Annex A: Questions relating to CM8079 – Government response to CAEC **Annual Report**

The paragraph numbers follow those in the Government's Response.

Paragraph 2 – The Government's Arms Exports Review

1. Why is the FCO not in close consultation with DFID as well as with the Department for Business, Innovation and Skills and the Ministry of Defence on its arms exports review?

   The FCO works closely with DFID on arms export controls. DFID was fully consulted on the FCO Review of Export Controls Policy.

2. By what date does the Government expect to have reported back to Parliament on its arms exports review?

   The Foreign Secretary provided an update on the review to Parliament on 18 July through a Written Ministerial Statement. He said that the review concluded that further work is needed on how we operate certain aspects of our export controls. The Foreign Secretary and the Secretary of State for Business, Innovation and Skills (who has responsibility for our export licensing operations) are considering how this should be done. Once that process is complete the Foreign Secretary will update the House on proposals, but we are unable to confirm exactly when this might happen at present.

3. The Government has now chosen to give a particular focus in its arms exports review to "crowd control goods". What arms and categories of arms does the Government consider to be "crowd control goods"?

   There is no comprehensive list of "crowd control goods" but some equipment carries a risk of being used for internal repression (rather than legitimate public order needs or external defence); this includes:

   - **CS grenades, tear gas canisters, crowd control ammunition**
   - **Water cannons**
   - **Anti-riot shields**
   - **Body armour**
   - **Shotguns, small arms, semi-automatic pistols, assault rifles, sniper rifles, submachine guns, and ammunition**
   - **Armoured personnel carriers, armoured fighting vehicles**

4. Why has the Government apparently restricted the scope of its review by giving it a particular focus on "crowd control goods" when no such restriction was made when the FCO Minister Alistair Burt first announced the review on February 18?

The announcement of the review and its focus was made during the Foreign Secretary's appearance before the FAC on 16 March 2011. The focus on "crowd control goods" was a result of incidents during the Arab Spring, as well as the issues raised by the Foreign Affairs Committee about equipment being sold to Gulf states for external defence, and concerns about those states using that equipment against their domestic populations. For example, Mr Baron MP sought a Government commitment to say: "When it comes to those specific arms that can be used against a domestic population, the Government will promise to undertake a full review to ensure that we don't make the mistakes of the past"? Mr Hague confirmed that "We will have a review. There is no doubt about that. The area to concentrate on is the one you are talking about. I will go that far to meet your request".

Paragraph 3 – The Treaty on US/UK Defence Cooperation

1. Will the Government provide the CAEC with the list of "pathfinder" projects to implement The Treaty on US/UK Defence Cooperation when agreed between the UK and US Governments?

Pathfinder projects will be used to test the efficacy and appropriateness of the full range of national processes, practice, guidance and training, which have been developed in consultation with the US, and to test the application and utility of the Treaty ahead of full implementation. There are seven jointly agreed Pathfinder projects; five nominated by the UK and two by the US.

The UK Pathfinder projects are: Chinook, Apache, RivetJoint (UK Air Seeker) and Bowman, with one 'Pathfinder' nomination from Industry (a sale to the US Navy by Aish Technologies Ltd) to test the bilateral nature of the Treaty by exporting equipment from the UK to the US. The US 'Pathfinder' projects are: F22 Raptor engines and V22 Osprey Tiltrotor. In addition, the clearance process required to enable facilities operated by UK non-governmental entities to join the 'Approved Community' will also be tested. Aish Technologies Ltd, Rolls Royce Ltd and Wiltshire Ballistics will provide 'Pathfinder' facilities for the Approved Community process.

Industrial participation in the Pathfinder process is key to ensuring that

the UK MOD and US DoD Industrial partners are similarly prepared for Treaty Implementation. The UK MOD Implementation Team have worked with the Aerospace Defence Security Trade Association to ensure that Government plans for Treaty implementation are understood and that Industry's views are taken into account.

2. By what date does the Government expect to provide the CAEC with its further note on the implementation of the Treaty on US/UK Defence Cooperation? It is hoped that this will be before the Committees start taking further evidence.

The Pathfinders were formally notified to the Defence Suppliers Forum ahead of the 1 September start date for the testing period and were discussed at the National Defence Industrial Association's annual Quadrilateral (UK, Canada, US and Australia) conference on 12 September 2011. Pathfinder testing and Approved Community trials will conclude by November 2011, which will enable the UK and US Governments to determine whether the Treaty's processes are robust and effective. Upon completion of the Pathfinder testing and "Approved Community" trials we will provide a further note to the Committee.

Paragraph 4 – The Performance of the Export Control Organisation

By what date will the Government be reporting its findings following its review of the Open General Export Licence (OGEL) system and whether there will be consultation with outside bodies in the course of the review? It is hoped that the Government will report to the Committees before the Committees start taking further evidence.

The Government has conducted a first phase of the review of Open General Export Licences, which has concluded that there is scope for increasing the use of existing OGELs – with benefits both for exporters and for the ECO – through a number of measures, including: (i) creation of a "plain English" OGEL template; (ii) standardisation of the terms and conditions of OGELs; (iii) improvements to the OGELChecker online self-help tool; and (iv) a study into ways of improving transparency in relation to the use of OGELs. A draft of the "plain English" OGEL has already been shared with industry representatives and their reaction was favourable. We will continue to consult industry and others on an informal basis during the course of the review. We will provide the Committees with a further report at the end of the year.

1. By what date will the Government be starting its full consultation on the possibility of the Export Control Organisation being funded by its customers?

It is hoped that this will be before the Committees start taking further evidence.

We have been discussing with exporters the possibility of charging for export licences. These informal discussions will continue. We will open a full public consultation as and when this becomes a firm Government proposal with a timetable for implementation.

Paragraph 6 – "Brass plate" companies

1. By what date does the Government expect to revert to the CAEC on "Brass plate" companies? It is hoped that this will be before the Committees start taking further evidence.

   The Government (the Department of Business, Innovation and Skills) will update the Committees regarding developments on these issues before the Committees start taking further evidence.

Paragraph 7 – Pre-licence registration of arms brokers

1. By what date does the Government expect to revert to the CAEC on pre-licence registration of arms brokers? It is hoped that this will be before the Committees start taking further evidence.

   The Government (the Department of Business, Innovation and Skills) will update the Committees regarding developments on these issues before the Committees start taking further evidence.

Paragraph 8 – Extra-territorial arms export controls

1. By what date does the Government expect to revert to the CAEC on extra-territorial arms export controls? It is hoped that this will be before the Committees start taking further evidence.

   The Government (the Department of Business, Innovation and Skills) will update the Committees regarding developments on these issues before the Committees start taking further evidence.

Paragraph 9 – Military end-use control

1. Will the Government provide the Committees with details of the UK proposal for an expanded Military End-Use Control and of the EU Commission's Green Paper as part of the preparation for the 2012 review of the EU Dual-Use Regulation?

   The UK proposal would be for an amendment to Article 4(2) of Council Regulation (EC) 428/2009 as follows:

"An authorisation shall be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1, or has reason to believe, that the items in question are or may be intended, in their entirety or in part, for a military end-use. For the purposes of this paragraph "military end-use" shall mean:

Intended for the military, paramilitary, security or police forces in a destination subject to an arms embargo or to an entity involved in procurement, manufacture, maintenance, repair or operation on their behalf.

An authorisation shall not be required if the items in question are medical supplies and equipment, food, clothing and other consumer goods."

The European Commission's Green Paper on dual-use export controls is attached (Flag A).

Paragraph 10 – Torture end-use controls

1. Will the Government provide the Committees with a copy of the letter of 12 April 2011 that the Minister for Business Mark Prisk MP wrote to the EU High Representative, Baroness Ashton, on torture end-use controls and with a copy of Baroness Ashton's reply when available?

   Mark Prisk's letter is attached (Flag B). Although this letter is primarily about the export of drugs to the United States for the purpose of lethal injection, it does specifically refer to torture end-use controls in the final paragraph. We are yet to receive a reply from Baroness Ashton.

Paragraph 11 – Sodium Thiopental

1. Given the further shipments of sodium thiopental for capital punishment executions were reportedly made from the UK to the US during the one month from 28 October until 30 November that it took the Secretary of State for Business, Innovation and Skills to bring into force an Order under Section 6 of the Export Control Act 2002 controlling the export of sodium thiopental from the UK to the United States, given also that under the applicable federal law it is not currently lawful to import sodium thiopental into the United States for medical purposes and also that sodium thiopental is virtually unused for medical purposes in the United States, why did the Government not impose a Control Order immediately for a temporary period whilst the Leigh Day & Co representations were investigated and assessed?

As detailed in our earlier response, sodium thiopental is an anaesthetic which is widely used in medicine throughout the world but is also used by some States in the US to anaesthetise prisoners prior to execution.

From the time that the allegation came to light on 28 October 2010 that some US States had attempted to source sodium thiopental from the UK for the purposes of execution, the Government investigated this case as a priority.

While continually affirming the Government's opposition to the death penalty, Dr Vince Cable, in his capacity as Secretary of State for Business, Innovation and Skills, declined to impose exports controls on the drug immediately, as his primary concern was that he should not take action which might cause delays in the export of a medicine which could be needed by patients.

The Committees are right to cite that the discoveries that it was illegal under applicable federal law to import sodium thiopental into the US for medical purposes, and that sodium thiopental was virtually unused for legitimate medical purposes in the US at that time, were the key developments that led to Dr Cable's decision on 29 November to impose an export control Order.

The Government does not agree that we were slow to act on these facts, which were not known when the issue first came to light on 28 October and were not established upon the commencement of Judicial Review proceedings on 17 November. Indeed our initial research indicated that sodium thiopental is a medicine that is used widely throughout the world and that was borne out by its inclusion in the World Health Organisation's Essential Medicines List. Moreover, prior to the commencement of Judicial Review proceedings we received a witness statement from a practising anaesthesiologist in the US who indicated that, prior to the national shortage of the drug, sodium thiopental was used at least in some parts of the United States, in particular in obstetric anaesthetics.

The discoveries that it was illegal to import sodium thiopental into the US for medical purposes, and that sodium thiopental was virtually unused for legitimate medical purposes in the US at that time, were made by us in the course of our intense research for the Judicial Review.

As soon as these facts became sufficiently clear on the weekend of 27 November, Dr Cable took decisive action to impose the export control Order, which came into force on 30 November.

Paragraph 14 – Compound penalties

1. The Government's Response fails to answer the Committees' recommendation that the Government makes public its criteria used for imposing compound penalties and how the amounts of such penalties are calculated. Will it now do so?

Section 152 of the Customs and Management Act 1979 allows the Commissioners to compound any proceedings under the customs and excise Acts. In effect this allows the Commissioners to enter into an agreement with an offender to settle the matter out of court as an alternative to initiating legal proceedings.

An offer to compound proceedings is only made in cases where there is sufficient evidence that would support criminal proceedings with a reasonable prospect of success.

When considering whether to offer a compound penalty, HMRC takes account of all factors including the seriousness of the offence and the best interests of law enforcement. For instance HMRC would be more likely to offer a compound settlement if the court was likely to impose a small or nominal penalty or the offence resulted from a genuine mistake or misunderstanding.

However, a compound settlement would not normally be offered in cases involving:

- **assaults on, or obstruction of, officers;**
- **persistent offenders;**
- **an offender who is subject to a suspended prison sentence or is on parole for a comparable offence;**
- **other related offences which are being considered by Customs, Police or other government departments.**

HMRC cannot impose a compound penalty and the exporter is under no obligation to accept an offer. If an exporter does not believe that he should pay a compound penalty, or he does not agree that the amount of the penalty is fair or proportionate to the offence, then he can have his case heard in a magistrate's court.

<u>Calculation of the offer to compound</u>

HMRC officers consider all relevant factors in each individual case when calculating the sum to be offered as a compound settlement. Although not exhaustive, the following factors are taken into account:

- **the seriousness of the alleged offence;**
- **whether fraudulent intent can be proven;**
- **the extent of the offender's efforts to perpetrate the alleged offence;**
- **the type and value of any goods involved;**
- **the offender's previous history; and**
- **the level of penalties known to have been imposed by courts for similar offences.**

No compound penalty can exceed the maximum monetary penalty laid down in law for the offence in question.

Paragraph 15- Compound penalties

1. In how many cases to date involving breaches of arms export controls has a publicity clause been included in a compounding agreement?

   All compounding agreements for arms export controls have a standard publicity clause, which sets out HMRC's policy on confidentiality and disclosure in such cases. HMRC's policy is generally not to publicise the names of individuals or companies accepting compound settlements. However, we reserve the right to publicise details where there is an over-riding public interest.

This is a longstanding Government policy, the details of which are set out in Hansard in a written statement by the then Economic Secretary to the Treasury, Mr Peter Lilley on 26 April 1989 (column 560). The text of this statement is reproduced below.

> ***Hansard: 26 April 1989 (column 560)***
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> **Customs and Excise Management Act 1979**
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> **Mr. Quentin Davies :** To ask the Chancellor of the Exchequer if he will make a statement on the circumstances in which the commissioners of Customs and Excise will disclose particulars of cases where proceedings for offences are compounded under section 152 of the Customs and Excise Management Act 1979.

Mr. Lilley : Section 152 of the Customs and Excise Management Act 1979 is the most recent re-enactment of the commissioners' long-standing power to compound proceedings, that is to offer an alleged offender the option of paying a penalty out of court rather than be prosecuted. This power is used to resolve the majority of customs or excise offences, and enables them to be dealt with efficiently and effectively without burdening the courts or tying up Customs staff in lengthy court hearings. Hitherto, details of compounded settlements have not usually been made public. The commissioners, having reviewed their policy on disclosure of compounded settlements, have decided that in respect of settlements made on or after 1 June 1989, details will be disclosed in the following circumstances :

It will be the Commissioners' invariable practice to disclose details

to other Government Departments whose statutory

responsibilities are directly affected ; and

(b) to the courts for sentencing purposes after conviction, in cases where there has been an earlier compounded settlement for a similar matter within the time limits specified for offences by the Rehabilitation of Offenders Act.

The commissioners will also disclose compounded settlements under two other circumstances

(c) to employers when it is apparent that

the nature of the employment has facilitated the offence ; or (

where drugs offences or indications of serious alcohol abuse are involved, the nature of the employment or duties requires a high degree of unimpaired judgement or faculties.

(d) in response to enquiries from Parliament or the media about cases which have excited public attention, if disclosure is considered to be in the public interest.

In all cases, persons considering an offer to compound for an alleged offence will be warned when the offer is made that details of the settlement may be disclosed in the circumstances set out at (a) to (d) above.

The commissioners have considered the recommendation of Lord Keith

of Kinkel's committee on the "Enforcement Powers of the Revenue Departments" (Cmnd. 9440), that the names of all persons making compounded settlements and particulars of the settlements should be published, subject to discretion to withhold the names of persons making full spontaneous voluntary disclosure of their offences. The policy now to be adopted reflects the commissioners' conclusion that, other than in the particular circumstances already described, it would

(cont... *Column 561)*

not be equitable or make the best use of their resources or those of the courts to depart from the present general principle of non-disclosure. The commissioners' general policy of non- disclosure of details of their dealings in individual cases will therefore continue to apply to cases which do not come within the circumstances described above.

I am satisfied with this outcome of the commissioners' review.

Paragraph 16 – The Arms Trade Treaty

1. In what specific ways is the UK continuing to play a leading role in the UN process of the Arms Trade Treaty so that an effective, legally binding international Treaty is secured?

   The UK has maintained its leading international position on an Arms Trade Treaty (ATT) in a number of ways; including bilateral outreach, active engagement in the Preparatory Committee meetings and through proactive multilateral interaction with the P5 and the EU. Significant funding for ATT related projects has also been provided, covering areas such as capacity building in developing states and research into technical aspects of the Treaty. The UK will continue to play a leading role as efforts intensify ahead of the crucial Negotiating Conference in 2012.

Paragraph 17 – The Arms Trade Treaty

1. Which of the other Permanent Members of the UN Security Council – namely China, France, Russia and the US – are, like the UK, also committed to achieving the strongest possible Arms Trade Treaty with the broadest possible scope, including ammunition?

The recent Preparatory Committee meeting in July saw the first joint P5 statement in support of the UN process on an ATT. **France and the US are firmly committed to securing a strong ATT, covering all conventional weapons. However, the US still has concerns about the inclusion of ammunition in an ATT's scope. Russia and China still have some significant concerns about an Arms Trade Treaty, and have different views on what should constitute the Treaty's final scope.**

2. Will the Government provide a further note to the Committees on what it considers would be the most effective way in which the Arms Trade Treaty could address the issue of corruption? It is hoped that this will be before the Committees start taking further evidence.

   The Government is still considering the most effective way of addressing the issue of corruption in the context of an ATT. It may be that this could be achieved most effectively through the Treaty's implementation mechanisms, by introducing a requirement for signatories to take necessary measures to combat corruption in relation to arms transfers covered by an ATT. However, the Government remains open to other suggestions regarding how an ATT could address this issue effectively.

Paragraphs 19 and 20 – Bribery and corruption

1. Will the Government confirm that if it becomes aware of corruption in arms deals it will, regardless of whether there is a risk of diversion or re-export under Criteria 7, take appropriate action under the provisions of the Bribery Act 2010?

   Yes. The Serious Fraud Office (SFO) has lead responsibility for investigating and prosecuting foreign bribery. They decide whether or not to pursue an investigation, in collaboration with the City of London Police's Overseas Anti-Corruption Unit. The Government, civil servants and the public should report allegations of bribery and corruption by companies or individuals directly to the SFO (e-mail: OverseasCorruption@sfo.gsi.gov.uk). They are also able to discuss issues informally http://www.sfo.gov.uk/bribery--corruption/the-sfo's-response/where-should-i-report-corruption.aspx.

Paragraph 24 Saudi Arabia and Yemen

1. Why does the Government consider that, notwithstanding the events this year, in Bahrain, Saudi Arabia and Yemen, that the arms and components of arms that could be used for internal repression and which have been approved for export to Saudi Arabia and Yemen, as detailed in Annex 4 of the

Committees' Report, remain in line with the Criteria and have not therefore been revoked by the Government?

Events of the Arab Spring have underlined the importance of ensuring that exports of UK defence equipment are subject to careful scrutiny. The Government takes its export responsibilities very seriously, and operates one of the most rigorous arms export control regimes in the world. All export licence applications are considered against the Consolidated EU and UK Export Licensing Criteria on a case by case basis, and in the light of prevailing circumstances. We pay particular attention to allegations of human rights abuses in our assessment. Each assessment takes into account the intended end use of the equipment, the behaviour of the end user, the risk of diversion and the prevailing circumstances in the country concerned.

The Government reacted quickly to events of the Arab Spring, reviewing all licences to all countries affected, including Saudi Arabia, Bahrain, Syria, and Yemen. The Government moved swiftly to revoke licences where evidence existed that licences were no longer in line with the Consolidated Criteria. As the decisions to revoke licences demonstrate, our export licensing policy and process allow us to respond quickly and robustly to changing facts on the ground. Furthermore, one licence covering sporting gun ammunition for Syria was in fact revoked following the introduction of sanctions.

At review, each application was considered against the Consolidated Criteria on a case by case basis taking into account the circumstances in the country concerned, the end user, and the likelihood that the product could be used to support internal repression. Revocations are also dependent on the number and type of goods reviewed which vary from country to country reflecting the export applications received and approved. For some countries like Syria and Yemen a small number of applications are received, and pre-existing concerns led to there being very few extant licences to review.

The reviews identified that there were significant differences between how Arab Governments reacted to the call for reforms. For example, the Syrian army's brutal repression of Syrian protestors differed markedly from the actions of the Saudi Arabian National Guard troops. We have no evidence that Saudi forces who were deployed to Bahrain as part of the Peninsula Shield Force, at the request of the Bahraini Government, did anything other than protect key installations.

Where a review was prompted by the repressive actions of law enforcement officials policing demonstrations in a country, it was consistent with the Criteria that licences for end users who had no role in policing demonstrations and were unlikely to help police demonstrations in the future, should remain in place.

The reviews also recognised that some types of equipment may be associated with far greater risks than others. For example machine guns could be

deployed for internal repression far more easily than components for naval equipment. The Criteria were applied consistently, but the different circumstances, including in relation to the issues referred to above, meant that different conclusions were reached as regards different countries and end users. This result is inevitable given the case by case analysis we conduct.

In line with our standard export licensing policy for all destinations the Government continues to monitor the situation across the Middle East, and will continue to take into account any changes in circumstances in its assessment of future export licence applications or further reviews of existing licences.