

Written evidence submitted by the Foreign, Commonwealth and Development Office and the Department for International Trade

Thank you for your correspondence of 14th June, in which you asked a number of questions that you and other Members would have raised in the Committee's evidence session that you were obliged to cancel due to absence of a quorum.

We are happy to respond to each of them in turn, providing the Committee with the same information that we would have provided had a session taken place. For ease of reference, the questions have also been included in the attached response.

1. How do the Government reconcile the Department for International Trade's dual role of promoting exports and as a regulator?

My Department is committed to enabling British businesses to succeed in the global marketplace and works to support them to take full advantage of trade opportunities, by facilitating exports from the United Kingdom.

HM Government's policy on export control is not to frustrate or hamper the ability of companies to trade, but to make the world a safer place for us all by operating a clear, proportionate, and robust system of controls. For instance, application of export controls is necessary to help protect our national security by restricting who has access to sensitive technologies and capabilities.

The Export Control Joint Unit (ECJU) is mindful of both commercial considerations and the potential impact of exports on rights, responsibilities, security and stability. Trade promotion activities do not affect either British exporters' obligations to comply with export control legislation or the United Kingdom's compliance with her international obligations.

2. What do you consider as the main changes in the new licencing Criteria and what was the rationale behind them?

The main changes are in respect of Criterion 3 ("preservation of internal peace and security") and Criterion 4 ("preservation of peace and security"). The new C4 addresses ambiguities in the previous formulation under the old Criteria, whilst C3 has been updated to track C4 given they both concern 'peace and security'. Both criteria provide for a more holistic assessment of peace and security, consistent with Britain's international obligations. HM Government will not grant a licence if, having assessed the potential that the items would either contribute to or undermine internal peace and security (C3) or regional/international peace and security (C4), it determines there is a clear risk that the items would, overall, undermine internal peace and security (C3) or regional/international peace and security (C4). Other changes include:

- Criterion 6a, which considers the potential that items could be used to commit or facilitate an offence under international conventions or protocols to which the United Kingdom is party relating to terrorism or transnational organised crime. It is now a mandatory criterion (along with Criteria 1-4), which means that if the risk threshold under this criterion is met, then the licence application must be refused.

- Within C3, C4 and C6, we have included an express reference to HM Government considering whether the items might be used to commit or facilitate gender-based violence or serious acts of violence against women or children.
- Criterion 2a and Criterion 2c of the new Criteria include an express reference to HM Government not granting a licence where there is a clear risk that the items might be used to “commit or facilitate” internal repression or a serious violation of international humanitarian law – the previous Criteria only referred to a clear risk that the items might be used to “commit” internal repression or a serious violation of international humanitarian law.
- Under ‘Other Factors’ the language has been clarified and narrowed down, so that it states explicitly that HM Government may decide not to grant a licence, in exceptional circumstances, where the items may have a significant negative impact on the United Kingdom’s international relations. This provides a degree of ‘future-proofing’, for unforeseen challenges.

With regards to the rationale for the changes, our departure from the EU provided the opportunity to look at how the United Kingdom controls her strategic exports and to revisit the assessment criteria for export licensing to ensure they properly reflect her strategic export objectives.

We took this opportunity to update the Criteria to reflect contemporary policy objectives, whilst maintaining the high standards we and European partners share on internal repression, international humanitarian law and the upholding of international obligations e.g. sanctions, more generally. We addressed ambiguities in the previous Criteria that have been identified through experience.

- **The International Trade Secretary has said that the Government “will not refuse a licence on the grounds of a purely theoretical risk of a breach of one or more of those Criteria”. How do you determine what is a purely theoretical risk?**

This language is not new to the Strategic Export Licensing Criteria. It is the same test that was applied previously. All our decisions are evidence-based, not theoretical. We look carefully at all relevant information before determining whether to issue a licence.

- **The ‘Other factors’ section has changed significantly and now just states “In exceptional circumstances the government may decide not to grant a licence for reasons other than those set out in Criteria 1 to 8 where the items may have a significant negative impact on the UK’s international relations”. What was the rationale behind this change, and can you give an example of when it might be applied?**

As noted above, the opportunity was taken to clarify and narrow down the language in the text.

A decision to refuse a licence with reference to ‘Other Factors’ will apply only in exceptional circumstances, where the items may have a significant negative impact on the United Kingdom’s international relations. This is a high threshold, and it is anticipated that ‘Other Factors’ would be used only very rarely.

‘Other Factors’ have not been used to reach a decision on any licence applications to date.

3. Following the UK's withdrawal from the EU and the UK's divergence from the Consolidated Criteria, how are you ensuring a joined-up approach to export controls and enforcement?

The United Kingdom continues to enjoy a joined-up approach to export controls and enforcement with European partners. As noted above, the Strategic Export Licensing Criteria maintain the high standards we share on preventing internal repression and the upholding of international obligations.

We continue to cooperate with EU Member States through our participation in the international export control regimes, and the Letter of Intent (LOI) grouping (France, Germany, Italy, Spain, Sweden, United Kingdom) under the auspices of the Export Control Informal Working Group. We will seek to maintain close working relationships with key EU Member States on a bilateral basis.

- **What steps are you taking to regain access to information sharing arrangements, such as the notification of denials?**

Whilst there are benefits from having access to EU information sharing systems, any future cooperation and information sharing arrangements would be subject to negotiation and would need to take account of the United Kingdom's wider objectives in any such negotiations.

We do, however, share information on denials of dual-use items in respect of Northern Ireland, in accordance with our commitments in the Northern Ireland Protocol. It should be noted that the United Kingdom is a member of the international export control regimes in her own right and HM Government will continue to represent British national interest in these regimes.

- **How will you evaluate the success of the post-withdrawal sanctions system?**

There remains broad continuity between British and EU export controls as the EU (Withdrawal) Act 2018 preserved the EU's export control legislation in Britain and this has been amended only to ensure operational effectiveness, update control lists, and to introduce the enhanced military end-use control so far.

We continue to use the sanctions regime as part of an integrated approach to promote British values and interests. Britain's departure from the EU means she can move more quickly where it is in her interests to do so, while continuing to coordinate closely with a range of like-minded partners. In some areas we have gone further than the EU; for example, we have banned all 3 million plus Russian companies from getting loans in the United Kingdom or from listing here.

4. During the course of our inquiry, some companies have relayed their concerns over ECJU licensing decision delays and told us that licences that would have been previously approved are now being refused without explanation, especially in the technology sector. What is your reaction to these concerns?

ECJU is extremely mindful of the commercial pressures that businesses face – and of the need to process licence applications with minimum delay – which is why it strives to meet its licensing targets: to conclude 70 per cent of applications within 20 working days and 99 per cent within 60 working days. However, some destinations remain more challenging as it continues to maintain the

United Kingdom's robust export controls regime. The most recent official statistics release for 2021 shows that 69 per cent of standard individual export licences were processed within 20 working days and 91 per cent within 60 working days.

ECJU is looking to ensure they provide quicker responses, even for those most challenging applications, and that where delays are anticipated that this is communicated to the exporter along with an explanation as to why. Licensing into an ongoing conflict requires particular scrutiny – as a result there were significant delays to licensing to Turkey, which have now been resolved.

We monitor performance against our targets monthly, and monitor new and completed applications on a weekly basis looking for trends or emerging issues that need addressing. We examine long outstanding cases on a weekly basis.

On the question of licensing decisions more generally, these are taken on a case-by-case basis based on the information available at the time of the assessment. Decisions to refuse licence applications are not taken lightly. The reasons for refusal are communicated to companies. We will share background where possible but, where the background information behind the refusal is classified, you will understand that we will not share it.

5. Based on the figures your department sent to the Committee at the beginning of June, nearly 1/3 of posts in the ECJU are vacant. Does this high level of vacancy concern you? What are you doing to fill these staffing gaps?

Since sending you the letter setting out the vacant posts in ECJU, some of the vacant posts have been filled. ECJU continues to have several live recruitment campaigns running, which will address some of the identified recruitment and resource challenges previously outlined in data shared with the Committee. We remain committed to reviewing our resourcing levels in the future, especially in the light of recent geopolitical challenges and the ongoing developments in the complexity of emerging technologies and their potential for dual use.

- **Do you anticipate that there will be a reduction in overall ECJU staff numbers as a result of the proposed cuts to the number of civil servants?**

The Prime Minister's announcement of an intention to reduce the size of the Civil Service will, of course, require all departments to consider future recruitment decisions carefully. DIT, will need to make sure that any vacancies and functions being filled are prioritised correctly, with careful consideration given to any new roles proposed.

6. What is the Government doing to investigate reports of UK made components being used by Russia in Ukraine? What will the ECJU do to prevent further British-made parts being used in Russian weapons?

- **Has the DIT launched an investigation into these matters? DIT**

- **If an investigation is underway, when do you expect it to be completed and will you share the lessons learnt with this Committee?**
- **If the investigation has concluded, what changes have you implemented as a result of this investigation?**

The Royal United Services Institute (RUSI) report on British components found in Russian made surveillance drones was in relation to components that were not included on the lists of items subject to an export licence at the time they left the United Kingdom, likely prior to the start of the invasion.

In lockstep with her allies, Britain is introducing the largest and most severe economic sanctions that Russia has ever faced, to help cripple Putin's war machine. In addition, the recent revision to our military end use control will provide additional scope to control the export of items not on the lists of items subject to an export licence to destinations subject to an arms embargo.

- **Why were all existing licenses for arms exports not revoked after the invasion of Crimea in 2014?**

An arms embargo was imposed on Russia in July 2014 following its illegal annexation of Crimea. As a member of the EU at the time, the United Kingdom implemented EU sanctions against Russia that were introduced in August 2014. The EU legislation included a prior contracts clause permitting licences where the export concerned the execution of an obligation arising from a contract or an agreement concluded before 1st August 2014.

Licences that were not consistent with the EU sanctions were revoked. After this time, only export licences consistent with the sanctions measures have been approved.

7. Given that oil and gas is proving to be a key strategic resource in this conflict—are you still licencing exports of equipment/materials to Russia for use in the oil and gas industry? Why did you carry on licencing exports of these items after 2014?

The sanctions imposed on Russia in 2014 made the export of specified equipment for use in the oil industry in Russia subject to a licence. A licence was not to be granted where the equipment was for use in deep water oil exploration and production, Arctic oil exploration and production, and shale oil projects. All licences granted have been consistent with the sanctions in place. In lockstep with her allies, Britain is introducing the largest and most severe economic sanctions that Russia has ever faced - including by banning the export of key oil refining equipment and catalysts - degrading Russia's ability to produce and export oil and so denying it a key strategic resource in this conflict. As noted previously, decisions made in 2014 were at an EU level.

- **While acknowledging the level of support the UK has provided, for example under Operation Orbital, should we have exported more military goods to Ukraine after the 2014 annexation of Crimea rather than the rushed response now?**

HM Government's approach has evolved over many years to address the growing Russian threat. The United Kingdom's Integrated Review last year, stated clearly that "Russia is the most acute

threat in the region, and we will work with NATO Allies to ensure a united Western response, combining military, intelligence and diplomatic efforts”.

The United Kingdom has taken carefully calibrated, substantive steps to deter and defend against the threat and to help partners, to better defend themselves, including an enduring bilateral defence relationship with Ukraine over many years, supporting defence capability and reform. Since 2015, we have been supporting Ukraine to develop the capabilities of their armed forces through training, advice, and the provision of equipment.

In particular, the United Kingdom has helped to build the resilience and capabilities of the Ukrainian armed forces through Operation ORBITAL, which has trained over 22,000 Ukrainian troops. In 2019, Operation ORBITAL was expanded to include naval cooperation and, in 2021, a range of measures were agreed with Ukraine, including the supply of two mine counter-measure vessels as well as agreeing the joint production of eight new ships, equipped with modern weapons systems.

8. How are you ensuring that lessons have been learned following the breaches of the Government’s undertakings to the Court on exports to Saudi Arabia and that the new processes implemented are working effectively? Do you plan to review them?

Following the breach of the Court Order we:

- Increased risk management measures on ECJU processes.
 - Introduced a dedicated Director-level post to head ECJU and put new Governance measures in place.
 - Introduced the transformation programme to assess, and evidence ECJU’s current operating model, and identify improvements to modernise the systems, processes and structures to make the service more robust, efficient and effective.
 - Introduced a new cross-Departmental reassessment process to consider and deal with changes in circumstances in a destination somewhere in the world. This ensures up-to-date information is used and applications that warrant closer attention are identified. In addition, changes were made to the digital licence application platform, SPIRE, to ensure some cases can’t be issued without additional checks.
 - At the time, an interim process was put in place for all Saudi-led coalition applications that involved extra levels of assurance by senior officials and final sign-off by Ministers.
- **Why was the decision taken to recommence exports to Saudi Arabia and coalition partners and to cease referring applications to ministers?**

We are currently exporting equipment to KSA (Kingdom of Saudi Arabia) for use in Yemen in accordance with the decision taken by the Secretary of State on 7 July 2020. That decision is the subject of further legal challenge and so there is a limit to the amount of detail that we can share. The below outlines how the decision-making methodology operates after the judgments by the Divisional Court and Court of Appeal in the first judicial review brought by the NGO Campaign Against Arms Trade.

The Court of Appeal substantially endorsed HM Government’s decision-making processes in 2019 as rigorous, robust and multi-layered, but found that HM Government had not sought “to assess the likelihood of a breach of IHL having been committed by the Coalition in any specific case” and that

HM Government was required to answer, or at least attempt to answer, the question of whether there was a historic pattern of breaches of IHL (International Humanitarian Law) on the part of the Saudi-led Coalition, and Saudi Arabia in particular. This was the Court of Appeal's only criticism of HM Government's decision-making process. In accordance with the Court of Appeal ruling, we revised our methodology for assessing licensing applications for air combat platforms, munitions and associated components for Saudi Arabia for possible use in the conflict in Yemen.

The revised methodology involves detailed analysis of allegations from all available sources of information by reference to the relevant principles of IHL to determine if they are possible violations, unlikely to be violations, or whether there is insufficient information to make an evaluation. Incidents that have been assessed as "possible" violations of IHL have been factored into the overall Criterion 2c analysis on the basis that they are violations of IHL.

Having applied this revised methodology, on 7th July 2020 the Secretary of State announced in a written statement to Parliament that she had retaken the decisions to license the sale or transfer of arms and military equipment to Saudi Arabia for possible use in the conflict in Yemen, as directed by the Court of Appeal. Taking into account the full range of information and analysis available to her, the Secretary of State concluded that there was no clear risk that items which are the subject of export licences to Saudi Arabia might be used in the commission of a serious violation of IHL.

- **Have any applications been referred to ministers since that decision?**

Saudi-led coalition applications were referred to Ministers until October 2020. After that point, and in light of the decision taken by the then Secretary of State for DIT on 7th July 2020, officials no longer submitted all applications to Ministers, but continued to assess each licence application against the relevant Criteria, including a detailed assessment on the Coalition's adherence to IHL. Licences would not be granted if to do so would be inconsistent with the Criteria. Officials submit regular IHL assessments on Saudi Arabia to Ministers and update us on an ad hoc basis, as required.

- **What action is the Government taking to reinstate the Group of Eminent Experts on Yemen following the recent UN vote not to renew its mandate?**

We regret that the mandate of the Group of Eminent Experts on Yemen has not been renewed. The United Kingdom voted in favour of the resolution.

As we made clear during the UN Human Rights Council session, we are concerned about reports of serious and wide-ranging violations and abuses of rights and responsibilities by parties to the conflict.

In March, the United Kingdom co-sponsored a joint statement at the UN Human Rights Council recognising the collective effort needed to respond to these allegations. The statement called for all parties to comply with their obligations under international law. We are discussing the potential for a follow-up mechanism with international partners to support accountability on rights in Yemen.

9. Why was the decision to remove Afghanistan as a permitted destination for 5 OGELs not made until August 2021?

All export licences to Afghanistan were reassessed quickly in August 2021. This included considering the risk of diversion to the Taliban. All licences for exports to the Afghan National

Defence and Security Forces were revoked. Afghanistan was removed from relevant Open General Export Licences (OGELs).

- **Why were SIEL applications still permitted after this decision?**

Licences were only left in place if they remained consistent with the Consolidated Criteria (humanitarian demining equipment for NGOs and items for the protection of remaining diplomatic missions). All licences are kept under careful and continual review as standard. All new licence applications will be assessed against the strict Criteria as usual.

- **Are any export licences currently in force or being considered or have all exports ceased?**

Licences for NGOs, humanitarian organisations, and diplomatic missions were left in place, as required, in support of their activities, following an assessment of the risk of diversion. All licences are kept under careful and continual review as standard.

- **What lessons have been learned from the withdrawal regarding the risk of UK Armed Forces weapons, or UK gifted items and exports falling into the hands of adversaries?**

All instances of gifting to Afghanistan were assessed against the Strategic Export Licensing Criteria and an End-User Undertaking was obtained from the National Afghan Army prior to equipment being handed over. No weapons were left behind by British forces on withdrawal.

10. In October 2019 the Government announced it would not grant export licences for Turkey for items that might be used in military operations in Syria. What action was taken in respect of licences already granted? What was the rationale behind this decision?

- **How did you change the decision-making process after the 2019 announcement?**
- **What was the rationale for the December 2021 announcement that “the government is now satisfied that decisions on all licence applications to Turkey can be taken following a careful assessment against the Strategic Export Licensing Criteria on a case-by-case basis”? What had changed?**
- **President Erdogan has stated recently that Turkey plans to begin a further military incursion into northern Syria to expand safe zones along its borders. What impact would this have on licence applications for exports to Turkey?**

HM Government’s announcement in October 2019 that no new licences would be granted for exports of items to Turkey that might be used in military operations in Syria was to allow for a review of Turkish activities in Northern Syria to be undertaken.

There were no changes to the decision-making process following the 2019 announcement.

However, on leaving the EU we were able to review the then-applicable Consolidated Criteria to make sure they provided an up-to-date and comprehensive assessment framework for assessing export licence applications. Now that they are in place the Strategic Export Licensing Criteria apply to all export licence applications and for all destinations.

The Criteria provide us with a thorough risk assessment framework that requires us to think hard about the possible impact of providing equipment and its capabilities for all countries, including Turkey.

Following the review of Turkish activities, and having considered the factual position and the information available, HM Government was satisfied that decisions on all licence applications to Turkey can be considered following a careful assessment against the Strategic Export Licensing Criteria.

We have noted President Erdogan's statement that he intends to expand the scope of Turkish operations in Syria. HM Government keeps export licences under careful and continual review. The assessment process is designed to respond swiftly and effectively to changing situations in recipient countries where there is a change in circumstances that means licences may no longer be consistent with the Strategic Export Licensing Criteria.

It remains the case that decisions can be taken to suspend, refuse or revoke licences in line with the Criteria if circumstances require. Decisions will then be applied to relevant individual licence applications.

11. Do decisions on exports to Saudi Arabia compared to those in respect of Turkey, Hong Kong and Afghanistan demonstrate an inconsistency in the application of the Criteria based on the importance that the Government attaches to the strategic relationship with the recipient country?

The United Kingdom takes its export control responsibilities very seriously and operates one of the most robust arms export control regimes in the world. HM Government examines every application on a case-by-case basis against strict Criteria. The Criteria apply to exports to all destinations, including Saudi Arabia, Turkey, Afghanistan and Hong Kong.

With respect to exports to Saudi Arabia, the Divisional Court noted (and the Court of Appeal agreed) that we applied a rigorous and robust, multi-layered process of analysis to making our licensing decisions. The revised process builds on this and involves extra scrutiny and consideration, providing an appropriate base from which to assess whether there is a clear risk that the items might be used in the commission or facilitation of a serious violation of international humanitarian law.

As set out in the Written Ministerial Statement of 8th December 2021, "the application of these Criteria will be without prejudice to the application to specific cases of specific measures as may be announced to Parliament from time to time". With respect to Hong Kong, on 20th July 2020 the then Foreign Secretary announced that "the UK will extend to Hong Kong the arms embargo that we have applied to mainland China since 1989."

The partial arms embargo to Hong Kong bans "any equipment which might be used for internal repression" which goes further than Criterion 2 where there must be a "clear risk" that the items might be used to commit or facilitate internal repression.

12. Do you have any particular concerns about exports to Israel?

All licences are kept under careful and continual review as standard and we are able to suspend, refuse or revoke licences as circumstances require.

If extant licences are found to be no longer consistent with the Strategic Export Licensing Criteria, those licences will be revoked. We will not license the export of equipment where to do so would be inconsistent with the Criteria.

- **Have you taken any action in respect of the alleged misuse of the Pegasus spyware?**

It is vital everyone uses cyber capabilities in a way that is legal, responsible, and proportionate to ensure 'cyberspace' remains a safe and prosperous place for everyone. We consider all applications closely and would consider with particular care any applications destined for entities understood to be using Pegasus software.

The United Kingdom has not issued any licences for Pegasus software.

13. We have heard concerns about the low level of prosecutions in respect of strategic exports and sanctions offences. Do you have any plans to review the effectiveness of the relevant legislation?

Richard Las from HMRC gave evidence to the Committee on 16th November 2021 and spoke about the numbers of prosecutions; enforcement remains the responsibility of HMRC.

- **What action are you taking to decrease the number of companies found to be non-compliant especially after a revisit? What are the main reasons for non-compliance?**

Non-compliance is not generally due to illicit behaviour. It can often be due to a lack of understanding export controls for business, how to adhere fully to the terms and conditions of licences or the lack of training leading to complete records of exports not being maintained, including consignee information.

Inspections enable us to identify those who struggle the most with licensing requirements and to put them on a corrective course of actions to take. Ongoing support is provided to exporters by the compliance team, for those where complex issues arise. There has been a substantive improvement in the compliance levels at the follow up inspections, i.e. 83 per cent of those revisited had a significant improvement in their compliance level. This is a direct consequence of the help and support provided to businesses by their Inspector.

To improve knowledge of the export licensing regime, ECJU delivers classroom-based training to industry on all aspects of the licensing process, including the Strategic Export Licensing Criteria. The training is held monthly and rotates around the country. Courses are constantly updated with information about the latest legislation and improved using industry feedback. Course content and dates are incorporated into a regular training bulletin on GOV.UK and advertised to industry and others. Information and guidance are available online, together with additional support being provided through webinars and training programmes.

Compliance inspections can support these training programmes as they also provide assurance to Government that licence holders are meeting the terms and conditions of their licences. Inspections also serve to raise awareness by helping businesses with the management and understanding of their licences.

Ultimately enforcement is the responsibility of HMRC. They assess all breaches of export controls and sanctions. Where serious and/or deliberate breaches of export controls are identified, or where there are aggravating features, cases will be considered for full criminal investigation.

Cases will be investigated and, if appropriate, referred to the Crown Prosecution Service (CPS), which determines whether there is sufficient evidence to prosecute and whether that prosecution is in the public interest.

- **In February 2022, HMRC agreed the largest Compound Settlement ever of c.£2.7million. However, the names of individuals or companies agreeing such settlements and the details of the items exported and the destination are not published. What discussions has the Government had with HMRC on increasing the transparency of Compound Settlements?**

All data on enforcement is a matter for and are provided by HMRC, including information on compound penalties that we might publish through a notice to exporters from time to time. HM Government is open about strategic export licensing to provide the means for Parliament and the public to hold us to account. It remains the case that no other country publishes as much data as the United Kingdom about licensing decisions.

HMRC has a duty not to make public the names or details of those investigated where no conviction has taken place, nor the names or details of those individuals or companies that have previously been or are currently being investigated. HMRC is responsible for enforcing strategic export controls and takes compliance failures very seriously.

14. What is your response to calls for an immediate moratorium on the sale, transfer and use of surveillance technology, until human rights-compliant regulatory frameworks are in place?

- **We also have evidence calling for amendments to the current DIT trade control system to move intrusion software and related licensable goods and technology into Category A of the UK's current trade controls system. What is your response to this suggestion?**

Cyber surveillance technologies play an important role in protecting national security and in the prevention and detection of serious crime. However, it is important that such technologies are not misused in a way that undermines rights and responsibilities, nor our vision of a free, open, peaceful and secure 'cyberspace'.

The Strategic Export Licensing Criteria provide a robust framework for assessing human rights risks, including in relation to exports of surveillance technologies. A licence would not be granted if there was a clear risk the items might be used to commit or facilitate internal repression.

Trade controls apply to United Kingdom involvement in the supply or delivery, or promoting the supply or delivery, of tangible goods moving from one third country to another. Trade controls do not apply to software or technology.

Category A goods, as set out in the Export Control Order 2008, includes items for which the supply is prohibited or is inherently undesirable, such as cluster munitions or execution goods and for which it is unlikely a licence would be granted. Controls on Category A items apply extra-territorially, that is, to the activities of British persons anywhere in the world.

Adding surveillance items to Category A would apply trade controls to the promotion of the supply of any physical hardware required for the generation, delivery, command, or control of the surveillance software – but not the actual software itself. Changing the trade controls to include intangibles like software and technology would require a fundamental rethink and it could have significant implications for legitimate trade, as well as raise serious questions about the enforceability of such controls.

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4 July 2022