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# EU Enlargement: Implications for EU and Multilateral Export Controls

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The actual and potential proliferation of weapons of mass destruction (WMD) remains the defining international security imperative. While states such as North Korea continue to advance their unconventional weapons capability, the threat of terrorist use of WMD complicates nonproliferation efforts. While securing nuclear, chemical and biological materials on-site is a key nonproliferation strategy, contemporary proliferation is driven less by theft than by purchase.<sup>1</sup> States and sub-state actors seek to acquire WMD-relevant goods and technologies by exploiting export control loopholes, such as inadequately enforced transshipment points, meager intelligence resources, and disparate compliance practices among key supplier states.

In large measure, U.S., European, and multilateral export controls were strengthened as a consequence of learning of the West's complicity in arming Iraq.<sup>2</sup> Nowhere is this response more dramatically apparent than in Europe. While individual countries, such as Germany, significantly improved their national export control systems, it was at the level of the European Union (EU) that export controls underwent their most radical change with the creation of a dual-use export control regime. As part of the

European Community, the dual-use regime is based on an EU regulation that is part of the *acquis communautaire*.<sup>3</sup> As such, it is binding on all member and prospective member states. In other words, the incoming EU countries will have to adopt this regulation in full. However, export control systems in the candidate countries are, comparatively speaking, less developed than those of the current 15, thereby creating potential weak points in the newly expanded internal market. Furthermore, only three of the four candidate countries among the Visegrád states are members of all the multilateral export control arrangements.

The implications of EU enlargement for international export control efforts are twofold: 1) the inclusion of relatively weaker export control systems represents a distinct proliferation risk, and 2) the disparate multilateral export control regime membership of the candidate countries may force reform issues on these limited arrangements. In light of these possible outcomes, this essay examines the current status of the export control system of the EU and the development and assistance efforts in the accession states. Thereafter, the logistical and policy ramifications of multilateral regime membership are addressed, with par-

ticular emphasis on the accession of regime nonmembers. Lastly, we conclude by suggesting that the export control challenges posed by an enlarged Europe may offer another venue to ameliorate and seek a consensus on common security threats at the European and multilateral levels.

### **THE EU DUAL-USE EXPORT CONTROL REGIME**

The matter of EU-wide export controls was initially raised with the completion of the Internal Market—i.e., the abolition of intra-EU borders. The integration of economic and political structures led to the forfeiture of traditional areas of national control, such as monetary policy and border restriction, thereby creating a unique opportunity to coordinate nonproliferation policies effectively. However, the abolition of internal borders, while economically advantageous, is not necessarily so from a security standpoint.<sup>4</sup>

Coinciding with the move to an Internal Market was the dissolution of the Coordinating Committee for Multilateral Export Controls (COCOM) and reports of inconsistent and inattentive national export control policies.<sup>5</sup> Publication of the *Scott Report* in the United Kingdom (UK) and the German “Rabta Affair” prompted high-level attention to the pressing need for an EU-wide system of export controls.<sup>6</sup> These and other undesirable transfers focused policymakers’ attention on the emerging proliferation threat posed by the practical and theoretical abolition of national borders. The current system of dual-use export controls is the result of increased nonproliferation awareness among member states and arduous intergovernmental bargaining.<sup>7</sup>

In 1992, the Commission of the EU—the main executive body—conducted an investigation of the state of national export control systems. In the study, the Directorate Generale III documented differences in the following areas: licensing procedures and criteria, size of restricted countries and goods lists, penalties for export violations, export agencies personnel and technical capabilities, and degree of information sharing among customs, enforcement, licensing, and intelligence bureaus. Furthermore, DG XVII (Energy) surveyed member states’ nuclear control lists. As all EU members were Nuclear Suppliers Group (NSG) and former COCOM members, identical lists were to be expected. The survey, however, revealed extraordinary variations. For example, examination of the French list revealed the absence of 14 items from the complete list of 72; Belgium lacked 20 and Spain 24.<sup>8</sup>

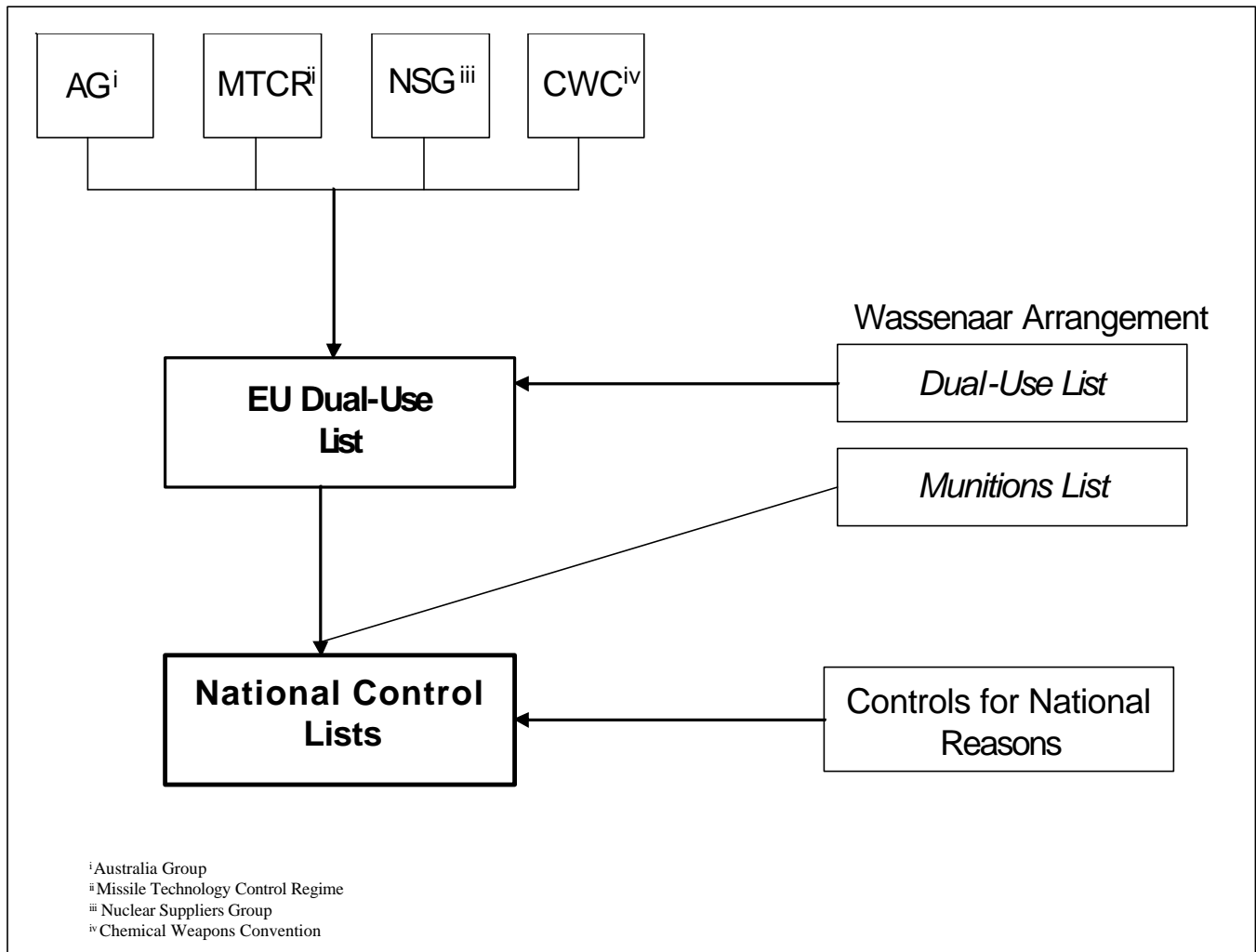
The commission concluded that, should divergences be eliminated and equal competitive conditions ensured, certain elements of national export control systems would need to be harmonized to ensure that each was equally effective. The commission then submitted a proposal to the Council of the European Union on standardizing elements of national systems of control. The proposal was strictly limited to those changes necessary to meet requirements essential for completion of the internal market system. Accordingly, arms exports would not be included in the proposed system; it would address only trade in dual-use goods.<sup>9</sup>

In 1994, the council adopted an export control regime for dual-use goods: a two-pillar system consisting of Council Regulation (EC) No 3381/94 and Council Decision 94/942/CFSP. The two major elements of that regime were, on the one hand, a common product list and, on the other, the principle of mutual recognition of export licenses. At the time of its adoption, the regime was considered to be transitory in nature. In July 2000, Council Decision 94/942/CFSP and Regulation (EC) 3381/94 were replaced by Council Decision 2000/402/CFSP and Regulation (EC) 1334/2000, reforming the community regime for the control of dual-use exports.<sup>10</sup> The reasons for this change were because of legal, practical, and policy problems inherent in the inter-pillar approach.<sup>11</sup> For example, implementation of the catch-all clause created multiple problems. Since the clause was an innovation for most member states, practical application differed widely from country to country. According to the commission, the main problem was the different degree to which governments inform their exporters about sensitive end users. This diversity raised questions of distortion of competition and put the effective enforcement of the catch-all clause in doubt. The commission therefore recommended that member states “improve significantly their information-sharing on sensitive end-users with a view to ensuring that a similar degree of guidance is given to exporters throughout the Community.”<sup>12</sup>

The aim of the new regulation is to simplify and strengthen the regime by facilitating legitimate trade and allowing resources to be concentrated on controlling sensitive exports and combating fraud.<sup>13</sup> The major differences are as follows:

- Dual-use items: The common list of dual-use items subject to controls is now contained in Annex I of the regulation, and is no longer the subject of a CFSP decision (see Figure 1). This list, drawn up in full conformity with the obligations and commitments

FIGURE 1  
EXPORT CONTROL REGIME



that each state has accepted as a member of the relevant international nonproliferation regimes and export control arrangements, or by ratification of relevant international treaties, will be updated according to developments in such regimes, arrangements, and international treaties.

- Creation of a general community license for certain exports: The regulation consolidates the substantial de facto convergence of member states' licensing policies vis-à-vis Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the United States, as well as those Central and Eastern European countries applying for membership of the European Union with whom accession negotiations began on March 31, 1998, and which are also very advanced in terms of effective export control legislation and membership

in the relevant international nonproliferation regimes—namely, the Czech Republic, Hungary and Poland. This de facto convergence is translated into a harmonized community license, an approach intended to reduce the complexity of the present regime and cover a considerable volume of trade, estimated to account for more than 70 percent of exports of these dual-use goods from the community. However, the most sensitive dual-use items are excluded from the benefit of this General License.

- The legal basis: The European Court of Justice, in two rulings of October 17, 1995 (C-70/94 and C-83/94), clearly established exclusive community competence for export controls concerning dual-use goods. The court explicitly stated that neither the particular nature of the goods nor the fact that the control mea-

asures are taken in light of foreign policy or security considerations prevent Article 133 from being applicable. However, the court has also ruled that Article 133 does not preclude national measures regarding export controls, provided this is done on the basis of a delegation of powers by the EC and within the limitation posed by Regulation (EEC) No 2603/69.<sup>14</sup> The regulation therefore strikes a balance between the principle of community competence and the legitimate concerns of member states to remain in control of matters relating to their national security.

- Catch-all clause: the catch-all clause extends to all military end uses for exports to countries subject to an EU, Organization for Security and Co-operation in Europe (OSCE), or United Nations (UN) arms embargo.
- Coverage of technology transfer by computer, fax, and telephone: The regulation closes the loophole in current legislation whereby these means of communication (i.e., intangible transfers of technology) escape authorization requirements.

Perhaps the most novel and important innovation in this context is the inclusion of a consultation mechanism on undercutting, a facility steadfastly absent from the Wassenaar Arrangement. According to Article 9.3, any member state, before granting “an export authorization which has been denied by another member state for an essentially identical transaction within the previous three years, ...will first consult the member state or states which issued the denial(s). If following consultations, the member state nevertheless decides to grant an authorization, it shall inform the other member state and the Commission, providing all relevant information to explain the decision.”<sup>15</sup>

While the EU has not developed a common export control policy per se, the decade-long effort to construct a common framework for dual-use exports has resulted in a more harmonized environment of national systems, integrated by common licensing categories, procedures, and institutionalized exchanges on information. By being conducted at a European level, past discrepancies and disparate procedures between national export control systems throughout the EU have been rectified to a significant degree. This EU-led export control harmonization effort has taken the better part of a decade, involving countries familiar with COCOM-standard export controls. The critical issue facing European export control efforts, therefore, is the degree to which the candidate countries in East and Central Europe can meet EU

standards while not undermining the openness of the internal market.

### **EXPORT CONTROLS IN THE FORMER EASTERN BLOC**

Thirteen countries have applied to become new EU members: 10 of these countries—Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia—are set to join on May 1, 2004, bringing to 25 the number of states operating in a borderless economic area. Bulgaria and Romania hope to join by 2007, while Turkey is not currently negotiating its membership.

From an export control perspective, the majority of these countries were former targets of COCOM and began export control development efforts only within the last decade. As such, despite considerable U.S. and, to a lesser extent, European assistance, many of these systems do not meet regime or EU standards. For example, in a year 2000 report updating the EU Commission on its progress toward standardization, the government of Malta noted regarding export controls that “Malta is not a member of any of the non-proliferation regimes and does not apply controls on the full range of products covered by the EU export control regime on dual-use goods. In this area, as others, Malta will have to assume the obligations of the *acquis communautaire*.”<sup>16</sup>

A recent report on the export control records of the candidate countries concludes: “[The] countries of Central and Eastern Europe, including several that are candidates for EU membership, have long been a major source of weapons flows to human rights abusers, conflict regions, and clients suspected of diverting weapons to unauthorized destinations. There has been some recent progress to tighten controls, but serious problems remain.”<sup>17</sup>

In an October 16, 2001, letter to commission president, Romano Prodi, the U.S. Mission to the EU expressed concern that the aspirant states “set up and enforce effective export control systems.” Specifically, the letter mentioned the problem of transshipment through weaker control areas in the expanded community.<sup>18</sup> In terms of accession priorities, export control coordination does not rank among the leading issues. For instance, in annual reports from the commission on a country’s progress toward accession, the export control portion of the *acquis* receives, at most, a paragraph. Furthermore, the wording in several of the reports is nearly identical.<sup>19</sup> For instance, following are excerpts from the 2002 reports for Estonia, Latvia, Malta, and Slovakia:

- *Estonia*. With regard to alignment with the *acquis* in the area of dual-use goods, no new developments can be reported. Estonia keeps the industry regularly informed of developments in this field and has developed bilateral contacts with EU Member States to exchange best practices on export control issues. Efforts are also ongoing to train customs officials. (p. 109)
- *Latvia*. With regard to the *acquis* in the area of dual-use goods, legislation on a new list of strategic goods entered into force in March 2002. The new legislation on controls regarding export, import, and transit of dual-use goods will provide further alignment to the *acquis*, although full alignment to the *acquis*, in particular the general export authorizations, can only take place upon accession. Latvia keeps the industry regularly informed of developments in this field.
- *Malta*. With regard to the *acquis* in the area of dual-use goods, regulations on the export control of dual-use items were issued under the National Interest Act and came into force in January 2002, and Malta adopted regulations to transpose the most recent *acquis* in July 2002. An exercise was carried out to identify exporters who could be potentially affected by dual-use legislation in order to advise them accordingly. Full alignment to the *acquis* in this field, in particular the general export authorizations, can only take place upon accession. (p. 99)
- *Slovakia*. With regard to dual-use goods, a law entered into force in February 2002, which largely aligned the Slovak legislation with the EU *acquis* in this area, including lists of controlled goods. Slovakia keeps the industry regularly informed of developments in this field and has developed bilateral contacts with the EU Member States to exchange best practices on export control issues. (p. 113-114)

Much of the export control development efforts in the candidate countries—such as passing laws and creating bureaucracies—have taken place largely on paper. In Bulgaria, for instance, Prime Minister Simeon Saxcoburggotski recently fired two deputy defense ministers because of illegal exports of military hardware by a Bulgarian defense industry firm to Syria.<sup>20</sup> In response, the Bulgarian government sought to reassure both NATO and EU officials of Sofia's commitment to export control reform.<sup>21</sup> Nevertheless, serious doubts remain. Assistant Secretary of State for European and Eurasian Affairs, Robert Bradtke, testified before a U.S. congressional

committee that: "It's important that the government of Bulgaria take steps to reform its export control system. This system is on paper very good. The laws are good. But there's difficulty in implementation. There's inadequate training of the customs inspectors. There are procedures that exist on paper that aren't followed in practice. There are laws dealing with dual-use exports that are just not being implemented and followed through on. So beyond this particular case and beyond the problems of this case, we have also focused our efforts on trying to urge the Bulgarians to reform their system and take steps to strengthen their export controls."<sup>22</sup>

Irresponsible weapons transfers from Central and Eastern Europe in the post-Cold War era are commonly attributed to the weakening of state structures and economies and to the emergence of powerful criminal elements in the region.<sup>23</sup> The difficult economic transition, coupled with scarce government resources, significantly limits the ability of national governments to maintain and exercise robust export control regimes.<sup>24</sup> Training for enforcement officials is, at best, minimal and foreign supplied. Customs officials at the Port of Riga, for example, lack the staff and training to police one of busiest container ports in Europe.<sup>25</sup> These deficiencies do not go unnoticed by states and organizations seeking conventional military and dual-goods and technology.

According to an annual report of the Czech counter-intelligence service, Czech intelligence and security officials are concerned that Iranian businesses might try to acquire dual-use technologies in the Czech Republic. Citing an earlier case of an Iranian military attaché expressing interest in certain unnamed important complexes and state institutions, Czech authorities have commented that since September 11, 2001, the interest of Iranian and other Islamic intelligence services has increased.<sup>26</sup> In Slovakia, Wadih el-Hage, the al Qaeda member convicted in the 1998 U.S. Embassy bombings in Africa, said during his New York trial that he purchased spare tractor parts and shopped for bitumin, urea, and nitrogenous fertilizer in Slovak towns.<sup>27</sup>

With respect to conventional weapons control, the end of the Cold War left East Bloc countries with massive stockpiles of unused Soviet-era weapons and economies reeling from the dissolution of Comecon. In recent years, billions of dollars worth of weapons have passed out of Eastern Europe into third-world conflict zones.<sup>28</sup> Several illegal weapons transfers to Iraq have been uncovered in post-communist Europe during the past few years, and experts on organized crime estimate that most are still

successfully hidden. Last year, despite pressure from NATO allies, the Czech Republic officially sold 20 L-39 Albacross light jet fighters to Yemen, a country notorious for reselling weapons to embargoed states such as Sudan.<sup>29</sup>

Enlargement will also push the EU's borders to Russia and, through Cyprus, the Middle East, thereby linking proliferation supply and demand. Consequently, the size of the borderless single market will more than double. The threat of transshipment and illicit re-export of dual-use goods and technologies will increase correspondingly. The significance of the transit risk for Lithuania, for example, is unique in that it borders Kaliningrad. Trains from Russia via Belarus and, to a lesser extent, Ukraine and Belarus are not inspected when transiting Lithuania en route to Kaliningrad.<sup>30</sup> Controls over goods transiting to and from Kaliningrad via Lithuania could worsen as Lithuania approaches EU accession.<sup>31</sup> Hoping to turn the territory into a Russian Hong Kong, Moscow made Kaliningrad—roughly half the size of Belgium—into a free-trade zone. A relatively porous border between Kaliningrad and its two neighbors was also maintained to encourage trade.<sup>32</sup> But with Lithuania and Poland now preparing for imminent entry into the European Union, the visa-free regime will be phased out. As a first step, both countries will have to demand visas from Russian citizens, including Kaliningrad residents. At present, Poland has no visa requirement for Russians. Lithuania, which does, makes an exception for Kaliningrad.

Almost totally reliant on the military during the Soviet era, Kaliningrad now depends on cross-border smuggling and the so-called gray economy to stay afloat. A recent EU report estimated that illegal activities such as trafficking in drugs, cars, amber, and human beings provides up to half of the enclave's wealth.<sup>33</sup> Lithuanian customs officials acknowledge that corruption is a problem on both sides of the border. Although a new procedure regulating the import, export, and transit of nuclear materials entered into force in December 1999—the procedure was adjusted to meet EU legal standards and will remain in force until Lithuania is accepted for membership in the EU—enforcing transit controls remains a technical as well as procedural weakness.

While comparatively weaker controls and the transit threat ensure that export controls in a newly expanded European Community will remain a critical nonproliferation challenge, the inclusion of the candidate countries into the EU's dual-use export control regime will also force a re-examination of the membership questions currently vexing the multilateral export control arrangements.

## ENLARGEMENT: EXPORT CONTROL REGIME IMPLICATIONS

Ironically, the expansion of the community will create new divisions. Of the 10 countries in line for 2004 accession, only 3 are members of all of the multilateral export control arrangements (MECA), 3 are a member of none, and the rest are members of one or more (see Table 1). This division may conflict with the letter and spirit of the EU dual-use export control regime, especially the year 2000 updated regulation with its emphasis on liberalized intra-EU trade. Specifically, under Regulation 1334/2000, the number of items that need authorization for intra-community transfer has been reduced by two-thirds. Moreover, the new regulation offers greatly simplified application procedures for exports to allied and friendly countries. In fact, the community General License implies an almost complete liberalization of exports of about 95 percent of all dual-use items to destinations listed in Annex II. For these items and these destinations, member states *have* to grant a Community General License to exporters who request it and can no longer impose an individual license.<sup>34</sup> An additional legal problem (more political than security related) posed by the accession of regime non-members is the legal link between the EU and the export control regimes. The EU Regulation comprises a common list of items subject to control directly derived from the consensus decisions taken in the regimes. Hence, non-members will essentially have no voice in the articulation of law to which they are beholden.

The problem posed by increasingly liberalized intra-EU trade in dual-use goods and technologies in the expanded community is weaker export control systems to the East and, therefore, the increased risk of transshipment. While trade in regime-controlled items with, for example, Malta—currently a non-EU/regime member—from an EU member state, would undergo a high degree of scrutiny. However, as an EU member, trade in listed dual-use items with Malta would operate under a strong assumption of approval in all but the most sensitive items. In other words, there could be a fundamental clash between multilateral regime adherence and community law. As noted in a 1998 study of EU expansion and the Missile Technology Control Regime (MTCR): “If any of the candidates join the EU without joining the regime (MTCR) first, their entry into the single market will increase the danger of missile technology being transshipped from the EU's MTCR member states, via the Union's non-MTCR member states, to missile projects in countries of proliferation concern.”<sup>35</sup>

TABLE 1  
MULTILATERAL EXPORT CONTROL REGIME MEMBERSHIP IN THE CANDIDATE COUNTRIES

	Australia Group <sup>i</sup>	MTCR <sup>ii</sup>	NSG <sup>iii</sup>	Wassenaar Arrangement	Zangger Committee <sup>iv</sup>
<b>2004 Candidates</b>					
Cyprus	•		•		
Czech Republic	•	•	•	•	•
Estonia					
Hungary	•	•	•	•	•
Latvia			•		
Lithuania					
Poland	•	•	•	•	•
Malta					
Slovakia	•		•	•	•
Slovenia			•		•
<b>2007 Candidates</b>					
Bulgaria			•	•	•
Romania	•		•	•	•
<b>Indefinite</b>					
Turkey	•	•	•	•	•

<sup>i</sup> The European Commission also participates in Australia Group meetings.

<sup>ii</sup> Missile Technology Control Regime; countries pledging to abide by MTCR guidelines include the People's Republic of China, Israel, Romania, and Slovakia.

<sup>iii</sup> Nuclear Suppliers Group; the European Commission is a permanent observer.

<sup>iv</sup> The European Commission is a permanent observer.

The new members of the multilateral export control regimes, including former Warsaw Pact members (Eastern Europe, Russia, and the states of the former Soviet Union) have very limited institutional capacity and resources to meet the compliance guidelines set forth in the regimes. There has been a tendency and desire by some in Europe and the United States to reward Eastern European countries with membership in the regimes for political reasons, and to do so before these countries have demonstrated an ability to implement and enforce controls.<sup>36</sup> Furthermore, many of the candidate countries are concerned that regime exclusion will limit their ability to police their borders effectively because they will not be part of the regimes' information sharing networks. An Estonian government official, for example, explained that

Estonia's exclusion from of any of the export control regimes:

...[h]as started to obstruct the normal development of an Estonian export control system. Because we are not members, we obviously are not participating in the regimes' internal information sharing processes. This continuing lack of information may pose a danger, insofar as Estonian high tech merchandise or goods transferred through Estonia may end up in the wrong hands or in countries that endanger international security. Because of non-membership, Estonia's export control authorities have no access to denial notifications or watch list databases. This fact substantially impedes implementation of the so-called catch-all provision (the end-user and end-usage based controls). In particular, Estonia has limited human, financial and intelligence

resources to track down illicit intangible transfers to unacceptable end-users. Therefore, Estonian export control authorities rely heavily on cooperation with like-minded countries. Although it is possible to get information from our nearest neighbors and cooperation partners about what is going on in international regimes, that information is insufficient and does not enable us to react adequately.<sup>37</sup>

While all candidate countries are keen to join the regimes, doing so may complicate already difficult membership problems within the regime. With the exception of the Wassenaar Arrangement, the regimes began as groups of like-minded supplier states who agreed on threats and responses. Over time, however, the regimes have grown, but at the cost of diluting the original membership criteria. The regimes now include non-suppliers as well as states that differ in their definition of threats and their understanding about the letter and spirit of the regime requirements.<sup>38</sup> For example, the MTCR has grown in membership from 7 members (i.e., the G-7) in 1987 to 33 in 2003. As any modifications to the regime guidelines, lists, membership, and the like require consensus, the addition of 10 or 13 additional members would exacerbate already difficult decisionmaking processes.

### CONCLUSION: EXPANDING BORDERS AND MEMBERSHIPS

As a pre-accession issue, export control development has received more rhetorical than substantive emphasis from Brussels. While the strengthened community dual-use export control regime seeks to ensure a greater degree of practical harmony among the current 15, the addition of 10 or 13 new members—of varying levels of export control maturity—will increase the risk of transshipment or diversion. A possible solution is automatic membership in the multilateral export control arrangements. However, this option may further complicate functional issues within the arrangements by further swelling membership without making the necessary procedural adjustments. Furthermore, the prospects of including more members may not be politically attractive to Washington.<sup>39</sup>

The proliferation risk posed by the inclusion of potentially weaker export control systems is amplified by fears that the new single-pillar structure of the EU dual-use export control regulation might lead to a situation in which commercial considerations prevail over security

concerns. The updated EU dual-use regime provides for a far-reaching liberalization of intra-community trade by limiting the member states' ability to impose restrictions to a strict minimum. Moreover, the combination of qualified majority voting and the commission's exclusive right of initiative makes future intra-EU dual-use trade liberalization steps probable.<sup>40</sup>

Both the EU and multilateral export control arrangements share membership issues with respect to nonproliferation efforts. Clearly, a situation in which EU members are not members of the arrangements is politically unsustainable. Yet the addition of more members may further constrain the ability of the arrangements to respond quickly to the changing nature of the proliferation challenge. The course ahead, therefore, both in Europe and in the regimes, lies in the direction of a greater nonproliferation leadership role for the EU, as evidenced, for example, by the increasingly activist role of the commission within the arrangements.<sup>41</sup> In spite of this, Brussels is doing, substantively, relatively little to ensure full compliance with dual-use regulations in the candidate countries. Both member states and the EU must keep export control development a priority in the accession process. A key to this end is universal export control regime membership for the candidate countries. Expanded membership will help promote export control norms and practices, as well as ensure the consistent application of the EU's dual-use export control regime within a Europe whose borders will run contiguously from Ireland to the Near East.

<sup>1</sup> As post-Gulf War national and international investigations revealed, Iraq *pur-chased*—either directly or through front companies—the majority of materials and technologies needed for its various weapons programs. Quite recently, U.S. officials have contended that Iraq has stepped up its quest for nuclear weapons and has embarked on a worldwide hunt for materials to make an atomic bomb. Iraq has sought to buy thousands of specially designed aluminum tubes, which American officials believe were intended as components of centrifuges to enrich uranium. See Michael Gordon and Judith Miller, "U.S. Says Hussein Intensifies Quest for A-Bomb Parts," *The New York Times*, September 8, 2002. One recent report notes how "Iraqi agents have been known to carry 30-page shopping lists of prohibited equipment. They usually pay in cash and buy in bulk. The military industrial commission usually remits the money through the nearest Iraqi ambassador or military attaché." See, Bob Drogin, "How Hussein Gets 'Anything He Wants,'" *Los Angeles Times*, November 23, 2002.

<sup>2</sup> See, for example, Mark Pythian, *The Arming of Iraq: How the U.S. and Britain Secretly Built Saddam's War Machine* (Boston: Northeastern University Press, 1996). See also, Khidr Abd Al-Abbas Hamzah, *Saddam's Bombmaker: The Terrifying Inside Story of the Iraqi Nuclear and Biological Weapons Agenda* (New York: Touchstone Books, 2001); Richard Butler and James Roy, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2001); Kenneth Timmerman, *Poison Gas Connection: Western Suppliers of Unconventional Weapons and Technologies to Iraq and Iran* (New York: Diane Publishing, 1991).



<sup>3</sup> The entire body of European laws is known as the *acquis communautaire*. This includes all the treaties, regulations and directives passed by the European institutions as well as judgments laid down by the Court of Justice. The term is most often used in connection with preparations by the 12 candidate countries to join the union. They must adopt, implement, and enforce all the *acquis* to be allowed to join the EU. As well as changing national laws, this often means they must set up or change the necessary administrative or judicial bodies which oversee the legislation.

<sup>4</sup> Claus Hofhansel, "The Harmonization of EU Export Control Policies," *Comparative Political Studies*, April 1999. See also, Paul Cornish, "The Economic Aspects of Security and the Regulation of Conventional Arms and Technology Exports from the EU," in Martin Holland, ed., *Common Foreign and Security Policy: The Record and Reforms* (London: Pinter, 1997).

<sup>5</sup> See, Jörg Wenzel, "The European Community's Approach to Export Controls," in Kathleen Bailey and Robert Rudney, eds., *Proliferation and Export Controls* (Lanham, MD: 1993).

<sup>6</sup> The *Scott Report* was a formal government inquiry into the means by which Iraqi dictator Saddam Hussein was able to import many UK dual-use goods and sophisticated armaments. The "Rabat Affair" concerned lax West German export controls that allowed a chemical weapons facility to be built in Libya with German engineering technology and chemicals. See, Harald Müller, "Europe's Leaky Borders," *The Bulletin of Atomic Scientists*, June 1993, pp. 27-30. In particular, Müller notes that in 1992, "Some governments with efficient systems are very reluctant to abolish national controls for the sake of a single market, and they have based their argument on the 'strategic commodity' exemption. They fear that sensitive commodities will travel through weak-control states and disappear to undesirable destinations. With a growing list of controlled commodities, this exemption would make a mockery of the single market."

<sup>7</sup> Hofhansel (1999) provides a comprehensive study of the bargaining between key EU member states (i.e., France, Germany, and the UK) on harmonizing national dual-use standards. See also the excellent study of the formative years of the dual-use control debate in Ian Davis, *The Regulation of Arms and Dual-Use Exports: Germany, Sweden, and the UK* (Oxford: Oxford University Press, 2002).

<sup>8</sup> Saferworld, Briefing Paper, *Arms & Dual-Use Export Controls: Priorities for the European Union*, June 1994, p. 5.

<sup>9</sup> Article 296 (ex 223) of the Treaty on European Union states that a member state has the right to take such measures as "it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions, and war material." The EU Code of Conduct for Conventional Arms Exports was adopted on June 8, 1998, by the General Affairs Council as a Council Declaration in the framework of the CFSP. This means that the Code of Conduct is part of the second pillar (intergovernmental) and does not involve the European Commission (normally in charge of trade issues). The initial proposal for the code was tabled by France and Great Britain in late January 1998 and then discussed in several meetings of the Council's Working Group on Conventional Arms Exports (COARM) as well as in the Political Committee. The code sets common minimum standards for the management and control of conventional arms exports by member states to third countries. Moreover, it establishes an information exchange and consultation mechanism, the first ever applied by any group of states in this field. The overall objective of the code is to achieve greater transparency in arms transactions and to lead to a growing convergence of national export policies. It is composed of two parts: 1) guidelines that set out a number of circumstances in which licenses should be denied, and 2) operative provisions that contain a mechanism for consultation on undercutting and an annual review process.

<sup>10</sup> Council Regulation (EC) 458/2001 of March 6, 2001, amended Regulation (EC) 1334/2000 with regard to the export list of controlled dual-use items and technology in order to reflect the liberalization of control parameters agreed on December 1, 2000, among the participating states in the Wassenaar Arrangement. Council Regulation (EC) 1334/2000 and Council Decision 2000/402/CFSP are published in the *Official Journal of the European Communities*, L 159, June 30, 2000, pp. 1-218. Council Regulation (EC) 458/2001 can be found in the *Official Journal*, L 65, March 7, 2001, p. 19.

<sup>11</sup> See, Burkhardt Schmitt, "A Common European Export Policy for Defense and Dual-Use Items?" Occasional Paper 25, Institute for Security Studies, Western European Union, May 2001; Panos Koutrakos, "The Reform of Common Rules on Exports of Dual-Use Goods under the Law of the European Union," *European*

*Journal of Law Reform* 2 (Spring 2000); *Report to the European Parliament and the Council on the application of regulation (EC) 3381/94 setting up a Community system of export controls regarding dual-use goods*, Com (98) 258, Brussels, May 1998; and *Proposal for a Council Regulation setting up a Community regime for the control of exports of dual-use goods and technology*, COM (1998) 257 final, 98/0162 (ACC), prepared by the commission.

<sup>12</sup> *Report to the European Parliament and the Council*, p. 10.

<sup>13</sup> For more information, see (300R1334) Council Regulation (EC) No 1334/2000 of June 22, 2000, "Setting Up a Community Regime for the Control of Exports of Dual-Use Items and Technology," *Official Journal L 159*, 30/06/2000 p. 0001, <<http://europa.eu.int/scadplus/leg/en/lvb/l11029.htm>>.

<sup>14</sup> The Common Commercial Policy (CCP), or Article 133, has been consistently held by the court to give rise to the community's exclusive competence, for otherwise "Member States may adopt positions which differ from those which the Community intends to adopt, and which would thereby distort the institutional framework, call into question the mutual trust within the Community and prevent the latter from fulfilling its task in the defense of the common interest." The corollary of the community's exclusive competence is that the member states can only act unilaterally in areas covered by the CCP on the basis of a specific community authorization. Furthermore, the choice of Article 133 EC as the legal basis of the legal regime on exports of dual-use goods would be significant in procedural terms, for measures falling within its scope are adopted by majority voting. For the internal negotiations prior to its adoption, see P. Cornish, "The Economic Aspects of Security and Regulation of Conventional Arms and Technology Exports from the EU," in M. Holland, ed., *Common Foreign and Security Policy: The Record and Reforms* (London: Pinter Publishing, 1997), p. 73.

<sup>15</sup> Council Regulation (EC) No 1334/2000 of June 22, 2000, setting up a community regime for the control of exports of dual-use items and technology, p. 5.

<sup>16</sup> Ministry of Foreign Affairs on Malta, Report Updating the Commission Opinion on Malta's Application for Membership, <<http://www.foreign.gov.mt/Malta-Eu/Avis/Avis99/default.htm>>. The U.S. government is clearly concerned that more nonproliferation assistance needs to be provided to the states of Eastern Europe and the Mediterranean, especially on issues of transshipment controls. In recent testimony to the U.S. Senate, Assistant Secretary of State for Nonproliferation John Wolf noted that in "Europe, we are increasing Export Control and Related Border Security (EXBS) assistance to the Baltics and Southeastern Europe, and Mediterranean transshipment points like Malta and Cyprus. All states, especially those with large ports, must do their part to forestall the transit of dangerous materials and technology." U.S. Senate, Committee on Foreign Relations, Testimony by Assistant Secretary of State for Nonproliferation John Wolf, March 19, 2003.

<sup>17</sup> "Arms Trade, Human Rights, and European Union Enlargement: The Record of Candidate Countries," A Human Rights Watch Briefing Paper, October 8, 2002, <[http://www.hrw.org/background/arms/eu\\_briefing.pdf](http://www.hrw.org/background/arms/eu_briefing.pdf)>.

<sup>18</sup> "Proposals for U.S.-EU Counter-Terrorism Cooperation," October 16, 2001, <<http://www.statewatch.org/news/2001/nov/06Ausalet.htm>>.

<sup>19</sup> Progress Reports for the candidate countries can be found at <<http://europa.eu.int/comm/enlargement/candidate.htm>>.

<sup>20</sup> "Bulgaria PM Fires 2 Deputy Defense Mins Over Syria Trade," *Dow Jones International News*, January 27, 2003.

<sup>21</sup> NATO Committee Chairman Bruce Jackson pointed precisely to just such loose control over export of dual-use goods as a major obstacle to Bulgaria's NATO accession.

<sup>22</sup> U.S. House of Representatives, Committee on International Relations, *Subcommittee on Europe Holds a Hearing on NATO Enlargement*, Testimony of Assistant Secretary of State for European and Eurasian Affairs, Robert Bradtke, April 29, 2003.

<sup>23</sup> *Arms Production in Central Eastern Europe*, Saferworld Report, 2002, <[http://www.saferworld.co.uk/arms\\_security/Beastrep.htm](http://www.saferworld.co.uk/arms_security/Beastrep.htm)>.

<sup>24</sup> See, for example, Scott Jones, *Nonproliferation Export Controls in the Czech Republic: 1999*, Center for International Trade and Security at The University of Georgia, <[http://www.uga.edu/cits/ttxc/nat\\_eval\\_czech.htm](http://www.uga.edu/cits/ttxc/nat_eval_czech.htm)>.

<sup>25</sup> Latvian customs official (name withheld by request), interview by author, Zilupe, Latvia, August 2003.

<sup>26</sup> "Czech Intelligence Describes Iranian Targeting," Radio Free Europe/Radio Liberty (RFE/RL) *Newsline* 5, August 26, 2002.

<sup>27</sup> Earlier cases include missile guidance systems that were intercepted in Austria

en route to India after being transhipped through Moldova and Hungary in March 1996. In December 1995, the Cypriot port of Limassol was used as a transshipment point for Russian chemical weapons material bound for Syria. See, "Ukrainians Seize Libya-Bound Russian Chemicals," *Agence France Presse*, April 12, 1995. See also, Rick Jervis, "Arms Industries in Eastern Europe Face Tough Post-Sept. 11 Scrutiny," *The Wall Street Journal*, December 11, 2001 and Rick Jervis, "Terrorist Hunters turn to Czech and Slovak Arms Traders," *The Wall Street Journal*, November 12, 2001.

<sup>28</sup> Abdel Fataou Musah and Robert Castle, "Eastern Europe's Arsenal on the Loose: Managing Light Weapons Flows to Conflict Zones," *Occasional Papers on International Security*, No. 26, ISSN 1353-0402, British-American Security Information Council, <<http://www.basicint.org/pubs/Papers/BP26.htm>>.

<sup>29</sup> Arie Farnam, "Iraq buying arms in East Europe's black markets," *The Christian Science Monitor*, September 11, 2002. Included in this article is an interview with Micheal Zantovsky, chairman of the Czech Senate Committee for Defense and Security Policy. It is Zantovsky's contention that "Eastern European countries are not very choosy about who buys their weapons, and their economies tend to be highly dependent on arms exports. It is altogether possible that individuals within the civil service are involved in illegal deals. It may not be policy, but corruption is rampant."

<sup>30</sup> On January 3, 2001, the *Washington Times* reported that Russia was transferring tactical nuclear weapons to Kaliningrad Oblast via Lithuania. The article, which cites U.S. intelligence sources, was promptly denied by the Russian Ministry of Defense and the Baltic Fleet, and there is not clear evidence that such redeployment is actually taking place.

<sup>31</sup> For example, at a recent meeting with foreign military attachés to Moscow, Chairman of the State Duma Defense Committee, Andrei Nikolayev, said that it had not been ruled out that Russian forces in the Kaliningrad region would be supplied in circumvention of Lithuania if the country were to join the EU and NATO.

<sup>32</sup> On the Kaliningrad questions, see J. Baxendale, "EU-Russia Relations: Is 2001 a Turning Point for Kaliningrad?" *European Foreign Affairs Review* 6 (Fall 2001), pp. 437-464, and P. Aalto, "A European Geopolitical Subject in the Making? EU, Russia and the Kaliningrad Question," *Geopolitics* 7 (Spring 2002), pp. 143-174.

<sup>33</sup> The Kaliningrad oblast hosts radioactive and chemical waste reprocessing facilities. Radioactive soil and some devices using nuclear isotopes had been collected on sites where units and detachments of the 11th Army of the former Soviet armed forces were deployed. In addition to that, 130 containers with chemical waste are to be removed from the Kaliningrad. The containers were illegally delivered to the region from Germany.

<sup>34</sup> Schmitt, "A Common European Export Policy," p. 16.

<sup>35</sup> Wyn Bown, "The MTCR and EU Expansion," *Nonproliferation Review* 5 (Spring-Summer 1998), pp. 84-88. See also, Scott A. Jones, "An Enlarging Europe: Implications for EU Nonproliferation Export Controls," *The Monitor: Nonproliferation, Demilitarization and Arms Control* 3 (Summer 1997).

<sup>36</sup> For example, for its decision to forego nuclear commerce with Iran, Ukraine was able to enter the MTCR. As part of the membership agreement, Ukraine will keep its hundreds of Scud missiles—the type of rocket MTCR was specifically designed to counter—through the end of their service lives, and will not forswear future production of short-range missiles should Ukraine find it necessary. See Howard Diamond, "U.S., Ukraine Sign Nuclear Accord, Agree on MTCR Accession," *Arms Control Today*, March 1998.

<sup>37</sup> Toomas Raba, "Enhancing Export Controls in Transit States," *The Monitor: International Perspectives on Nonproliferation* 8 (Spring 2002). Mr. Raba is Executive Secretary of the Estonian Ministry of Foreign Affairs' Export Control Division.

<sup>38</sup> For a fuller examination of the membership issue, see Seema Gahlaut and Victor Zaborskiy, "Do Regimes Have The Members They Need?" working paper, Center for International Trade and Security, University of Georgia, Athens, Georgia, February 2003.

<sup>39</sup> For example, Assistant Secretary of State for Nonproliferation John Wolf recently observed: "But while strong regimes are necessary, they are not enough. Most are voluntary agreements, which aren't legally binding. We have differences with Europe. I think we spend too much time debating what I'd call "architecture"—treaties, arrangements, etc.—and not enough time discussing how to put in place a strong commitment to action to back up those fine words on paper. What we're not doing enough of is taking concrete action to enforce commitments more strictly and make proliferation more costly—politically and financially." See "U.S. Determined to Push Back Nuclear Proliferation, Wolf Says," U.S. State Department, Press Releases and Document, March 20, 2003.

<sup>40</sup> Schmitt, "A Common European Export Policy," p. 8.

<sup>41</sup> In a recent *Communication from the Commission to the Council* (COM(2003) 133, final), the commission articulated its opinion on the EU's role within the regimes: "The Community, by transposing in legal terms the decisions taken by the Member States in the export control regimes, imposes export control restrictions on European Member States. The Commission is not a member (with the exception of the Australia Group) of the regimes. There is a need for greater Commission involvement in order more effectively to make more effective coordination of Member States' positions in the various regimes and to represent Community interests.... There is a need to ensure that all these aspects will be adequately addressed in the perspective of enlargement to ensure that both the dual-use single market and the Community export control regime are not adversely affected... The Commission will bring up the issue of how to achieve these aims with Member States in the relevant Council working bodies, including the particular challenges stemming from enlargement." *Communication from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions - European Defence - Industrial and market issues - Towards an EU Defence Equipment Policy*, COM(2003) 113 final, <[http://europa.eu.int/comm/enterprise/defence/defence\\_docs/com\\_2003\\_113\\_en.pdf](http://europa.eu.int/comm/enterprise/defence/defence_docs/com_2003_113_en.pdf)>. See also, Scott Jones, "Nonproliferation Leadership in the 21st Century: Brussels or Washington?" *Jane's Intelligence Review*, March 2002.