



## Department for International Trade

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Mark Garnier MP  
Chair Committees on Arms Export Controls  
House of Commons  
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Our ref:

19<sup>th</sup> January 2021

Dear Mark,

Thank you for your letter of 16 December in which you ask questions about 'other factors' that might be considered alongside the Consolidated EU and National Arms Export Licensing Criteria (the Consolidated Criteria) in export licence decisions, the National Security and Investment Bill and export controls for new technologies.

I will address each of your questions in turn.

You have asked about other factors and the protection of the UK's essential strategic industrial base. The Export Control Joint Unit (ECJU) does not monitor technologies to prevent technology leaking out of the UK. ECJU's function is to consider export licence applications for goods and technology proposed for export. They assess these licence applications against the eight criteria contained within the Consolidated Criteria. The 'other factors' included alongside the Consolidated Criteria, one of which you refer to in your letter, will not affect the application of the criteria but may be taken account of where appropriate.

Different government departments, chiefly FCDO and MOD, will advise DIT in relation to particular criteria and it will primarily be them who will flag any strategic or national security issues about controlled technologies being exported from the UK. Other Government Departments and bodies such as BEIS (e.g., in respect of civil nuclear exports) or the National Cyber Security Centre (NCSC) (in respect of information and communication technologies) will feed in where necessary.

In particular, Criterion 5 addresses national security risks and protection of UK military classified information and capabilities. Primarily MOD provide advice on this Criterion, but NCSC also provide advice on technologies that could threaten national security.

You have asked whether ECJU was consulted on the National Security and Investment Bill (NSI Bill). DIT was consulted as part of the ordinary process of write round across Whitehall departments in relation to the NSI Bill, but within that process ECJU – which is hosted by DIT - was not consulted separately.

On point 2a. There will be very little direct impact. ECJU's role will not change and the Investment Security Unit will not be involved in the export licence decision process. There will however remain good alignment on what is considered a national security threat, which will feed into the overall licence assessment as appropriate. ECJU have always worked closely with relevant officials across Whitehall and we anticipate this will continue under the proposed new legal framework contained within the Bill, and that there will be regular engagement between ECJU and the Investment Security Unit.

On point 2b. Working arrangements will be finalised in due course given the Bill is not yet law. Officials across Whitehall are used to working together effectively, and when the Bill is enacted the Investment Security Unit do expect to consult ECJU on relevant cases and will ensure they have strong links to all Departments and Agencies in order to gather relevant experts' input.

On point 2c. The current or potential future ownership of an exporter is not a relevant matter in determining an export licence application and it would be improper for us to take that into account. Export licensing decisions are based on an assessment of the risks arising from the export itself. The Investment Security Unit will consider any future acquisition of control over the company that may take place. That consideration may take into account the export licences held by the company if they are relevant to a national security assessment.

On point 2d. Exports from the UK will continue to be governed by export control legislation, irrespective of whether the company is foreign owned or has had a takeover scrutinised. That said, the two regimes will work in tandem together particularly where there is a common risk to be considered. Criterion 5 of the Consolidated Criteria requires HM Government to take into account the potential effect of the proposed exports on the UK's defence and security interests.

On point 2e. Many factors will be taken into account, the relevance and precise details will vary from case-to-case but could include information about export licences. The information-gathering powers within the Bill would allow the Secretary of State to require such information as part of the assessment process.

On point 2f. Powers within the Bill would allow the Secretary of State to impose conditions on a "trigger event" along these lines where he considers that "the provisions are necessary and proportionate for the purpose of preventing, remedying or mitigating the [national security] risk". Whether or not those conditions were imposed would depend on the facts of an individual case.

It is of course possible that export controls will apply and that the export of the required development or production technology will be subject to obtaining an export licence.

You have asked about international forums and control of new technologies. The international export control regimes such as Wassenaar are the appropriate place for the international community to address common threats from emerging technologies. They can call on relevant experts to ensure new controls precisely address threats and they deliver exports controls that have a broad reach while maintaining a level playing field across nations. You might wish to refer to our previous written evidence to the 2017 arms exports Annual Report inquiry, your reference AAR0022<sup>1</sup>

HM Government has the necessary technical expertise to raise concerns about new or emerging technologies through the international regimes, present proposals for new controls and discuss concerns raised by other Member States. We can also raise concerns and discuss common approaches through bilateral engagement with key international partners.

Under UK law it is possible for HM Government to act unilaterally and add items to a national control list. However, before doing so we need to consider carefully whether such controls would be effective in preventing their acquisition, for example where the items in question are freely available elsewhere; and whether the controls would be proportionate, given the potential impact on legitimate UK exporters whose foreign competitors would not be subject to the same controls.

In July 2019, for example, we introduced national controls on “Submersible Vessels and related goods, software and technology” to Russia to mitigate the national security risk presented by the uncontrolled export of this equipment to Russia, given the Russian government’s underwater capabilities.

You have also asked about the input of ECJU/DIT into the future of export licences in respect of new technologies. DIT ECJU technical experts represent the UK at the international export control forums and lead for the UK in the technical experts’ meetings. They are supported by experts from the Defence Science and Technology Laboratory (DSTL), other relevant MOD experts and where appropriate, experts from other Government Departments and bodies such as BEIS or the NCSC.

DIT ECJU technical experts also work with the relevant experts from other Government Departments to develop national export control lists when required.

I hope these answers are of help to the Committees.



**THE RT HON ELIZABETH TRUSS MP**  
Secretary of State, Department for International Trade  
& President of the Board of Trade

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<sup>1</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/committees-on-arms-export-controls/2017-arms-export-controls-annual-report/written/103184.htm>



# Committees on Arms Export Controls

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16 December 2020

Dear Secretary of State

We would like to thank DIT officials for appearing before the Committee on the 10 November and for their subsequent correspondence. One area of interest that we did not have time to cover fully at the session were the 'other factors' that might be considered alongside the Consolidated Criteria in export licence decisions. We would therefore be grateful to receive responses to the following questions:

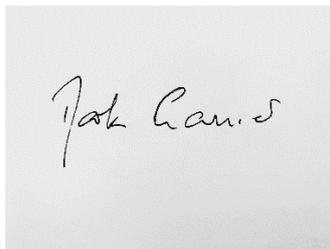
1. One of the 'other factors' is "the protection of the UK's essential strategic industrial base". Is it the Export Control Joint Unit (ECJU), or elsewhere in Government, that monitors technologies in order to prevent technology leaking out of the UK? How does that monitoring system work?
  - a) What role does BEIS play in this matter? Does the ECJU engage with BEIS on such matters?
2. Was the ECJU consulted on the National Security and Investment Bill?
  - a) How will the Bill impact on the work of the ECJU?
  - b) Will the ECJU be consulted by, and feed into the work of, the Investment Security Unit, once the Bill is passed, to inform the investment screening process?
  - c) How will you ensure that the ECJU has all relevant information/intelligence (for example when considering export licence applications from a company that might be subject to foreign acquisition in future, but no formal offer has been made)?
  - d) Will the provisions of the National Security and Investment Bill ensure that exports of sensitive and new technologies do not occur following a takeover?
  - e) Would the export history of a company seeking to acquire a UK company be considered under the provisions of the Bill?
  - f) Will the provisions of the Bill stop a company moving production of sensitive items overseas to enable their export following a takeover? If so, what estimate have you made of how often measures of this kind are expected to be used?

cont/d

3. In terms of avoiding exports of new technologies, like AI, which might increase potential adversaries' military capability, are international forums like the Wassenaar Arrangement sufficient, or does the UK have its own mechanism for such matters?
4. What input do the ECJU and DIT provide during discussions on the future of export licences in respect of new technologies, especially as the character of conflict evolves?

We realise that some of these matters are fully or partly the responsibilities of other Government Departments so we would be grateful to receive a coordinated cross-government response. It would be helpful to receive a response by 19 January 2021.

Yours sincerely

A rectangular box containing a handwritten signature in black ink. The signature appears to read 'Mark Garnier'.

**Mark Garnier MP**  
**Chair**