
Executive summary

Introduction

THIS REPORT IS an audit of the UK Government Reports on Strategic Export Controls for 2003 and the first half of 2004. Its aim is to assess:

- whether during 2003 and the first half of 2004 the UK Government was following its own criteria for exports;
- whether the Reports provide enough information and in such a format as to enable a judgement to be made as to whether the Government was following its own criteria for exports (and recommend improvements where appropriate); and
- where, in light of the operation of the Government's criteria during the period covered by the Audit, changes in the interpretation and implementation of the criteria should be made.

Specific destinations, regions and exports are examined in order that a shared understanding and common practice can be achieved around a restrictive interpretation of the Consolidated EU and National Arms Export Licensing Criteria (Consolidated Criteria).

Section 1: Developments in arms exports controls

United Kingdom

This section examines recent and proposed key developments in arms export controls within the UK, within the EU, and then in terms of work by the UK Government to promote more effective export controls at the international level.

UK legislation

The Export Control Act (2002) took effect on 1 May 2004. While the Act represents a major advance over the existing legislation, there are several areas in which the Act and the contingent control Orders disappoint. For example, despite increased parliamentary oversight, there are still areas where the executive has excessive discretion, and new controls brought in to regulate arms brokering and licensed production overseas are less than comprehensive.

UK reporting on strategic export controls

Following calls from the Quadripartite Select Committee (QSC)¹ that the Government should allow for improved retrospective scrutiny by “publishing more timely licensing

¹ The QSC is comprised of representatives from the Defence, Foreign Affairs, International Development and Trade & Industry Select Committees. It was established in 1999 to scrutinise UK Government policy on arms exports.

information than is currently the case”, the Government has this year begun to provide quarterly reports online, so far within four months of the end of the quarter being reported upon. While this represents a significant improvement over previous practice, Saferworld agrees with the QSC that this should not be regarded as a substitute for a system of prior scrutiny.

Defence Industrial Policy and arms exports

In 2003, two deals involving the sale of Hawk military aircraft raised concerns that domestic procurement and the perceived economic benefits of defence production are undermining export controls, and that the desire for a strong domestic defence manufacturing base could result in bad procurement decisions. In July 2003 the UK Government agreed to buy up to 44 Hawks for the RAF from BAE Systems, while in September 2003 BAE secured the sale of 66 Hawks to India. The Defence Secretary, Geoff Hoon, drew direct links between the deals: there are concerns that export prospects influenced the domestic procurement decision, and that the perceived economic benefits of the Indian sale may have trumped concerns about the potential impact of the sale on regional stability.

UK defence manufacturers and corruption

The UK has undertaken a series of measures to weed out corrupt practices in the defence industry. However, recent improvements on the conditionality of financial insurance from the Export Credit Guarantee Department have been watered down, in part on the basis that companies cannot be expected to take any responsibility for the activities of affiliates over whom they do not have effective control. In the current environment, in which unrelated criminal investigations are being carried out with respect to possible corrupt practice by two UK defence companies, BAE Systems and Alvis plc, this weakening of controls simply encourages companies to hide any corrupt practices within the activities of their affiliates. It should therefore be reversed.

Staffing levels at the Export Control Organisation (ECO) and Her Majesty's Customs & Excise (HMC&E)

Despite an estimated 23 percent increase in the number of standard licence applications per annum due to new controls on brokered and intangible transfers, plans have been announced to cut staffing levels at the ECO, the DTI unit responsible for administering the export licensing process, by 25 percent by June 2005, with the prospects of more job losses by June 2006. Staffing levels at HMC&E are also likely to be cut, potentially by around 14 percent, at a time when, according to official estimates, the additional cost to HMC&E to enforce the new export and trade controls will be approximately £200,000 to £300,000 per annum. It is not clear exactly where these job reductions will be made, however combined with the staffing decisions at ECO, Saferworld is concerned that not enough resources are being devoted to implementing the new export control regime.

European Union

EU expansion and outreach

While a number of measures were taken by the old member states to assist the accession of 10 new members on 1 May 2004, these efforts were largely *ad hoc* and uncoordinated, and officials from the new members themselves have suggested that the level of support from the ‘old 15’ was disappointing. There are promising signs with regard to the next wave of accession that some of the lessons of the past may have been learnt, with member states endeavouring to identify priorities among the next wave of acceding countries and to coordinate assistance. It is crucial, however, that the level of

support and engagement is of sufficient depth to make a real difference to the export control culture and practice in the target countries.

The Review of the EU Code

The EU Code is currently under review for the first time since it was agreed in 1998. As of December 2004, the review is yet to be completed; officials are confident that the process will be complete in early 2005. Indications at this stage are that the review has been predominantly a tidying up exercise, and apart from a welcome strengthening of the language on international humanitarian law there has been disappointingly little substantive change to the Code criteria.

Elaboration of criterion 8

EU member states are currently engaged in elaborating guidelines for the implementation of criterion 8 (frequently referred to as the 'sustainable development' criterion), on the basis that this is among the least understood of the criteria and therefore in most need of attention. Saferworld understands that the system being developed will provide for a relatively sophisticated understanding of sustainable development concerns. This is extremely welcome, as it should contribute significantly to the capacity of member states to make informed export licensing decisions in the context of criterion 8. Saferworld would encourage the UK Government to initiate a similar process for other criteria under its next EU Presidency, in the second half of 2005.

Incorporation of goods for re-export

It is set out in the 6th Consolidated Annual Report on the EU Code that member states have agreed new permissive guidelines regarding the supply of controlled goods where it is understood that the goods are to be incorporated into products for re-export. Saferworld believes these guidelines are unnecessary and constitute a weakening of EU export controls, providing member states with a rationale for approving exports that would otherwise have been refused. Saferworld therefore recommends that EU member states reverse this decision at the earliest available opportunity.

EU embargo on China

During 2004, there has been considerable pressure, led by France and Germany, to have the EU arms embargo on China lifted. It now appears the ground is being prepared for the embargo to be lifted in the near future, possibly within six months. The UK's position on the ongoing status of the embargo has not been made clear. There are compelling reasons to maintain the embargo, for example the human rights situation in China, the aggressive Chinese posture toward Taiwan, and China's reputation as a proliferator of controlled technologies. In addition, officials from the US have been quoted as predicting that if the embargo were lifted, Congress would pass laws erecting barriers to defence trade with the EU. Arguments that the EU Code criteria will ensure that appropriate restraint continues to be exercised by EU member states may not stand up to the likely massive economic pressures to participate in what is expected to be a very large defence market.

International

The Transfer Controls Initiative (TCI) and the Arms Trade Treaty (ATT)

During the period covered by this Audit, the UK Government has been involved in efforts to improve arms export controls in the international arena. It has, through its TCI, been working to encourage governments to agree common minimum standards with regard to the transfer of small arms and light weapons (SALW), with a view to

obtaining inclusion of minimum common international standards on SALW transfers in the 2006 UN Programme of Action on SALW. In addition to this, at the Labour Party Conference in September 2004, the Foreign Secretary, Jack Straw, announced the UK Government's support for an international ATT based on states' existing obligations under international law. The UK has also established the Commission for Africa, intended to generate action for a strong and prosperous Africa, which has made explicit reference to the need to "[promote] an International Arms Trade Treaty to control small arms and light weapons."

Saferworld welcomes the Government's efforts in this area. It recommends that all main political parties in the UK make a manifesto commitment in support of an ATT, and that the Government work with other sympathetic governments and with civil society to promote the principles which underpin the idea of an ATT based on states' existing obligations in discussions and negotiations at bilateral, regional and international levels.

Section 2: Developments in transparency

Many serious issues raised by Saferworld over the past several years relating to transparency and accountability in UK arms export policy remain to be addressed. Beyond this, there are a number of new issues that also require attention.

Quarterly reporting

The introduction, in 2004, by the Government, of quarterly reporting on strategic export controls is welcome. However, it is regrettable that some aspects of export control policy are not reported on quarterly, for example gifts of controlled goods or on government-to-government transfers. Furthermore the level of reporting on the new trade controls in the second Quarterly Report (April to June 2004) is so limited as to be virtually meaningless.

Provision of information to the QSC

Saferworld would urge the Government and QSC to agree on a standard format for answering queries concerning export licences granted, refusals, appeals and other material issues so that both parties may be confident that the same quality and quantity of information is being provided to Parliament year on year.

End-use

In view of the broad consensus in favour of increased disclosure of information on end-use, it is regrettable that the Government does not consider it feasible to provide information even on broad categories of end-use. Saferworld would nevertheless urge the Government to declare its willingness in principle to provide this information and to work towards the provision of such information in the shortest possible time.

Incorporation

Saferworld welcomes the inclusion of information on SIELs covering goods for incorporation but urges the Government to go further and to provide information on the ultimate destination and end-use of the final product. With regard to OIELs for incorporation, comparable information should be sought from exporters and published in subsequent Quarterly and Annual Reports.

Government-to-government transfers

In addition to the Table on Government-to-Government Transfers of Equipment, the Government should provide clear information in Section 2.7 (Export Licence Decisions) on all licences and other forms of approval (such as F680) granted to prospective government-to-government transfers. The Government should also clarify the extent of the scrutiny involved in the granting of any F680 approval for government-to-government transfers which take place outside the UK.

Disposal sales

Since transfers under the Disposal Sales arrangement will involve the export of publicly owned goods, the Government should provide separate information on licences granted and transfers made under such arrangements.

Gifted items

The Government's undertaking to consider denial notifications issued under the EU Code when considering proposed gifts of strategic goods is welcome. However, the gifting of military equipment is not the only scenario when arms are transferred from the UK without an export licence having been sought or granted. The Government should extend its pledge to cover all types of transfer that are not formally subject to the licensing process. Moreover, where the Government considers and then decides against a gift or another type of non-licensed transfer it should inform its EU partners of this decision. However, even if the Government were to adopt the aforementioned recommendations, this does not alleviate Saferworld's core concern that all transfers of equipment from UK jurisdiction or ownership should be subject to an export or trade licensing requirement which involves rigorous assessment against the Consolidated Criteria.

New Reporting Requirements: Framework Agreement (FA)

Since Global Project Licences (GPLs) are tied to specific manufacturing agreements with an agreed list of possible destinations (White Lists) for the finished product, Saferworld believes that the Government could and should provide much more information on GPLs than they do on OIELs. Indeed it is not clear why the Government does not seem prepared even to indicate which OIELs are in fact GPLs. Beyond this, Saferworld believes that listing GPLs under the FA partner paints a misleading picture, since this partner will be merely an interim destination, prior to the export of the final product. Saferworld agrees with the QSC that once a contract has been agreed with a country on the so-called White List of destinations identified under each collaborative project, the Government should publish this information in the Annual Report.²

New Reporting Requirements: The Trade in Controlled and Restricted Goods

Saferworld would urge the Government to provide comprehensive information on Trade Control Licences on a quarterly basis (as recommended previously) and to organise this information according to the final country destination of the goods.

Reporting on SIELs

The Government should clarify that it is reporting on all SIELs granted – even if the licences that are granted differ in some way from the original application. The Government should also expand the practice of giving numbers of small arms and

² QSC, *Strategic Export Controls: Annual Report for 2001*, Licensing Policy and Parliamentary Scrutiny, May 2003, para 160, HC 474, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmfa/474/47402.htm>.

light weapons licensed for export to include SALW components and to other complete systems and components therefor.

Reporting on Denials/Refusals and Revocations:

Saferworld regards the information currently provided on licences refused as inadequate for the effective scrutiny of export control policy. At a minimum, Saferworld would urge the Government to provide, under each country entry in the Strategic Export Control reports, the grounds for each refusal alongside the rating for each licence refused and, unless there are compelling reasons for confidentiality, a summary description of the goods. In addition, where the relevant partner does not raise any objection, the Government should provide Parliament and the public with at least some information regarding the outcome of consultations on denials issued under the EU Code that were entered into by the UK.

Section 3: Export licences of concern

This section analyses on a criterion-by-criterion basis arms export licences to particular countries where UK licensing decisions have given us cause for concern. The fact that we have concentrated on relatively few examples (compared to previous Audits) should not however be taken as an indication that our concerns regarding the Government's implementation of the UK Consolidated Criteria have abated in any significant way. Indeed, while our primary focus is on exports to recipients where our concerns are particularly acute, *under most of the criteria* we also set out an additional list of countries to which UK arms exports also raise significant questions. In carrying out this analysis, Saferworld hopes that it will prompt a productive and focussed debate among opinion-formers and decision-makers concerning the UK Government's implementation of each of the Consolidated Criteria.

The destinations where concerns are most acute under each criterion are:

Criterion 1	China Iran	Criterion 6	Israel Philippines Russia
Criterion 2	Nepal Saudi Arabia Turkey	Criterion 7	Indonesia Iraq Israel Pakistan
Criterion 3	Colombia Indonesia Morocco	Criterion 8	India Nigeria Pakistan South Africa
Criterion 4	China and Taiwan India and Pakistan Middle East		