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Developments in arms exports controls

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.

United Kingdom

UK legislation

With the coming into force of the contingent secondary legislation, the regulatory regime mandated by the Export Control Act (2002) took effect on 1 May 2004. Among other changes, the new legislation establishes a licensing requirement for the first time on third-country arms transfers brokered in the UK (and in certain limited cases by UK persons operating outside UK territory) and intangible transfers of technology.

While the Act represents a major advance over the previous legislation, there are several areas in which the Act and the contingent control Orders disappoint, including:

- despite increased parliamentary oversight, there are still areas where the executive has excessive discretion, eg the Government can introduce substantive changes to export licensing criteria subject only to having to inform parliament retrospectively, and in most cases Parliament does not have the opportunity to consider changes to control Orders before they are instituted;
- in most cases, UK-passport holders can evade the new controls on arms brokering simply by stepping outside the UK to conduct their activities;
- UK companies are not required to obtain permission before establishing licensed production facilities overseas, a system of control which would greatly increase the ability of the Government to limit total production quantities and unwelcome onward export.¹

The Government has undertaken to review the legislation within three years of its coming into force.

¹ For a full and still relevant analysis of the strengths and weaknesses of the primary and secondary legislation see *An Independent Audit of the 2000 UK Annual Report on Strategic Export Controls*, Saferworld, July 2002; and *An Independent Audit of the 2001 UK Annual Report on Strategic Export Controls*, Saferworld, February 2003.

UK reporting on strategic export controls

In its most recent (May 2004) report on strategic export controls, the Quadripartite Select Committee (the QSC), as it has done for a number of years, stated its support for a system of prior scrutiny of export licence applications. The QSC noted that the Government showed little inclination to introduce such a system, but called upon the Government to allow for improved retrospective scrutiny by “publishing more timely licensing information than is currently the case.”²

On 28 July 2004 the Government introduced a significant improvement to its strategic export reporting regime with its first quarterly report, available online, covering the period January to March 2004.³ The second of these, for April to June 2004 was published on 28 October 2004.⁴ The Government has announced that, in addition to these online quarterly reports, it will continue to publish an annual report in hard copy. This will summarise the information already published in the quarterly reports and in addition include developments in export control policy.

A detailed analysis of the new quarterly reports is carried out in section 2 of this Audit. **While Saferworld believes that the quarterly reports are a welcome addition to the UK’s reporting framework, we agree with the QSC that “this [should not be regarded] as a substitute for a system of prior scrutiny.”⁵**

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 20 Hawks for the RAF from BAE Systems (with an option on another 24) for £800 m, while in September 2003 BAE secured the sale of 66 Hawks to India for £1 bn. Both sales were controversial and may have been interlinked. According to the Guardian, “BAE officials claim[ed] that winning the domestic order is critical to prospects of selling the aircraft to overseas customers. They reckon[ed] it could win orders for up to 400 planes, equivalent to about 15 years’ production at Brough, but only if it [got] the British order.”⁶ Sir Kevin Tebbit, Permanent Secretary at the MoD, took the highly unusual step of refusing to agree the RAF procurement on value-for-money grounds.

The Guardian also reported that Defence Secretary Geoff Hoon wrote immediately after that decision to the Indian Defence Minister, urging him to buy Hawks⁷, while just days after the Indian deal was confirmed Mr Hoon referred to the UK jobs that would be sustained by Hawk sales and drew a direct link between the domestic purchase and exports. Speaking in Parliament, Mr Hoon said:

“Well over 2,000 jobs have been sustained at Brough as a result of the decision to which my hon. Friend referred. She is right to pay tribute to the quality of the work force at Brough. We are already seeing the benefit of the decision on the [domestic] purchase of Hawk 128 with the welcome news of the Indian Government’s order for Hawk as their advanced jet trainer. I anticipate that that will be the first of many further orders for Hawk.”⁸

² QSC, *Strategic Export Controls: Annual Report for 2002*, Licensing Policy and Parliamentary Scrutiny, 18 May 2004, paras 49–52, HC390.

³ *Strategic Export Controls, Quarterly Report Jan–March 2004*, (FCO, July 2004), <http://www.fco.gov.uk/Files/kfile/strategicexportcontrols2004JanMarreport.pdf>.

⁴ *Strategic Export Controls, Quarterly Report April–June 2004*, (FCO, July 2004), <http://www.fco.gov.uk/Files/kfile/strategicexportcontrols2004aprunreport.pdf>

⁵ HC390, para. 52.

⁶ Terry Macalister and Mark Milner, ‘BAE brings Hawk battle into open’, *The Guardian*, 12 June 2003, <http://www.guardian.co.uk/armstrade/story/0,10674,975647,00.html>.

⁷ David Gow, ‘5,000 jobs safe as India buys Hawks’, *The Guardian*, 4 September 2003, <http://www.guardian.co.uk/armstrade/story/0,10674,1035347,00.html>.

⁸ Geoff Hoon, Oral Answers to Questions, House of Commons, 8 September 2003, col. 1, http://www.publications.parliament.uk/cgi-bin/30908-01_spnw7.

The Government seemed to pay little attention to the possibility that the sale to India might not sit comfortably with the UK's export control commitments on regional stability and nuclear capability grounds (although sold as trainers, the Hawks have a ground attack capability ideal for use in Kashmiri terrain, and as trainers would probably be used to prepare pilots to fly the more sophisticated aircraft that India hopes will one day be able to deliver a nuclear payload).

In the foreword to the 2002 UK Defence Industrial Policy, it is stated that:

*A thriving, innovative and competitive defence industry is essential for the defence of the UK. ... [The Government is] delighted to launch the Government's new defence industrial policy aimed at enhancing the competitiveness and sustainability of the UK defence industry, while continuing to provide high quality equipment at best value for money. The industry is a key part of our economy, contributing significantly to our balance of trade and employment.*⁹

Criterion 5 of the Consolidated Criteria states that while "the Government will take into account the potential effect of the proposed export on the UK's defence and security interests" it is recognised that "this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability." The Consolidated Criteria also refer to operative provision 10 of the EU Code, noting that "member states may where appropriate also take into account the effect of the proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the criteria in the Code."

The examples of the Hawk deals raise two related concerns: that not only might economic factors be compromising the stated basis for export licensing decisions, but also that the pressures to maintain a domestic defence production capability and the jobs thereby supported may result in domestic procurement being influenced by export potential. **Saferworld recommends that the Government reassert the relationship between economic factors and the other elements that make up the Consolidated Criteria, in particular that domestic economic concerns cannot be allowed to trump concerns over human rights, regional stability and sustainable development.**

UK defence manufacturers and corruption

In 2002 the UK fulfilled its obligations under the OECD 1997 *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* by passing into law the *Anti-Terrorism, Crime and Security Act 2001*, which outlaws the bribing of any foreign public official by a UK person.

In May 2004 this commitment to tackle corruption was underlined by a new policy on corruption in the Export Credit Guarantee Corporation (ECGD), the Government agency which supports UK exporters by providing guarantees, insurance and reinsurance against non-payment by foreign customers. This is particularly relevant to the defence industry; in recent years around one-third to one-half of ECGD support has been for military exports (though recent revelations by *The Guardian* of a secret deal to provide £1bn worth of insurance *per annum* on BAE Systems' exposure to Saudi Arabia suggest that the true figure may be significantly higher¹⁰). The new ECGD policy states that "corruption and bribery represent an unacceptable cost to business ... distort competition and investment, and hinder free and fair trade"¹¹, and a number of new procedures have been established to "deter illegal payments, corrupt practices and money laundering by applicants for ECGD's support".¹²

⁹ *The UK Defence Industrial Policy 2002*, Foreword, authored by Lord Bach, Minister of State for Defence Procurement & Alan Johnson, Minister of State for Employment Relations, Industry & the Regions, http://www.mod.uk/issues/industrial_policy.htm.

¹⁰ David Leigh and Rob Evans, 'Secret £1bn deal to insure Saudi arms contract,' *The Guardian*, 14 December 2004, <http://www.guardian.co.uk/armstrade/story/0,10674,1373154,00.html>.

¹¹ ECGD Bribery and Corruption Policy, http://www.ecgd.gov.uk/index/pi_home/policy_on_bribery_and_corruption.htm.

¹² *Ibid.*

These have been extremely welcome developments, especially in light of recent claims of corrupt practices in connection with arms deals which have received backing from the ECGD. The Serious Fraud Office is currently investigating claims that BAE have operated a £60 million ‘slush-fund’ for “Prince Turki bin Nasser, a leading member of Saudi Arabia’s ruling royal family responsible for running the Saudi side of al-Yamamah, the biggest arms sale in British history, worth billions in orders to [BAE Systems].”¹³ In another case, following a legal challenge by *The Guardian*, court documents, including a large number of internal company memos, were released in December 2004 revealing that the land-systems manufacturer Alvis plc was alleged to have paid £16.5 m in bribes to President Suharto’s eldest daughter to secure a £160 m sale of Scorpion tanks to Indonesia in the mid-1990s.¹⁴ These alleged bribes are now under investigation by the National Criminal Intelligence Service in the UK and by anti-corruption investigators in Indonesia. Payment for the Scorpions, guaranteed by the ECGD, was eventually defaulted upon by the Indonesian Government at a cost of £93 million to the UK tax-payer. (For details on recent concerns over the use of UK-sourced Scorpion tanks by Indonesian security forces, see the Indonesia entry under section 3, criterion 3)

There are, however, some concerns over the extent of the ECGD’s commitment to tighten up on bribery and corruption. Under ECGD rules, an admission or a conviction for bribery and corruption is a *prima facie* reason for refusing cover for new business, yet it would seem that *suspicion* of bribery, however well-founded, is not. Therefore, despite the current investigations into practice at Alvis and BAE, under ECGD rules there are as yet no grounds for ECGD to withhold further support. Even more worryingly, the new (May 2004) rules on bribery and corruption were watered down (with effect from 1 December 2004) following personal lobbying of The Secretary of State for Trade & Industry, Patricia Hewitt, by defence companies the Airbus Consortium, BAE Systems and Rolls Royce.¹⁵ In evidence to the Parliamentary Select Committee on Trade & Industry, Mr John Weiss, Deputy Chief Executive of the ECGD, argued that the new regulations were too onerous in that *inter alia* they required guarantees regarding the behaviour, “to the best of [the companies’] knowledge and belief”, of affiliates beyond the control of the companies contracting with the ECGD.¹⁶

The recent allegations about the involvement of UK defence companies in bribery and corruption suggest that not enough is being done to clamp down on unethical practice in the industry. In such a context, watering down the regulations that do exist sends the wrong signal. Rather than placing pressure on companies to root out corruption, this merely encourages companies to construct “Chinese walls” to ensure that corrupt practices cannot be traced back to the parent company. **Saferworld recommends that the ECGD’s May 2004 rules on bribery and corruption should be reinstated, and further that provision for maintaining or increasing ECGD cover should be based upon balance of probability, rather than criminal conviction.**

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

The ECO, which is the unit inside the Department of Trade & Industry (DTI) responsible for administering the export licensing process, is facing job cuts of 25 percent by June 2005, with the possibility of more jobs lost by June 2006. This is occurring despite the fact that the *Final Regulatory Impact Assessment Export Control*

¹³ ‘The Money Programme,’ BBC2, 4 October 2004,

http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/10_october/04/money.shtml.

¹⁴ David Leigh, David Pallister, Rob Evans, and John Aglionby, ‘Guardian victory in arms bribe case’, *The Guardian*, 9 December 2004, <http://www.guardian.co.uk/armstrade/story/0,10674,1369662,00.html>.

¹⁵ Oliver Morgan, ‘One man’s bribe is another’s commission’, *The Observer*, 12 December 2004, <http://observer.guardian.co.uk/business/story/0,6903,1371692,00.html>.

¹⁶ See uncorrected transcript of oral evidence, to be published as HC1275-i, House of Commons, Minutes of evidence taken before the Trade & Industry Committee, ECGD Support for the Baku-Tbilisi-Ceyhan Pipeline, 16 November 2004, qu. 57–74, <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmtrdind/uc1275-i/uc127502.htm>.

Orders calculates a likely 23 percent increase in the number of standard licence applications – from 11,000 to 13,500 per year – as a result of the new licensing requirements (for intangible and for brokered transfers) under the Export Control Act 2002.¹⁷ Systems have been developed to concentrate attention on those licence applications most likely to raise questions under the Consolidated Criteria; nonetheless, any moves to downsize the ECO at this time must be of considerable concern. The government has moved to encourage the submission of export licence applications (ELAs) electronically, however any efficiencies are likely to be some time off. For the foreseeable future applications are likely to be lodged by both paper and electronic means, raising the prospect of an additional burden in terms of co-ordination difficulties. There would therefore seem to be a significant risk that, if performance targets are to be met with regard to the prompt processing of ELAs, individual licence applications will be subject to less rigorous evaluation. Alternatively, the Government may be envisaging a further shift towards more widespread use of open licences in order to reduce the overall bureaucratic burden. While Saferworld does not oppose the use of Open Licences *per se*, any decision to increase their scope or coverage should be taken in response to strategic evaluation, and not as part of a cost-cutting exercise.

In addition, the Government announced that as result of the merger between Inland Revenue and HMC&E, a minimum of 12,500 posts would be lost.¹⁸ Assuming a similar proportion of jobs are lost from each department (currently no figures on this are available), 3,000, or approximately 14 percent of HMC&E jobs would disappear. HMC&E estimates that the additional cost to them to enforce the new export and trade controls will be approximately £200,000 to £300,000 per annum. Given the current concerns regarding illicit trafficking in controlled goods in general, and possible attempts to move equipment useful to terrorists across international borders in particular, it is especially important that this aspect of HMC&E's work is well resourced. **Saferworld would therefore welcome a guarantee from the Government that any cuts to HMC&E's staffing levels or changes to its structure will not be at the expense of these estimated additional costs of enforcing strategic export controls.**

European Union

EU expansion and outreach

On 1 May 2004 the membership of the EU expanded to include 10 new members from the Baltic sub-region, Central Europe and the Mediterranean. As the date of accession drew near a number of steps were taken by the 'old 15' member states to assist the new members in implementing the EU Code. Among these were the following:

- the then accession countries had observer status at meetings of the EU Council Working Group on Arms Exports (COARM);
- denial notifications were shared with the accession countries on an aggregate basis; and
- the UK organised two seminars for accession countries on the implementation of the EU Code criteria.

While these measures were welcome, officials from the new members themselves have suggested that the level of support from the 'old 15' was insufficient for the purpose of enabling the new members to join the EU's export control regimes as full and equal partners. While some of the 'old 15' (including the UK) did attempt to assist the accession countries, these efforts were largely *ad hoc* and uncoordinated.

¹⁷ Final Regulatory Impact Assessment Export Control Orders, 31 October 2003, http://www.dti.gov.uk/export_control/legislation/pdfs/riafinalversion.pdf.

¹⁸ Speech by Gus O'Donnell, Permanent Secretary, HM Treasury, 18 November 2004. HM Treasury state that an additional 3,500 posts could either be redeployed or removed. There is no current data available on how many of the jobs lost or redeployed will be in HMC&E. *Accountancy Age*, 5th April 2004, estimates that a combined loss of 14,000 posts for HMC&E and Inland Revenue, would result in a proportional loss of 3,000 staff for HMC&E.

There are promising signs with regard to the next wave of accession that some of the lessons of the past may have been learnt. EU member states are endeavouring to identify priorities among the next-wave countries and to coordinate assistance. Some of the new member states are taking an active part in this process, a welcome development in that they have a first-hand appreciation of some of the difficulties that EU accession can involve. The first seminar to explain criteria implementation to Bulgaria, Croatia, Romania and Turkey was held in Prague in December 2004. Supporting the accession process is a major challenge for the existing EU states, possibly more so now than with the previous group of candidates: Romania and Bulgaria still have very real problems relating to the development and enforcement of effective arms export control policy and practice and so it is crucial that member states develop a comprehensive approach to supporting their eventual accession. To this end the UK Government played an important role in mid-2004 in the development and agreement of a COARM-wide outreach strategy that aims to provide support for new EU candidates as well as engaging with other European states struggling with the problems of achieving effective control over arms production, stockpiling and transfers.

Furthermore, it is likely that under the current Review of the EU Code (see below), the existing operative provision 11 of the Code, which currently states that “EU member states will use their best endeavours to encourage other arms exporting states to subscribe to the principles of this Code of Conduct,” will be expanded upon. It is expected that the updated operative provision will encourage regular exchanges of information between EU members and those countries which adhere to the Code¹⁹ and will promote bilateral and joint EU assistance activities in third countries.

While this amendment to the EU Code will be welcome, it is crucial that the level of support and engagement on offer is of sufficient depth to make a real difference to the export control culture and practice in the target countries. For example, although new member states welcomed the aforementioned seminars on criteria implementation held prior to their accession, they were sceptical of the impact a single seminar, attended by only a few officials from each country, could have across all the relevant government agencies involved in export licensing.

The Review of the EU Code

EU member states announced late in 2003 that they were to undertake a review of the EU Code. The Code has proved a relatively dynamic instrument, and in the six years since its adoption a range of supporting statements and commitments has grown up around it: these are now set out in the Compendium of Agreed Practices, which each year are annexed to the EU Consolidated Annual Report. Among the most notable of these has been the agreement on 23 June 2003 of the EU Common Position on arms brokering.²⁰ However, until now the actual text of the Code has been inviolate; the Review has provided member states their first opportunity to alter the Code language.

As at December 2004, the ‘new’ EU Code has yet to be finalised, though officials are confident that the process will be complete in early 2005. It is therefore impossible to comment with certainty on what the result of the Review will be, however indications are that it has been predominantly a tidying up exercise—many of the new references in the Code will be merely a restatement of items already agreed by member states within the context of the ongoing development and implementation of the Code, eg the new references to licensed production overseas are likely to be based on measures first agreed in 2002. As well, substantive changes to the criteria have been largely off limits, although it is understood that, in a welcome development, the language on international humanitarian law has been strengthened. However, the central criticism of

¹⁹ The notion of “adherence” to the Code is new and refers to those states who have not only given rhetorical support to the notion of applying the principles of the Code, but whose export control practice is considered to be broadly in line with that of EU member states, eg Norway.

²⁰ *Council Common Position 2003/468 /CFSP on the control of arms brokering*, Official Journal of the European Union, 23 June 2004. http://europa.eu.int/comm/external_relations/cfsp/sanctions/468.pdf.

the criteria, that they allow for too broad a range of interpretations by the different member states, has not been addressed.

Saferworld has also been disappointed by the absence of a formal consultation procedure in respect of the Review process. While the Presidencies have been largely supportive of efforts by civil society to engage on the Review, and in the UK FCO officials have arranged for meetings with NGOs (including Saferworld) to discuss proposals, for the most part at both the member-state and EU levels virtually all interaction has been prompted by the NGO community. In many member states, governments made absolutely no effort to engage with their electorates on the issue, and in some cases enquiries from NGOs into the process went unanswered. It is to be hoped that the next (as yet unscheduled) review will not only seek to confront the weaknesses in the current criteria, but will actively solicit input in a timely manner from all interested parties.²¹

Elaboration of criterion 8

While the EU Code Review may have failed to address problems with the Code criteria, also in 2004 a process has been underway to elaborate guidelines of the implementation of criterion 8 (frequently referred to as the 'sustainable development' criterion). This was on the basis that criterion 8 is among the least understood of the criteria, and therefore in most need of attention. The elaboration process is likely to be concluded early in 2005, and possibly before the end of 2004.

Saferworld understands that the system being developed involves first identifying those exports that might raise concerns on the basis of whether the recipient is a developing country and on the scale of the proposed export. For those transfers thereby identified as potentially problematic, a series of indicators will be applied to determine the likely extent of concern, at which point a judgement will be made as to whether the export should be approved. To Saferworld's knowledge, since the UK Government was among those member states taking the lead on this process, it seems the guidelines will contain some crossover with the indicators set out in the statement on the application by the UK Government of criterion 8 by the Secretary of State for Trade & Industry in September 2002²², although there will also be other elements taken into account.

This initiative is most welcome, and it is to be hoped that it will contribute significantly to the capacity of member states to make informed export licensing decisions in the context of criterion 8. **It is also encouraging that the 5th "Priority Guideline for the Near Future" set out in the 6th Consolidated Annual Report on the EU Code is the "development of best practices for the interpretation of criteria, as is being done in respect of criterion 8"**²³ However, as yet it seems that no member state has seized the initiative in this regard; Saferworld encourages the UK Government to take such a lead, especially in light of the fact that the UK will hold the EU Presidency in the second half of 2005.

Incorporation of goods for re-export

As is set out in the 6th Consolidated Annual Report on the EU Code, member states have agreed that, "as with all licence applications, they will fully apply the Code of Conduct to licence applications for goods where it is understood that the goods are to be incorporated into products for re-export."²⁴ However, the report goes on to state that:

²¹ For a comprehensive NGO analysis of priorities for the EU Code delivery process, see 'Taking control: the case for a more effective EU Code of Conduct on Arms Exports', eds Saferworld, September 2004, <http://www.saferworld.org.uk/publications/Taking%20control.pdf>.

²² Statement by Secretary of State for Trade & Industry, Patricia Hewitt, on the application of Criterion 8 of the Consolidated Criteria in assessing relevant export licence applications, Hansard, House of Commons Debate, 26 September 2002, Col 310W.

²³ *Sixth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports*, Council of European Union, 22 November 2004.

²⁴ *Ibid.*

In assessing such applications, member states will also have regard inter alia to:

- i. the export control policies and effectiveness of the export control system of the incorporating country;
- ii. the importance of their defence and security relationship with that country;
- iii. the materiality and significance of the goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern;
- iv. the ease with which the goods, or significant parts of them, could be removed from the goods into which they are to be incorporated;
- v. the standing entity to which the goods are to be exported.

These new guidelines are effectively identical with those applied unilaterally by the UK as set out in a statement by the UK Foreign Secretary in July 2002, on the grounds that the existing controls did not cover incorporation cases.²⁵ Saferworld's Audit of the 2001 UK Annual Report on Strategic Export Controls explained in detail that this was not the case and how these incorporation guidelines undermined the Consolidated Criteria. Given the decision of the EU member states to adopt the same guidelines, part of that analysis is reproduced as follows:

Criterion 5 of the Consolidated Criteria explicitly authorises [the Government] to take into account such factors as defence and security relationships ("while recognising that this factor cannot affect consideration of the criteria in respect of human rights and on regional peace, security and stability"). Criterion 7 refers to the "risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions." The operative provisions of the EU Code allow member states to take into account economic considerations when judging licence applications, though not at the expense of any of the criteria (operative provision 10), while operative provisions 5 and 6 state that the criteria are to be applied not just to complete weapons systems but also to military and dual-use components. ...

In response to concerns expressed by the QSC about the new guidelines,²⁶ [the Government] stated that "[c]riterion 7 will still be taken into account in respect of the final destination where incorporation is not involved"²⁷ and that "the statement does not apply to items to be re-exported without being incorporated into other items. These would be covered under the Criteria (Criterion 7)."²⁸ The implication of both these statements is that in cases of incorporation, criterion seven will not apply.²⁹

Saferworld remains convinced that the adoption of such guidelines is unnecessary and indeed constitutes a weakening of EU export controls, providing member states with a rationale for approving exports that would otherwise have been refused. In this context, it is instructive that during the period January 2003 to June 2004 there were 61 incorporation licences issued for the transfer of licensable goods to Israel, a state known to have ignored specific end-use undertakings in the past and which includes China and India among its main arms-export customers (see chapter 3, criterion 7 for more details). Saferworld therefore recommends that EU member states reverse this decision at the earliest available opportunity.

EU embargo on China

An EU arms embargo has been in place on China since June 1989, in response to the events that took place in Tiananmen Square and as an expression of concern over the human rights situation in China. During the course of 2004, there has been consider-

²⁵ Jack Straw, Foreign Secretary, House of Commons Hansard 8 July 2002, col. 651W, <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmhansrd/vo020708/text/20708w01.htm#20708w01.html.sbh3>.

²⁶ HC718, pp. 50–54, paras 136–147.

²⁷ Cm5629, p. 11, emphasis added.

²⁸ *Ibid.*, p. 12.

²⁹ *An Independent Audit of the 2001 UK Annual Report on Strategic Export Controls*, Saferworld, July 2002.

able pressure, led by France and Germany, to have the EU arms embargo on China lifted. This has been on the basis that the embargo implies a near-pariah status China no longer deserves and that the EU Code (which was not in existence when the embargo was established) could now serve as an adequate framework for regulating arms exports to China. It would seem that the ground is now being prepared for the embargo to be lifted in the near future: in December 2004 the Dutch Prime Minister, Jan Peter Balkenende, speaking as President of the EU, said “there is a possibility but it is not a guarantee” that the embargo could be lifted within six months.³⁰ The UK’s position on the ongoing status of the embargo has not been made clear, however it is widely regarded that the UK will not stand in the way of the majority view.

There are several reasons why the arms embargo should not only be maintained but indeed strengthened. The human rights situation, which as mentioned forms the basis for the embargo in China, is still of major concern (see, for example the China country entry in the latest Amnesty International and US State Department annual reports³¹). However there are also other arguments why China should be considered a special case. It is official Chinese policy that were Taiwan to make a formal declaration of independence, China would assert its claim on Taiwanese territory by force. Furthermore, China has a reputation as a serial proliferator of conventional, missile and WMD technologies.³² These factors all point in favour of maintaining the embargo, while the variability with which EU member states seem to interpret the embargo argues in favour of its strengthening. According to the 6th Consolidated EU Report, in 2003, 17 of the 22 EU member states and accession countries who reported on licences granted did not licence the export of any military list goods to China, while of the five who reported that licences were granted, France, Italy and the UK each authorised licences valued at more than €100 million.³³ (For an assessment of the UK’s interpretation of the embargo, see the China entry under section 3, criterion 1)

The security interests of the UK may also in fact be harmed by easing export controls on China. Lifting the embargo would almost certainly impact upon the UK’s prospects of gaining a US ITAR Waiver (which would reduce the licensing requirements for US companies exporting controlled goods to the UK). At a recent export controls seminar, Gregory Suchan, Director of the US State Department’s Office of Defence Trade Controls, said that if the embargo were lifted US military exports to the EU would be affected, and predicted that Congress would pass laws erecting barriers to defence trade with the EU.³⁴

It is argued by those in favour of lifting the embargo that the EU Code criteria will ensure that appropriate restraint continues to be exercised by EU member states. It is likely, however, that there will be massive economic pressures to participate in what is expected to be a very large defence market. Given the room for flexible interpretation contained in the EU Code criteria, these pressures may be hard for member states to resist. **Saferworld therefore recommends that member states restate their commitment to the arms embargo on China, and preferably in such a way so as to ensure more consistent application across the EU.**

³⁰ See Raphael Minder, ‘EU stalls over lifting China arms embargo,’ *Financial Times*, 9 December 2004, <http://news.ft.com/cms/s/8e1cae04-4988-11d9-8ce9-00000e2511c8.html>.

³¹ *Amnesty International Report 2004: China*, (Amnesty International), <http://web.amnesty.org/report2004/chn-summary-eng>; and *US Department of State Country Reports on Human Rights 2003: China*, <http://www.state.gov/drl/rls/hrrpt/2003/27768.htm>.

³² For further information on China’s role as proliferator, see *An Independent Audit of the 2002 UK Annual Report on Strategic Export Controls*, Saferworld, February 2004.

³³ *Sixth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports*.

³⁴ Guy Dinmore, ‘US warns EU against resuming arms sales to China,’ *Financial Times*, 13 December 2004, http://news.ft.com/cms/s/0ce069ea-4d46-11d9-b3be-00000e2511c8,ft_acl=s01=1.html.

International

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

The TCI is an attempt by the UK Government, through a series of regional workshops, to obtain inclusion in the 2006 UN Programme of Action on Small Arms and Light Weapons (SALW) of a package of agreed minimum common international standards on SALW transfers. The initiative grew from an understanding that many states from around the world were unwilling to accept the criteria set out in the EU Code as a basis for an international standard and that a different approach would have to be used to advance the international export control agenda. To date, presentations have been made at regional workshops held in South America, East Africa, Central America, West Africa and South Asia and a number of visits to key capitals have been undertaken where the TCI has been an important agenda item.

The TCI will continue to be taken forward within the context of the UN Programme of Action, however in September 2004 at the Labour Party Conference, the Foreign Secretary, Jack Straw, announced the UK Government's support for an international ATT based on states' existing obligations under international law. The Commission for Africa, which was launched by the UK Prime Minister in February 2004 with the intention that it should generate action for a strong and prosperous Africa, made explicit reference in its Consultation Document of November 2004 to the need to "[promote] an International Arms Trade Treaty to control small arms and light weapons."³⁵

A large number of NGOs have for some time been promoting an ATT, based on states' obligations under international law, as a necessary component in any attempt to bring the international arms trade under effective control. The statement of the UK Government is therefore extremely welcome. **Saferworld 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 proposed ATT in discussions and negotiations at bilateral, regional and international levels.**

Conclusion

It is encouraging that arms export control practice in the UK and the EU continues to make progress in a number of areas. It is however notable that in a year in which the UK Export Control Act (2002) entered into force and where for the first time the EU Code has been reviewed, this progress appears for the most part to have been only incremental. At the same time, cutbacks in the resources being devoted to export control within the EU, eg in terms of staff employed at the Export Control Organisation, and the EU agreement on relatively liberal incorporation guidelines, threaten to undermine the positive developments that have occurred elsewhere.

³⁵ Consultation Document, Commission for Africa, November 2004, p. 9, http://213.225.140.43/getting_involved/consultationdocument.htm.