-standing ties with Nepal, has therefore been working for a peaceful solution for some time.

The Global Pool strategy focuses on three integrated strands: support to peace-building; improving security; and tackling the root causes of the conflict.

The supply of two transport helicopters for the Royal Nepalese Army (RNA) by the United Kingdom was part of an integrated package of assistance for the Nepalese government, which was designed to increase Nepal's security, reform and development capacity. The package was agreed inter-departmentally as part of a joint conflict resolution strategy for Nepal, aimed at stabilizing the security situation and establishing a suitable environment for a renewed negotiation process. The decision to supply helicopters from the Global Conflict Prevention Pool (GCPP) was taken in the context of that overall strategy.

The Government is confident that the ongoing GCPP package as a whole has so far provided a constructive and beneficial balance of security, development and governance assistance for Nepal, and is helping to influence the developing peace process.

Policy issues

17. **We recommend that the Government confirm in its response to this Report whether all sales and gifts of military equipment by the Government are considered against the consolidated criteria before being made, and whether the same arrangements for interdepartmental consideration of such sales and gifts exist as for exports subject to the licensing procedure.** (Paragraph 93)

The procedure for the transfer of licensable goods is dependent upon:

a. whether the transfer is handled by the government itself, or by a contractor operating on its behalf; and

b. where the transaction takes place.

Where MOD is involved directly in the sale of strategically controlled goods to an overseas Government, rather than through a commercial contractor working with HMG, MOD Form 680 (F680) clearance (that allows consideration against the Consolidated EU and National Arms Export Licensing Criteria) will be sought following an analysis of Indications of Interest and the emergence of a likely customer, and prior to transfer of goods. Following agreement for a sale, the handover of such goods is nearly always undertaken on UK territory or in UK waters. Under these circumstances, the buyer is required to apply for an export licence. In the comparatively rare event that the handover takes place overseas, F680 approval, will be required prior to sale and handover of the goods.

Where contractors to the MOD are responsible for negotiation, sale and export of strategically controlled goods, the contractors, as the physical exporters, are responsible for obtaining an export licence.

Although the Government is not aware of any gift of strategically controlled goods that could be regarded as inconsistent with its licensing policy, gifts of such goods made in recent years have not always been assessed formally against the criteria. Nevertheless, for the future, it is intended that all gifts will be assessed under the F680 procedure.

18. We conclude that the use of the F680 procedure as an alternative to an export licence for equipment owned by the Government risks muddying the Government's message to industry that F680 clearance is no substitute for an export licence. (Paragraph 95)

The Government disagrees with the Committee's conclusion. The Government encourages industry to use the F680 procedure to gain advice about its marketing plans, and requires industry to seek such clearance where a promotion campaign will include the release of classified information. The Government's own use of F680s in respect of transfers does not involve industry and is a quite separate use of the procedure. The Government has received no indications from industry that our use of the procedure in this way causes confusion. If the Committee has received such feedback then the Government would welcome receiving it to ensure it is properly evaluated.

19. We recommend that the Government explain in its response to this Report what considerations determine whether a transfer of ownership of military equipment in the possession of the Crown takes place under the F680 procedure or by letter of Crown Immunity, and what procedure is followed for gifts. (Paragraph 96)

The export licence, F680 or Letter of Crown Immunity is not in itself a method of transfer of ownership of goods. Transfer of ownership of licensable equipment owned by the UK Government will take place as agreed with the customer or recipient and, where there is a contract or memorandum of understanding covering the transfer, will be done in accordance with the conditions or terms therein.

The Form 680 is the procedure that is used to ensure that goods owned by the Crown receive consideration in line with the Consolidated Criteria prior to export. The Letter of Crown Immunity confirms to HM Customs that the item is either wholly owned by the Crown, or is one over which the Crown has the right of disposal, and will therefore not be subject to licence.

20. We recommend that the Government explain under what circumstances it would sell or give military equipment for use abroad to an end-user other than another Government, and to explain what procedures are in place to ensure that any such transfers are consistent with the consolidated criteria. (Paragraph 97)

The Government has made gifts of non-licensable as well as licensable goods to non-Governmental end-users. Any gifts funded from the Global Conflict Prevention Pool will have been subject to appropriate interdepartmental consideration. Where the Ministry of Defence has sought to make a gift of items of an unusual nature, Parliament has been informed and approval sought in accordance with regulations. We are not aware of any examples of gifting that would be contrary to our export licensing policy, and records show that licensing staff have been consulted as appropriate. However, as explained in the response to Question 17, the MOD will in future make more systematic use of the F680 procedure.

Since 1997, gifts have been made to organisations other than a recipient state as set out in the letter of 15 January 2003, Minister for the armed forces to Llewellyn Smith MP, [D/Min(AF)/AI PQ 5676M/02/Y]. The organisations have included local authorities, hospitals and museums and the gifts given with the aim of assisting in conflict prevention, in support of humanitarian relief projects or to preserve military heritage.

Strategically controlled goods being sold for export to a non-Government end-user in another country are subject to the usual export licensing procedures.

21. We are concerned that Government transactions could go entirely unreported where they involve the transfer of military equipment to a third party, rather than being related either to the operations of the British armed forces overseas or to collaborative equipment procurement projects, and we recommend that the Government should consider amending its reporting procedures accordingly. (Paragraph 103)

The Government already reports on transfers of military equipment to third parties. Where a licence has been issued to cover export of an item sold by the Government, the granting of the licence will be recorded in the Annual Report. Similarly Government to Government transfers of major equipment are recorded in the Annual Report, and information gathered on items that are gifted, are noted in the MOD's published Resource accounts. Information on strategically controlled goods gifted by the Government will be included in future Annual Reports.

22. **We recommend that, in the interests of transparency, future Annual Reports should include information on all sales, gifts and other transfers of military equipment by the Government to other end-users abroad.** (Paragraph 104)

The Annual Report includes relevant information on those goods transferred abroad. Information on sales is currently included either in the section providing information on licences, or in the tables on exports. Information on strategically controlled goods gifted by the Government will be included in future Annual Reports.

However, it is not necessarily the intention of the Government to report all transfers of military equipment abroad. For example, the Government may issue Government Furnished Equipment (GFE) to a UK contractor in support of a UK defence procurement programme which will then be transferred to an end-user (Government or otherwise) overseas, and may as such be exported using an Open General Export Licence. It is not the intention of the Government to list all such transfers, for reasons of both practicality and resource burden on Government and Industry.

Similarly, while we may publish the broad details of certain Government to Government agreements, some overseas recipient governments may be sensitive about the reporting of all the transfers of goods, and confidentiality undertakings may form part of such agreements.

23. **We recommend that before any Minister becomes personally involved in promoting the sale of defence equipment abroad, the Government should consider the proposed export in question against the consolidated criteria with as much care as it would an export licence application.** (Paragraph 106)

Government Ministers speak in support of the whole of UK industry. This may include speaking at International Exhibitions or direct with members of a foreign Government. Support for defence exports in general is in the context of our wider defence and international security interests, frequently in respect of equipment that is in service with, or being procured for, UK forces and about which Government will have detailed knowledge of the capabilities and performance. 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 in support of a marketing campaign. As the Committee will be aware, applications for Form 680 approvals are considered against the Consolidated Criteria. Relevant advice is given to Ministers at the time of any visit and this includes information on the potential for export. However, this in no way prejudges the assessment for any subsequent licence application, which can only be assessed in the context of the circumstances at the time of application.

24. We recommend that the Government should publish more prominently the list of countries in which it considers that sustainable development is most likely to be an issue, and that it should clarify both the basis on which the list is compiled and the basis on which it is subject to review. (Paragraph 110)

The Government understands that the Committee had difficulty in locating the list of countries in which it considers that sustainable development is most likely to be an issue. That list is published on the Export Control Organisation's website http://www.dti.gov.uk/export.control/policy/criterion8.htm. For further ease of reference, the Government will add a separate entry on the site index highlighting the link to the list.

In her statement of 19 September 2002 announcing the results of the inter-departmental discussions on the procedures relating to the assessment of export licence applications against Criterion 8, the Secretary of State for Trade & Industry made clear that *"the list of countries will reflect those destinations where the prevailing macro-economic and development conditions mean that an export is most likely to trigger concern about economic impact or sustainable development as defined in Criterion 8. Those countries eligible for concessional loans from the World Bank's International Development Association (IDA) have been chosen for these purposes as representing the world's poorest".* It is therefore the IDA eligible countries, which has been used as a starting point in identifying those destinations where sustainable development is most likely to be an issue. As such, the list will be automatically updated as and when the IDA list is updated.

The Secretary of State for Trade & Industry also made clear that the Government would keep the list of countries under constant review to take account of changing circumstances. It is important to note that the list is non-exhaustive: at the request of any Government Department involved in the licensing process, any export licence application may be examined for its impact on the economy or sustainable development of the recipient country as defined in Criterion 8, should that Government Department consider this appropriate in the light of the individual circumstances of that application.

25. We conclude that the guidance published by the Government on its application of the sustainable development criterion is a welcome step in the direction of greater openness, but that it is couched in such

a way that it is unlikely on its own to be of much assistance to industry in judging whether a licence application is likely to be approved. (Paragraph 114)

The Committee is referring to the Secretary of State for Trade and Industry's response to a parliamentary question on 19 September 2002 [Official Report Columns 309W-311W]. Its purpose was to report the conclusion of the review of internal procedures within Whitehall for reaching decisions on export licence applications where sustainable development is an issue, as initiated by Lord Sainsbury on 4 March 2002 [Col 73] during the passage of the Export Control Bill. It was not specifically intended to act as further guidance to exporters.

Exporters wishing to obtain prior advice on any proposed licensable export are welcome to use the F680 process.

26. We recommend that the Government provide us, in confidence if necessary, with a copy of the guidance issued to overseas posts and desk officers on the circumstances in which end-use monitoring should be considered. (Paragraph 122)

The Government cannot accept the Committee's recommendation in this case. The guidance to which the Committee refers is for internal use only and is therefore withheld under the exemption 2 of the Code of Practice on Access to Government Information. The guidance advises on the considerations that must take place when approving a strategic export licence. However, consistent with our commitment to transparency we hereby give below the Committee an outline of the Guidance's content.

The guidance explains what is meant by a number of terms, for example end-use and end-user. It sets out that licence applications need to be assessed on the risk of the proposed export being used by the end-user in ways that would contravene the Consolidated EU and National Arms Export Licensing Criteria.

The guidance advises desk officers on considerations that they must make when assessing an application. For example, desk officers should routinely consider any reliable relevant information that is available about the proposed end-user including from their Posts and their contacts, available information from diplomatic sources (e.g. State Department Human Rights Reports), or from NGOs and the media. Desk officers should also consider whether to ask overseas Posts to make specific enquiries to further investigate the potential end use and end-user of the proposed export or earlier exports. Desk officers are advised to discuss any questions with other Foreign and Commonwealth Office departments that can offer advice, including potential infringements of sanctions or arms embargoes.

In respect of the physical monitoring of goods post-export, although this does not over-ride the need for a thorough risk assessment before the issue of a licence, the guidance advises the desk officer to consider where such monitoring would be feasible and would make a genuine contribution to our efforts to prevent diversion or misuse of UK defence exports. It makes clear our commitment that we are prepared to carry out such monitoring where possible and appropriate. It also reminds Posts to remain watchful for reports about the misuse of UK-exported controlled equipment in the countries that they cover. The guidance also re-iterates that the Government has the power to suspend or revoke any relevant extant licence following reports of equipment misuse.

27. **We recommend that one of the central purposes of end-use monitoring should be to ensure that the Government is made aware when military goods exported from the United Kingdom have been diverted to unintended third parties.** (Paragraph 125)

The Government agrees. Our system of end-use monitoring already seeks to establish where goods are diverted from the intended recipient or are re-sold by that recipient. As we have previously said, we believe the surest way to prevent UK arms ending up in the wrong hands is to examine export licences applications carefully at the licensing stage and to refuse an export licence when there is an unacceptable risk of diversion or misuse. We take the risk of diversion very seriously indeed, to this end we consult with a number of different sources when considering licences applications.

In certain circumstances we are willing to 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.

Assurances may be sought before a licence is approved. An assurance may limit the people in the recipient country that are allowed to use the equipment, or may limit the use of the equipment. It is not in importing countries' interests in the long term to give end-user assurances and then not comply with them.

28. **We conclude that it is curious that industry recognises that there has been an increase in the scope of open licensing, given that the Government has consistently denied that this is the case.** (Paragraph 128)

The number of Open Individual Export Licences (OIELs) issued in 2002 is broadly similar to that issued in 1998 (581 OIELs issued in 2002 compared to 566 OIELs in 1998). Industry may have in mind that the Government issued a new Open General Export Licence (OGEL) in May 2002, authorising the export of military goods to Government end-users in friendly countries. This

OGEL is consistent with both the Consolidated Criteria and the Government's policy on open licensing, in that it allows us to focus resources on those applications where there is the greatest potential concern.

Collaborative defence manufacturing

29. While we applaud the principle of transparency which led the Government to issue guidelines on incorporation in July 2002, we conclude that the guidelines themselves do little to increase the ability of those outside Government to predict whether particular licence applications are likely to be approved. (Paragraph 136)

This clarification of the Consolidated EU and National Arms Export Licensing Criteria was intended to illustrate the considerations that are taken into account when assessing export licences applications in 'incorporation cases'. Such cases can raise complicated policy issues where the outcome is not easily predicted. As with all licence considerations, the Government does not apply the Criteria to incorporation cases in a mechanistic way, but on a case by case basis, taking into account the individual licence application's circumstances.

30. We recommend that the Government clarify whether UK-origin goods in incorporation cases are more likely to be licensed for export if they are more material and significant to the goods in which they are to be incorporated, or if they are less material and significant to these goods. (Paragraph 137)

There is no direct correlation between the materiality and significance of the UK-origin goods in relation to the goods into which they are to be incorporated and the likelihood of their being licensed for export. For example, there is no formula that connects the value of the UK-origin goods as a percentage of the final product with the probability of a licence being approved.

Similarly, as the Committee will note, the specific factor it mentions cannot be considered in isolation to the other incorporation factors, and will, as with the Consolidated EU and National Arms export Licensing Criteria, be applied on a case-by-case basis. As such no definitive generalisations can be made as to whether or not such goods are more likely to be licensed for export. However, it is likely that if the UK is the only source for certain goods, or if the UK-origin goods are being supplied as part of a long-standing supply programme that the implications of refusing licences on the UK's defence relations with the incorporating country are likely to be greater. This will be taken into account in reaching any decision.

31. We recommend that the Government should set out in its response to this Report the results of its consideration of how to present information on incorporation cases in future Annual Reports. (Paragraph 139)

32. We recommend that the Government should identify in future Annual Reports those licences for which additional factors of 8 July 2002 were a consideration. The final destination of the equipment licensed for export should be identified in such cases as well as the incorporating country. (Paragraph 142)

These recommendations are connected. As the Government made clear in its response of 28 October 2002 to the Committee, it intends to publish in future Annual Reports information on cases where incorporation is involved. The Government will present information on incorporation cases in a format that is consistent with that on other licensing decisions published in the Annual Report. It will set out the number of Standard Individual Export Licences (SIELs) issued and refused together with the goods description and the total value of SIELs issued. As for other licensing decisions, where an application has been refused, the Annual Report will list the item's rating, rather than the goods description. An example[1] of the content and format the Committee can expect to see in future Annual Reports is set out below:

INCORPORATION CASES

Total value of SIEL applications for which a licence was issued	

Number of SIELs issued covering:	
Items on the Military List	
Other items	
Military List and other items	
Total number of SIELs issued	

The goods description

Number of SIELs refused covering:	
Items on the Military List	
Other items	
Military List and other items	
Total number of SIELs refused	

Rating	
No of SIELs covering items with this rating	

The Government does not intend to include in the Annual Report the final destination of the equipment licensed for export. The Foreign Secretary made clear in his statement of 8 July that in considering relevant applications the Government will have regard, amongst other things, to the export control policies and effectiveness of the export control system of the incorporating country. The Foreign Secretary's statement also outlined the way the restructured defence industry operates. In practical terms, the implication of

[1] Any wider changes in the way information on export licences is presented might also be reflected in the way that incorporation cases are presented.

this is that the end user incorporating the goods might not be able to provide information on all of their future customers at the time of application in the UK, so that the destination of the ultimate end use will not always be known at that time.

33. **We recommend that the Government explain in its response to this Report why it did not seek to ensure that Israeli assurances – that British exports of military equipment direct to Israel would not be used aggressively in the Occupied Territories – did not also apply to components permitted for export to Israel via the United States.** (Paragraph 143)

34. **We conclude that it is hard to comprehend the ethical basis for a policy which allows the export of certain military goods for end-use in Israel only via the United States with no assurance that they will not be used aggressively in the Occupied Territories.** (Paragraph 146)

These points are related. The Foreign Secretary's statement of 8 July 2002 [Official Report Columns 650W-652W] states clearly the Government's approach to licence applications in 'incorporation cases'. This approach takes into account the increasing globalisation of the defence industry, and in particular the fact that a component of an item of defence equipment might be incorporated into a larger part in a number of different countries before forming part of a finished product which is ready to be exported, often years later, to an end-user. Against this background, it is clear that it would be unrealistic for the UK to attempt to exercise extraterritorial control over the end-use to which all of its components which are incorporated overseas for onward export might be put. This is also true in relation to end-use assurances given by countries in which UK-origin components incorporated overseas are used. In particular, monitoring compliance with such assurances would be extremely difficult, if not impossible, when the UK-origin components are not visible to an observer. Instead, countries that export defence equipment have to consider pragmatically how they can best approach applications for export of components to one country for incorporation and re-export to another. The Government has attempted to do this in a responsible and transparent manner, as the Committee recognises.

35. **We conclude that the new policy on incorporation cases risks undermining other aspects of export policy. We recommend that the Government explain in its response to this Report how it will treat licence applications for the export of spare parts to the end user direct, or indirect but unincorporated, where the original licence was granted for incorporation in one country prior to onward export to an end user in another country.** (Paragraph 148)

The Government does not accept that the guidance issued on incorporation represents a change in policy, nor that it undermines other aspects of its export control policy. Licences to export spare parts for existing UK-supplied main

equipment are considered on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria and the guidelines published by the Government in July 2000, whether the export is direct or indirect but unincorporated. We cannot comment on a theoretical case, and in deciding whether to issue an export licence we would, as ever, take account of all relevant circumstances against the announced policies.

36. We recommend that the Government set out in its response to this Report the steps that it is taking to harmonise the policies of countries which have responsible and practical arms export controls (such as the United Kingdom and United States) on the export of defence equipment to third countries (such as Israel), particularly in cases of collaborative defence manufacture. (Paragraph 153)

Arms export arrangements are a core aspect of national foreign policies, and as such total harmonisation remains an unlikely goal in the foreseeable future. However, the UK Government is already involved in sharing information in a number of areas that have proved successful and helps those countries involved to take well informed licensing decisions.

The denial notification system and exchange of information operating in the EU Code of Conduct already provides a significant degree of such harmonisation. The Wassenaar Arrangement (a grouping of 33 European and other nations) provides another such forum. The Government supports the introduction of a denial notification procedure to support consistency of decision by the Participating States of the Wassenaar Arrangement within its ambit. The Government also promotes the application of the criteria in the EU Code of Conduct on Arms Exports to non-EU members.

37. On incorporation, we conclude that the export of components in collaborative defence manufacturing projects only involves a different balance of considerations from other defence exports because different countries operate different licensing regimes. When considering the question of the export of Head-Up Displays to Israel via the United States, the Government faced a dilemma: it could allow the export and risk undermining national policy, or it could refuse the export and risk undermining the United Kingdom's defence relationship with the United States. The Government was right to attempt to find a solution to this dilemma, and right to be open about its position. But, as we have shown, the Government's solution raises as many issues as it addresses. In our view, it also had a third choice: it could have allowed the export, but attached conditions to its end use. The United States regularly imposes end-use conditions on its defence exports; it does not seem unreasonable that the British Government should do the same. (Paragraph 154)

The Government welcomes the Committee's recognition that it was right to take account of the globalisation of the defence industry and increasing incidence of multinational collaborative defence projects by issuing publicly available clarification of how the Government will approach licence applications in incorporation cases. However, the Government does not accept the Committee's view that this clarification risks undermining national strategic export control policy. The Foreign Secretary's statement of 8 July 2002 states clearly that the factors to be taken into account in such cases are in addition to those that always apply to export licence applications. The Government regularly imposes end-use conditions on its defence exports, for example on those to the Indonesian armed forces. However, as explained in its response to recommendations 33 and 34 above, the Government does not consider that this is appropriate in the case of UK-origin components incorporated overseas for onward export.

38. **We hope that reports are accurate that agreement is imminent on a British waiver from the International Trade in Arms Regulations. We recommend that the 2002 Annual Report should include a progress report on negotiations towards this waiver.** (Paragraph 157)

As has been reported in the 2002 Annual Report on Strategic Export Controls, negotiations between UK and US Government officials on proposed texts for an unclassified International Trade in Arms Regulations waiver were completed on 16 May 2003. Work is continuing on the remaining regulatory and administrative implementation measures agreed between the two Governments so that the waiver may take effect.

39. **We recommend that, as a minimum, information should be published in future Annual Reports showing that a country is a permitted destination under a Global Project Licence as soon as the Government is aware that agreement has been reached with an end-user in that country for supply of equipment produced under such a licence.** (Paragraph 163)

We cannot agree to this recommendation without further discussion with our Framework Agreement Partners, as it has implications for them. We strive to be as transparent as possible whilst ensuring commercial confidentiality. As we have said before, we expect that Global Project licences will be reported in a similar manner to the way in which we report on OIELs in the Annual Report. We will continue to discuss this within the Working Group on Export Procedures under the Framework Agreement. We will report the outcome to the Committee as soon as the way forward has been established.

40. **We note that the Government has the power under the Six Nation Framework Agreement to refuse unilaterally to allow the export to a particular destination of equipment produced collaboratively under the agreement. We conclude that this element of the agreement is essential to secure public confidence in the continuing robustness of strategic export controls.** (Paragraph 164)

The Government also recognises the importance of the provisions contained within the Framework Agreement. The export provisions recognise the changes in the defence industry, where more strategic export equipment is produced multi-nationally and under collaborative arrangements.

Format of Annual Reports on Strategic Export Controls

41. We recommend that the Government should explain in its response to this Report why it does not publish information on individual denial notifications under the EU Code of Conduct to the same level of transparency as the Netherlands. (Paragraph 167)

The Government is continuously reviewing what information it can place in the public demain. However, it believes that to publish details on licence applications that have been denied would give unscrupulous arms manufacturers and dealers knowledge about which goods are wanted by whom. They could then use this information to provide the specified goods to the proposed end-user. We do publish in the Annual Report on Strategic Exports Controls the number of licences we refuse for each individual country in any given year. We believe that this is the correct balance between openness and commercial sensitivity.

42. We recommend that the Government should explain in its response to this Report in what circumstances it believes that the publication of the identity of end users of export licences would be to the commercial disadvantage of the exporter. (Paragraph 171)

The Defence Manufacturers Association of Great Britain (DMA), noted in the memorandum it submitted to the Quadripartite Committee on 25 November 1999, that British Industry's biggest concern about the efforts to introduce a greater level of openness and transparency that the Annual Reports represent is over the issue of the need to preserve commercial confidence, and the need to tread a fine line that divides greater openness and giving away information that can be used by a potential competitor.

The fact that the international defence industry may be "buyer-driven" does not negate concerns over commercial confidentiality, and does not necessarily mean that there is no opportunism on the supply side. In its evidence to the Committee the DMA suggests *"Whilst we would accept that there is much information available, in the public domain, as to major contract opportunities around the world for high value capital systems, the same is not true for lower tier areas. For the vast majority of companies involved in these areas there is very little published information, and any intelligence, even on recent contracts that have been awarded, is ravenously sought, and of great potential value."* The Government has sympathy with the DMA's view. Nevertheless, the Government is considering whether it can publish information on individual licences broken down between Government and non-Government end users whilst still protecting commercial confidentiality.

The Committee will also recognise that concerns over publication of end user details goes beyond just commercial confidences for UK companies. As the Government made clear in its response of July 2000 to the Committee, publishing the identities of end users, when taken in conjunction with other information in the Annual Reports, could reveal details of the recipient's country's defence strategy. It could also lead to difficulties with the UK's bilateral relationships, as well as potentially making overseas Governments less inclined to source defence items from UK suppliers.

43. We recommend that the Government consider providing more information in future Annual Reports where this could help to explain licensing decisions which might otherwise give rise to the suspicion that they had been improperly granted. (Paragraph 172)

In cases where the proposed export clearly appears inconsistent with the Government's commitments, for example because it involves the export of prohibited goods to embargoed destinations, the Government already publishes additional information in written statements to the House at the time of the licensing decision, as well as in the Annual Report. As the extent of the Committee's own questioning illustrates however, it would be impossible to anticipate and identify all other cases where the details of licensing decisions published in the Annual Report might appear to conflict with the Government's export licensing policy.

44. We recommend that the Government should consider publishing information on end users of licences by broad category. (Paragraph 174)

The Government remains concerned that there are still significant confidentiality issues arising from the publication of end user information by broad category, and that the examples highlighted by the Committee (i.e. Police and Armed Forces) do not negate these concerns. Nevertheless, the Government is considering whether it can publish information on individual licences broken down by Government and non-Government end users.

45. We recommend that the Government should consider again how it might provide information on the value of military exports which comes closer to providing a comprehensive measure of all exports of licensable goods. (Paragraph 175)

The Government regrets that it has not so far been possible to provide more comprehensive data on the value of defence exports made. As the Committee is aware, the identification of exports is based upon the classification of goods in EC Tariff codes whether the information concerns exports to EC partners or represents trade outside the EC. As is indicated in the Annual Report on Strategic Export Controls, the classification of goods in the Tariff codes do not match the classification of goods subject to strategic export controls. Discussion that continues with EC Partners includes consideration of changes

to the Tariff codes that would enable a greater level of transparency in the information that is provided on the value of strategic exports from the UK. The Government is also considering whether there are other ways of obtaining better estimates of such information.

Administration of the licensing system

46. We conclude that the introduction of new controls under the Export Control Act will be a major test of the efficiency of the licensing regime – a test that the Government must not fail if it is to maintain the confidence of industry. (Paragraph 181)

The Government agrees that the licensing regime should be administered in an efficient way which maintains the confidence of industry. We will strive to maintain the recent improvement in performance against processing targets despite the introduction of the new controls.

Conclusion

47. Our general assessment of the strategic export control system is that it usually – eventually – produces the right results. The principles embodied in the consolidated criteria seem to be understood and applied in a sensible way which meets the country's interests. Unsurprisingly, some licensing decisions are open to argument; occasionally, decisions may be taken which turn out, with hindsight, to have been mistaken. But most licensing decisions – including many which may superficially seem suspicious – are uncontroversial and properly considered.

As we have discovered in the context of the Government's recent guidelines on incorporation, the increasing globalisation of trade in military equipment limits the extent to which national controls on exports can be effective on their own. This is a subject to which we will return.

The Government deserves praise for the transparency that it has brought to its operation of strategic export controls and to the policy refinements it has introduced. But a little information can be more frustrating than none at all. There is inevitably a tension between those who seek further openness, and those who believe that the Government has already gone as far as it can. We view it as one of our tasks to ensure that the Government only withholds information from the public when it has sound reasons for doing so. The Government should not sit on its laurels – however well earned these may be. (Paragraphs 182–184)

We welcome the Committee's recognition of the Government's efforts in this area. The United Kingdom operates one of the most effective and transparent strategic export licensing systems in the world, and is committed to

continuing to improve this system, including through the entry into force of the Export Control Act 2002, on which the Committee has made a separate set of recommendations. With respect to the Committee's comment on transparency, that: *"a little information can be more frustrating than none at all"*, the Government considers that a great deal of information on strategic exports is currently available to the public. Yet more is provided to the Committee in confidence. The UK's Annual Report on export licensing decisions gives more detail than any other national report of which we are aware.

Whilst we appreciate that there will always be a desire for further information, withholding information is sometimes necessary, for example for reasons of commercial confidentiality, foreign relations or security. However, the Government fully accepts the Committee's view that only where such factors are present should categories of information be withheld.

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