Dear Julian,

Thank you for your letter of 5 February 2019 in response to mine on the subject of UK procurement regulations. This provides an opportunity to explain the genesis of our decision making with regard to procurement of the Fleet Solid Support (FSS) Ships.

The National Shipbuilding Strategy (NSbS) was published in 2017 following approval by the Economic Affairs Cabinet Sub-Committee. As you will be aware, it contains a delineation between destroyers, frigates and aircraft carriers, which for convenience it termed “warships” and “all other naval ships”. This distinction was made only for the purpose of ship acquisition. The approach laid out in the NSbS seeks to balance National Security considerations with ensuring value for money, using the following principles:

a. Compliance with UK Commercial Law and the HM Treasury Green Book ensuring International Competition remains the cornerstone of defence procurement policy; and

b. A UK judgement that exemption from International Competition, under Article 346\(^1\), was required for frigates, destroyers and aircraft carriers, for National Security reasons. This was justified by using the case that “warships” as defined by the NSbS specifically require a Sovereign capability to maintain our Operational Advantage\(^2\) (OA) and Freedom of Action\(^3\) (FOA).

\(^1\) Treaty on the Functioning of the European Union (TFEU), now transposed into UK Law
\(^2\) Operational advantage is the ability to find and maintain an edge over potential adversaries, both to increase the chances of our success in hostile situations and to increase the protection of the UK assets involved, especially our people.
\(^3\) Freedom of action is the ability to determine our internal and external affairs and act in the country's interests free from intervention by other states or entities, in accordance with our legal obligations. This freedom is the essence of national sovereignty.

The Rt Hon Dr Julian Lewis MP
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These principles reflect the judgement that while international competition remains the best way to achieve value for money, a National Security exemption is necessary in the case of destroyers, frigates and aircraft carriers because their design features, complex weapons and sensors fit underpin OA. Further, we need to retain FOA to be able to update, upgrade, repair or build more platforms and systems through life. These OA and FOA considerations mean that design, build and integration must be conducted on-shore, in the UK, from the outset.

In the case of FSS Ships the same exemption from competition regulations on grounds of National Security cannot be made. Since FSS ships will not be fitted with the same complex weapon and sensor systems, nor have the same design features, a specific OA case cannot therefore be justified. Retaining a sovereign capability to design, build and integrate frigates, destroyers and aircraft carriers will also allow us the required FOA to be able to update, upgrade, repair or build other naval ships such as the FSS in the UK, providing resilience in times of conflict. As such, the argument for a restricted competition cannot be made on the same grounds as for aircraft carriers, destroyers and frigates. We are therefore competing FSS procurement internationally, which is judged to be the best way to achieve value for money.

It would be inappropriate for me to comment on the judgements that sit behind the decisions made by France and Italy. I hope however, the above explains the UK’s decision process on whether or not to apply an Article 346 exemption. Going forward, a wider Government decision would be needed for the UK to challenge another Government’s reasoning for applying an Article 346 exemption, which the UK would have to bring to the European Court of Justice for their investigation. In this context, however, it is also conceivable that other Governments have applied exemptions, where the UK has chosen not to, but which are still reasonable in their own National Security context and wholly compliant with TFEU.

With regards the relative weightings of the FSS ships and Type 31e competitions, as these competitions are ongoing, I am unable to comment on the commercial detail. However, I can offer that for the Type 31e, exportability has been designed into our requirement from the outset.

Furthermore, the process for demonstration of value for money in both cases is to consider costs and benefits to UK society as a whole in accordance with HM Treasury Green Book, where the costs and benefits are relevant and without hampering open competition. Prosperity is therefore achieved by selecting the best value for money solution in both the FSS and Type 31e competitions.

STUART ANDREW MP