

**Written evidence submitted by Richard Las, Head of Operations, Fraud Investigation, Service, Customer Compliance Group and Joanne Cheetham, Head of Customs Compliance, Audit and Law Division**

We write further to an email from the Committees dated 24 November 2021 containing questions arising from the evidence session on 16 November 2021.

Responses to those questions are contained in Annex I to this letter. Additional information requested is in Annex II.

We hope this gives you and the Committees the information you need about the range of strategic exports enforcement activity undertaken by HMRC.

*14 January 2022*

**Annex 1**

CAEC transcript for ref: <https://committees.parliament.uk/oralevidence/3003/pdf/>

Please see below CAEC's request for further information following the evidence session on 16<sup>th</sup> November (where applicable the relevant question number from the transcript is shown in brackets):

**1. Further information on the additional staff resources including timescales, grading and how they will be allocated, and how HMRC is meeting the challenges of staff retention, (Q163, Q170-Q173)**

HMRC recognises the importance of resourcing strategic exports enforcement activity and decided to increase Customs A/B capacity to align capacity to current and future needs.

The number of full-time equivalent staff working for Customs A/B in April 2020 was 21.4. This had increased to 39 by November 2021 and will rise to nearer 61 by the end of 2021/2022. Customs A/B staff are based in HMRC offices countrywide and those appointed since 2020 are graded as Officer (x28), Higher Investigation Officer (x16) and Senior Investigation Officer (x1).

HMRC uses a range of measures to address retention, including an attractive employment offer and workforce planning to support retention, recruitment and redeployment as appropriate.

**2. Further Information on HMRC's internal controls and the checks and balances covering your decision making (Q165).**

Q165 RL said “we also have a series of internal controls that look at our decision making and checks and balances, where people will review case decisions and case decision logs. I appreciate that that is inward, but that is our process.”

In deciding whether to pursue a criminal investigation, HMRC will consider several factors. This includes:

- previous instances of non-compliance with export controls,

- awareness of current controls (i.e. warning letters issued or awareness visits undertaken),
- sensitivity of the goods and the intended destination or end user (some destinations are subject to UN/EU sanctions).
- Existence of adducible evidence of a criminal offence.

HMRC's Fraud Investigation Service (FIS), like any other UK law enforcement agency, adheres to national standards for criminal investigation procedures and (in England and Wales), the requirements of, inter alia, Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016. Similar legislation exists for Scotland and Northern Ireland. In addition, HMRC has its own legislation which contains additional investigatory powers, these are the Customs and Excise Management Act 1979 and the Commissioners for Revenue and Customs Act 2005. FIS can obtain legal advice from the HMRC Solicitor and the Crown Prosecution Service. HMRC is also subject to the governance of the Independent Office for Police Conduct (in England and Wales) and its counterparts in Scotland and Northern Ireland.

FIS investigators may decide that a case is potentially suitable for consideration for a compound settlement. In these instances, the case is referred to the Enforcement Policy team to assess. The Policy team consider these referrals independently from the investigations team. It sits in a separate directorate to FIS. If the Policy team decide a settlement offer is appropriate, the offer is made from that team. If they decide it is not appropriate the case is referred back to FIS with a recommendation that they continue the investigation with a view to referral to the CPS for prosecution. Assessments of these referrals are made against established criteria and by a group of subject matter experts. Decisions are recorded and signed off at the appropriate level of seniority.

### **3. Cross-country comparisons of prosecutions (Q166).**

We do not hold data on cross-country comparisons of prosecutions. However, the Committees may be interested in this Stockholm International Peace Research Institute (SIPRI) study on [Detecting, Investigating and Prosecuting Export Control Violations: European Perspectives on Key Challenges and Good Practices \(sipri.org\)<sup>1</sup>](https://www.sipri.org/sites/default/files/20192/1912_sipri_report_prosecuting_export_control_violations_0.pdf).

One of the authors of the study is Dr Sibylle Bauer, Director of Studies, Armament and Disarmament, SIPRI. Both Dr Bauer and Dr Ian Stewart have given evidence to the committees about UK prosecution figures and how these compare globally. Relevant excerpts are copied below for ease of reference.

16 March 2021. Dr Sibylle Bauer, Director of Studies, Armament and Disarmament, SIPRI.

In response to a question from Chris Law MP:

*“When you look at the prosecutions, as has been cited in previous evidence sessions I have seen, it is true that very few countries actually prosecute export control cases. The UK is one*

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[https://www.sipri.org/sites/default/files/20192/1912\\_sipri\\_report\\_prosecuting\\_export\\_control\\_violations\\_0.pdf](https://www.sipri.org/sites/default/files/20192/1912_sipri_report_prosecuting_export_control_violations_0.pdf)

*of a small group of countries that has built up very valuable experience in that area. There is at least one country, in addition to the US, that has prosecuted more cases, and that is Germany, where there have been prosecutions every year as long as I can remember.”*

*Chris Law: Thank you, Dr Bauer, that was wide-ranging and gave us a lot of information. In your mind, do you think that the UK has a low level of prosecutions for export control violations? Does that surprise you, given what you have said about resources to make those prosecutions? I know it is difficult to find out, but how does that compare with what you’ve seen in other countries, particularly in the EU?*

*Dr Bauer: Given the resource that the UK has, it probably has quite a high number of prosecutions compared with other countries. But the number of prosecutions in many other countries is actually quite low. It is not just a question of resource; it is also a question of many other elements that have to be put in place. Often, when it comes to a rare export control case, it might be prosecuted in a regional court, where the judge and prosecutor have very little experience in this area. Not enough has been invested in international networks and exchanges between enforcement officers and prosecutors. If you only have a rare case once every 10 years, once you’ve built up the experience, the case is concluded.*

02 February 2021. Dr Ian J. Stewart, Executive Director, Washington DC Office, James Martin Center for Non-proliferation Studies.

*Q190 Mark Menzies: Turning to you, Dr Stewart, the same question: what is your assessment of the UK’s enforcement and compliance process? Dr Stewart: With this question, there is a real need to break down what we mean by compliance and enforcement. There’s a really specific point that I’m not sure is widely understood. The Export Control Joint Unit compliance team—it says this in the annual report, but it’s actually worth dwelling on—says that it is there to monitor compliance with the terms and conditions of licences. It does not view its role as monitoring or auditing companies for not applying for licences. They view that as the role of customs. So there is a really important distinction here. If companies are applying for licences—what we mean by that is open licences or, to a lesser extent, individual licences where there is a tech transfer aspect or something—then it would fall to the compliance team within the Export Control Joint Unit. Otherwise, they view it as a customs issue. That reflects the question of what we mean by non-compliance. Are we worried about shipments of items without being licensed? I do worry about that. I focus more on the dual-use side of things, where my main concern is goods getting to places like China, North Korea and Iran without licences. We see that; that happens from the UK. The companies that are involved in that are probably not the ones that are routinely applying for licenses and so on; it is probably the other types of companies. That is a really important area, but it is distinct from the type of thing that we are talking about, which is whether the record keeping associated with the use of an open licence is inadequate. There is a real need to have those as distinct categories. Both are important, and I would urge that one is not lost at the expense of the other. In terms of how the UK does versus others, it is a bit lamentable that no country worldwide, apart from the US, does any more prosecutions on these topics than the UK does. Yes, the UK numbers are low, but they are low worldwide. If we are using a relative benchmark, I regret the fact that the numbers are low, and I worry about things such as staffing within customs and the level of outreach, but it is probably in line with the playing field globally, except in the US. The US is different, for reasons that we could talk about if there is interest. Q191 Mark Menzies: To turn that on its head, could you even say, bizarrely, that the UK numbers are high by international standards? Therefore, you have incredibly low*

*compliance globally. Dr Stewart: Yes. To take that out of the abstract, I did a map a few years ago of the number of countries that had prosecuted an export control case. It was a blue colouring, and the number of blue colours globally was quite small.*

**4. Further information on (and copies of) HMRC's memorandum of understanding and service level agreement with the ECJU. Please include how these are monitored and how frequently and by whom they are reviewed (Q176).**

Management of the SLA/MOU is through nominated co-ordinators in each department, with options to escalate any relevant issues to liaison groups, directors and ultimately ministers. Both departments maintain liaison points of contact. The nature of our relationship has meant that escalation of issues is rarely necessary. We are currently working with ECJU on a formal review of these documents and we will share the refreshed documents with the Committees when finalised.

**5. Further information on the legislative gateways and memorandums of understanding in respect of international cooperation, including a list of countries and partners with whom HMRC have such cooperation mechanisms. Please include a description of the provisions included and whether these follow a standard model for such agreements or the circumstances in which they might differ (Q182).**

HMRC has extensive international contacts with overseas counterparts who hold their country's strategic export portfolio. This can be with a customs administration, a police organisation, or a judicial investigation unit, depending on the arrangements in-country.

The process varies from county to country, but is underpinned by UK legal information sharing gateways, and in some cases, international agreements, and memoranda of understanding. Customs cooperation agreements provide an operational framework for HMRC and its law enforcement partners to cooperate with international partners in combatting customs offenses and fraud. HMRC's standard text for these agreements is based on the World Customs Organisation's model for bilateral cooperation but can be adapted to meet the needs of a partner country or to tackle a specific concern. The standard provisions include:

- Establishing a legal basis for specific forms of investigative co-operation
- A legal basis for exchange of information
- Agreeing Mutual Administrative Assistance provisions which are clear on how requests are to be made, respect HMRC operational practice and set out appropriate provisions on data protection to comply with UK standards.

All engagement is subject to risk assessment in respect of Human Rights and Data Protection; such considerations can restrict cooperation with some jurisdictions where there are concerns. Options for international co-operation can also be restricted where certain jurisdictions are involved. This can be because of Human Rights concerns around how information might be used.

HMRC operates the International Mutual Assistance Team (IMAT). IMAT is the Central Authority for making and receiving Mutual Administrative Assistance (MAA) requests between HMRC and other partner agencies worldwide relating to criminal matters. IMAT is

Competent to execute both MAA and Mutual Legal Assistance (MLA) requests relating to HMRC functions (working with HMRC's Solicitor's Office on the latter).

**Legislative Gateways:** that allow the exchange of information and international cooperation in customs matters

- Taxation (Cross Border Trade) Act 2018
- The Regulation of Investigatory Powers Act 2000 (RIPA) and Police Act 1997
- Commissioners for Revenue and Customs Act 2005
- Customs and Excise Management Act 1979
- Customs and Excise Management Act 2020
- Anti-Terrorism, Crime & Security Act 2001
- Trade (Disclosure of Information) Act 2020

**Memorandums of Understanding:** arrangements HMRC is a signatory to that allow for various customs cooperation activities with overseas counterparts.

- |             |                      |               |
|-------------|----------------------|---------------|
| • ALBANIA   | • KOSOVO             | • SINGAPORE   |
| • AUSTRALIA | • MALAYSIA           | • SWITZERLAND |
| • CANADA    | • MOLDOVA            | • TAIWAN      |
| • CHILE     | • MOZAMBIQUE         | • TURKEY      |
| • CHINA     | • NORTH<br>MACEDONIA | • UAE         |
| • GEORGIA   | • NORWAY             | • UKRAINE     |
| • INDIA     | • PERU               | • VIETNAM     |

HMRC also has Cooperation and Mutual Administrative Assistance Treaties in place with China, India, Japan, New Zealand and the USA.

**6. Further information on the fiscal crime liaison officer network, including where these are in operation and how it is decided to establish such a network in a particular UK Embassy or High Commission (Q182).**

HMRC's overseas network of Fiscal Crime Liaison Officers (FCLO) is an integral part of the fight against those who organise, facilitate and commit fraud and tax evasion for an illegal financial gain. There are currently 49 diplomatically credited HMRC officers posted in 34 locations around the world, covering over 100 countries. FCLO locations are based on assessments by HMRC's Risk and Intelligence Service in addition to strategic prioritisation and resource availability, collaboration with HMG partners and diplomatic relations with a potential host nation.

The FCLO Network combats serious and organised crime through intelligence sharing and collaboration with international and domestic partners to support HMRC priorities. The Network works closely with other UK law enforcement agencies such as the National Crime Agency, Border Force, Immigration Enforcement International and SOCNet. FCLOs are fully

integrated into the wider team in British missions overseas, playing their part in delivering cross-HMG Country Plans.

FCLOs act as HMRC's operational link to overseas Customs and Tax authorities, law enforcement, public prosecutors, and other partners in the prevention and tackling of fiscal crime. The Network works to enhance security and prosperity around the world. This includes capacity-building support to help other countries tackle fiscal and serious and organised crime.

### **List of FCLO COUNTRIES**

*\*It is important to note that this is the Network's current set up, but this is subject to review/change. FCLOs will have both regional and host country responsibilities.*

- ALBANIA
- AUSTRALIA
- AUSTRIA
- BELGIUM
- BOSNIA and HERZEGOVINA
- BULGARIA
- CHINA
- CYPRUS
- EUROPOL
- FRANCE
- GERMANY
- GREECE
- HUNGARY
- INDIA
- IRELAND
- ITALY
- KOSOVO
- LATVIA
- LITHUANIA
- MALAYSIA
- MALTA
- MONTENEGRO
- NETHERLANDS
- PANAMA
- POLAND
- PORTUGAL
- ROMANIA
- SERBIA
- SINGAPORE
- SOUTH AFRICA
- SPAIN
- UAE
- UKRAINE
- USA

### **7. Further information on the area of the Naples II agreement where HMRC are attempting to re-establish operational capability (Q186).**

The Customs Mutual Administrative Assistance Protocol to the Trade and Cooperation Agreement provides the operational capabilities we require to conduct HMRC's strategic export controls with our EU member state counterparts. This has provided operational continuity in respect of these controls since the end of the Transition Period.

### **8. Further information and statistics on HMRC assisting overseas or UN investigations that involve UK registered companies and individuals (Q190)**

HMRC provides assistance to overseas agencies under either Customs Mutual Assistance or International Legal Assistance agreements. This can be of an intelligence nature or evidential support for a criminal case. No statistics specific to strategic exports or sanctions are maintained.

HMRC undertakes a preliminary assessment into **all** credible allegations of strategic export control offences. We routinely assist overseas or UN investigations involving UK registered companies. Some cases are also brought to HMG attention by NGOs. HMRC does not maintain records which would allow support to UN panel of experts investigations to be easily identified. However, we estimate these to be not more than 5 per annum.

UK registered companies can often be implicated in arms deals. We believe this is due to the apparent respectability of a UK address and the ease with which companies can be established.

Due to the very limited UK footprint of brass-plate companies, their involvement in unlicensed activity is very difficult to detect. Where there is a UK footprint, HMRC has had a number of successful enforcement outcomes involving Trafficking and Brokering Offences, including 9 prosecutions (since 2007) and 12 compound settlements (since 2010).

## **Annex II**

### **HMRC note to CEAC re Q157:**

Richard Las answers a question about implementation of trade sanctions and references 800 assessments. This figure represents activity across strategic exports and trade sanctions.

From an enforcement perspective, the techniques and processes applicable to Strategic Exports and Trade Sanctions are the same. Essentially, they are both movements of goods subject to licence from DIT and HMRC does not make a distinction between them in statistics.

### **In addition to questions 1-8 above the Committees requested an explanatory note which is enclosed below:**

*“As suggested by the team, CAEC would also be grateful to receive the explanatory note. It would be helpful if your note could give some indication of the circumstances of when HMRC might use each of the enforcement options available. We did discuss this prior to the session but unfortunately the opportunity did not arise on the day. Of course, we understand that you cannot go into individual cases but hope it is possible to give general indications/examples.”*

*“As part of this note, the committee have requested if you can set out the thresholds for each enforcement option available to HMRC and how often these are reviewed and also what part the consolidated criteria play in HMRC's investigations and enforcement role.”*

### **Explanatory Note**

We use a wide range of interventions that drive changes in non-compliant behaviour in accordance with a Promote / Prevent / Respond compliance strategy.

#### **HMRC aims to:**

- Work with businesses to educate and *promote* voluntary compliance.
- Detect and *prevent* the illegal export of military, dual-use and sanctioned goods.

- Detect and disrupt unlicensed activities in relation to arms trafficking and brokering and technical assistance.
- Facilitate the seizure of unlicensed goods detected at the UK border.
- *Respond* with enforcement action where appropriate.
- Facilitate legitimate trade.

**There are several teams across different parts of HMRC which deliver this.**

The **Enforcement Policy** team handles overarching policy matters, external relationships and compound settlements.

Our **Risk and Intelligence Service** provide analysis to help HMRC and partners understand the risk and improve targeting.

HMRC's **audit teams** undertake post clearance compliance activity targeting higher risk traders.

**National Clearance Hub** manage targeted Strategic Export checks undertaken during freight clearance. They consult with Customs A/B, Enforcement Policy, Border Force and DIT as necessary.

**Fraud Investigation Service** have Customs A/B who are responsible for:

- Pre and post export operational issues
- Intelligence development
- All areas of StratEx Investigations, including arrest, interviews and where necessary advancement of operations through court
- Undertaking outreach visits to exporters.

HMRC also works very closely with Border Force teams who are responsible for frontline detection activity.

### **How we hear about breaches**

HMRC undertakes a preliminary assessment into **all** credible intelligence/allegations of strategic export control offences. Not all of these will warrant further action or investigation.

HMRC targets export control risks at the border. This is a 24/7/365 arrangement delivered by NCH and Customs B, responding to alerts/notifications relating to potential exports of concern. A significant number of detections are made this way.

Information or referrals can also originate from teams across HMRC, the National Crime Agency, police forces, UK and international counter proliferation partners and Border Force.

We also receive referrals from ECJU compliance teams where they have found serious non-compliance.

Exporters often make Voluntary Disclosures to HMRC. It is not unusual for this to be prompted by an adverse ECJU compliance audit.



Members of the public can use HMRC's fraud hotline or online reporting tool to share information. They do not have to give personal details and any information will be treated as confidential.

Customs B is responsible for the collection, analysis and dissemination of intelligence to create disruption opportunities to prevent the export of controlled goods. They also develop operational packages for criminal investigation (by Customs A) and other enforcement outcomes.

To give a sense of the scale of HMRC's activity in 2020 -

- we conducted over 800 assessments into credible intelligence or allegations of strategic export control offences.
- 160 seizures and a further 103 detentions were made by HMRC or BF.
- Additionally, we opened one new criminal investigation.
- 19 cases had compound settlements. - These do not all relate to the same year as enquiries can span a number of years - but it gives an indication of outcomes.
- We received 136 Voluntary Disclosures.
- And Issued 64 Warning letters

### **How HMRC investigates**

Investigations are undertaken by Customs A and it is this team who assess Voluntary Disclosures and referrals from Customs B and ECJU compliance team. This assessment will decide the most appropriate disposal of a case. This could include a full criminal Investigation, an awareness visit, a warning letter or referral to the Enforcement Policy team for a compound settlement decision.

There is no one size fits all template that can be used to apply "thresholds" to decide the appropriate outcome. The circumstances of all cases are different, and considerations must be made on a case-by-case basis. However, if a breach has occurred and can be proven, a warning letter is typically the baseline. If intent to circumvent export controls can be proven a compound penalty may be considered in appropriate cases, or a case may be referred to the CPS for consideration for prosecution. There are numerous factors which will inform case disposal, including, but not limited to the sensitivity of the goods/destination, whether a license would have been issued had one been applied for etc.

HMRC's Investigatory powers are in line with those of other law enforcement bodies in the UK. We use all domestic and international legislation available to progress and enhance criminal investigations.

The full range of investigative tools are used. Namely arrests, search warrants, interviews under caution (following arrest and by voluntary attendance), court orders for access (production orders), witness interviews, international letters of request, international customs mutual assistance, forensic accountants, digital forensic and surveillance teams. We will also engage with our international Fiscal Liaison Officer Network and with experts from OGDs, industry and academia, as appropriate.

Contemporary investigations of strategic export cases cover a wide range of controlled items involving direct export offences from the UK and trafficking and brokering offences undertaken by UK persons overseas They can include, amongst other things, aircraft, guided

missiles and bombs, battle tanks, anti-aircraft radar and radar-defence systems, quantities of small arms and ammunition, weapons scopes, WMD related chemicals, technology, components and precision manufacturing machinery.

**The CAEC have also asked if we could update the information in the links below (which was provided for a previous CAEC inquiry).**

- 1) <https://old.parliament.uk/documents/commons-committees/Arms-export-controls/HMRC-enforcement-outcomes-17-19.pdf>

Compound Settlement figures updated to 2017- 2020 are below. The remaining data in this document is unchanged and we are considering how we might report data like this in future Annual Reports.

Number of investigations reported to HMRC Enforcement Policy directly for consideration of compound penalty which resulted in compound penalty settlements :**83**

Number of Compound Penalties issued by Enforcement Policy: **83**

Total value of those penalties: **£3,966,638.90**

- 2) <https://old.parliament.uk/documents/commons-committees/Arms-export-controls/Note-HMRC-17-19.pdf>

We believe the response to question 1, regarding staffing levels, covers this.