

7th September 1998

Open Letter To:

Scott Enquiry Follow Up Unit
Export Control Organisation
Department of Trade and Industry
Bay 656, Kingsgate House
66-74 Victoria Street
London SW1E 6SW

Dear Sir/Madam,

White Paper on Accountability in Strategic Export Controls

I am writing to express a view on the White Paper on Accountability in Strategic Export Controls that was published earlier this year.

While it serves nobody's interests to support the development of weapons of mass destruction, it is nevertheless vital to ensure that any controls that are introduced clearly impede such developments without having an impact elsewhere that makes them counterproductive. In particular it will be important to ensure that controls do not harm genuine civil and commercial trade or the development of open international markets for civil products. It is also vital to ensure that they do not undermine the long established academic and personal freedoms enjoyed by UK citizens.

The following paragraphs cover a number of specific elements of the White Paper where I have observations.

Purpose of Strategic Export Controls (2.2)

I strongly support the concern expressed by Sir Richard Scott about the lack of clarity in export control objectives. This has been a major problem in an area in which I work – cryptography – where the real reasons for export controls have even been kept secret for many years with no justification. As Sir Richard's report makes clear, all future export controls must meet precise objectives that are fully and openly stated.

Within this section of the paper a number of policy objectives are set out for controls but these vary widely in their precision. Some of these are sensible, others less so, and one in particular – the need to meet the UK's international obligations under 'arms embargoes and international control regimes' – will inevitably lead to the very lack of clarity which Sir Richard Scott has criticised.

If a control is required under an international obligation then it will either fit within one of the other headings or a new specific heading is needed. To have a 'chicken and egg' list item that says, in effect, that 'we need to control laws to implement controls' is far too vague and invites the very problems that Sir Richard has identified. It also invites the introduction of controls that have not been justified within a national UK context.

This clause should therefore be removed and replaced by a specific clause or clauses to meet any requirements that the current clause seeks to meet.

The Need for Effectiveness Criteria for Export Controls

For many purely military products the aims of export controls and their effectiveness will be immediately evident.

For 'dual-use' goods and technologies, however, the operation of effective controls is far more difficult since these can (and sometimes do) have detrimental impacts on legitimate civil and commercial trade. In such situations it is important to ensure that the benefits of a control demonstrably outweigh any detrimental impact that it will have on civil and commercial use. Criminals, terrorists and belligerent nations find many widely available goods very useful but this alone does not provide a sufficient reason for controls. In deciding whether to control particular products or technologies it is important to show that:

- The control envisaged is capable of achieving the objective for which it is being proposed;
- It will be efficient and effective for this purpose within the context in which it will operate;

- It will not be undermined by factors over which the UK has no influence or control;
- The benefits it will provide are demonstrably worthwhile in the light of the costs of its operation and the 'lost opportunity' costs that result from any impact it will have on legitimate civil or commercial use.

For example, criminals and terrorists use telephones but their availability is not controlled because the costs to society of a controlled market for telephones would far outweigh any conceivable benefits in trying to stop criminal or terrorist use.

The legislative and administrative regime within which export controls operate should require such assessments as a pre-requisite to the introduction of any controls. This rigour should also be applied to all controls on a continuing basis, with any that do not meet these criteria being removed.

Such an approach will ensure the clarity of purpose sought by Sir Richard Scott and will also ensure that the controls that are operated are truly effective and truly worthwhile.

Extension of Export Controls to the Transfer of Technology by Intangible Means

Although it might seem that the ability to transfer technology by intangible means provides a loophole in existing controls, a little more thought suggests that the extension of export controls to intangibles will be fraught with serious difficulties.

First of all, the term 'intangible goods' covers a very broad and ill-defined scope. This term could apply just as well to a scientist in an international electronic conference discussing new techniques for stellar navigation (which might conceivably be used in a future missile system) as it could to an electronic blueprint for a missile system. And, whereas it might be sensible to control the latter, any attempt to control the former would be a massive infringement of academic and personal freedom. Yet there is no easy way to set a clear dividing line between these two activities.

Equally the construction of an agricultural chemical plant or the construction of a computer based ambulance control system for overseas clients will involve the exchange of many ideas (i.e. intangible goods) that are the same in principle as those that would be exchanged if the intended uses were military rather than civilian. In practice, therefore, it is not likely to be possible to introduce controls on intangible goods without having a massive and highly detrimental impact on genuine civil and commercial trade.

Intangible export controls will be highly counterproductive for the UK and stand to damage an area where the UK has considerable strength in international markets. In modern times the UK has been strong on ideas but less strong in its ability to translate ideas into products. This situation is well understood by many companies and this has meant that they have either located their research and development laboratories here or they have contracted such work with UK companies and universities.

In consequence, although we associate many of the products we buy with other countries, if we were to take a closer look at many of them we would find that much of their design and development was actually undertaken here. UK based design work is at the heart of such things as mobile phones, advanced computer and telecommunications systems, virtual reality and computer imaging systems, computer games and much, much more. In the computer games world, for example, where we see consoles manufactured abroad, many of the games themselves are the result of design and development work done by highly innovative UK companies.

A free and unconstrained international market in intangible goods has been an essential element in the success of UK companies in these areas. Moreover, these UK strengths, combined with the increasing importance of 'information based' economic activities, will mean that our prospects for the future are especially bright. But the introduction of export controls on intangibles will put all of this at risk.

Controls on intangible exports will also create other difficulties since ideas that are published in books will (presumably) not be controlled whereas the identical ideas in electronic form will be. One country – the United States – attempts to make just this distinction for cryptography and the result is truly dire in that there are now continuous and costly legal disputes to try and determine when something is subject to control and when it is not. In fact US companies wishing to export cryptographic software do so by publishing it in books which are then exported so that the software can be recreated in other countries. The result has been that the controls have been completely ineffective for their intended purpose and have served only to place intolerable burdens on US industry.

In practice many US companies have simply moved their cryptographic research and development overseas so the real result has been to export high technology jobs from the United States to other countries. Given the strength of the UK in advanced design and development, the introduction of similar controls in the UK would have exactly the same effect here and would simply mean that the UK would quickly lose its markets for advanced technology design and development without securing any real benefits in return.

And there are even more serious dangers. Once ideas in electronic form become subject to control there will be an inevitable temptation to extend these controls to the same material in published form. And since terrorists and criminals exist in the UK as well as overseas the next step will be to extend controls to the publication and exchange of ideas within the UK. Once we allow the government to control ideas, however limited, we are on a slippery slope towards the complete state control of ideas and history shows only too well where this will lead. This is simply too big a risk to take whatever the gain.

In actual fact new legislation is unnecessary anyway since there are already laws (such as, for example, the Official Secrets Act) which prevent the export of intangible goods and ideas where such actions would be prejudicial to the interests of the UK. Hence there are no really new requirements here and this must lead to a suspicion that there is more behind the proposals on intangible goods than is being admitted in public. Indeed these proposed measures are so ill conceived as to suggest that some forces within government are seeking to use Sir Richard Scott's proposals for their own ends.

Conclusion

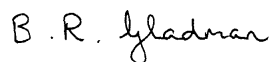
In conclusion I support Sir Richard Scott's desire to see greater clarity of purpose in export controls and greater precision to ensure that they are both efficient and effective in operation and not harmful to genuine civil and commercial trade and the development of open international civil markets.

However, the extension of export controls to intangible goods is a thoroughly bad idea. This is wrong in principle, unworkable in practice and will cause immense harm to the future economic health of the UK as an 'ideas' nation. Worse still this will turn the clock back on centuries of hard fought progress in establishing the democratic rights of UK citizens and their personal and academic freedoms.

Any nation that gives its government the ability to control ideas, however limited, is taking the first step on the slippery path towards an authoritarian state. For all its inadequacies, the line between tangible and intangible goods is at least easy to distinguish and implement. Any conceivable dangers that society faces because intangibles are not controlled are infinitesimally small when compared with the dangers of giving any government the ability to control the ideas expressed by its citizens.

I simply cannot believe that this is a step that Sir Richard Scott intended to advocate.

Yours sincerely,



Dr Brian Gladman