

SECURITY SHIFTS AND POWER PLAYS: THE CASE OF EUROPEAN UNION
DUAL-USE EXPORT CONTROL REGIME DEVELOPMENT

by

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(Under the Direction of Gary Bertsch)

ABSTRACT

This thesis examines dual-use export controls and their relationship with the influence of the EU institutions, EU supranational defense industry interest groups and theories of regional integration. The European Union has developed a system for dual-use-export control that could potentially have strong implications for the future of national sovereignty for the member states. There does not currently exist any legally binding regime for export controls among states in the international system, with the exception of the members of the EU. Does the current system actually improve the common dual-use export control policy for the EU over that which previously existed? If the current system has actually improved dual-use technology regulation by the EU, what explanation could provide an answer for how the EU was able to transfer at least partial sovereignty of this national security concern from the national governments to the integrated, supranational level of the EU institutions?

INDEX WORDS: Center for International Trade and Security; defense industry; dual-use goods; European Union; export controls; national security; national sovereignty; regional integration

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CHAPTER 1

INTRODUCTION

In December of 1994, the Commission of the European Union (EU)¹ adopted Regulation 3381/94² creating a new export control system for dual-use³ technology among the member states of the EU. These efforts by the Commission, and subsequent validation by the Council, were motivated by a need to increase harmonization of the previously existing systems of dual-use regulation by the member states through their respective national governments. In February 2003, The Directorate General (DG) for Trade of the European Commission discussed some of the original motivations for a creation of a dual-use export control regime. The DG for Trade cited the need for the "completion of the Internal Market and the creation of an external 'fence' for extra-Community exports," supplemented by the economically driven reason that "trade in these items has to be controlled to preserve member states' security interests,"⁴ in combination with more recent judicial decisions interpreting action in the area of dual-use export control.

¹ In this work, "EU" and "Community" are used interchangeably.

² Council Regulation (EC) No. 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods [Official Journal L 367, 31.12.1994] (hereafter referred to as Regulation 3381/94).

³ Dual-use items are defined as "items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices," as delineated in Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology [Official Journal L 159, 30.06.2000] Article 2. (hereafter referred to as Regulation 1334/2000)

⁴ The Directorate General for Trade of the European Commission: Dual-Use Export Controls, see http://europa.eu.int/comm/trade/goods/dualuse/index_en.htm §1.

This Regulation, however, was ineffective in regulating the dual-use exports with greater efficiency than the member states themselves. The intention was justifiable and the mere presence of this Regulation exhibits an initiation of effective nonproliferation efforts, but the Regulation was “little more than political and economic expedience and compromise” since the “original Commission proposal was diluted in deference to member states” resulting in controls that are “relaxed and limited to a narrow range of goods and technologies.”⁵ With the free movement of goods as a fundamental EU freedom and the transition from the Member State level to the institutional level, there was a significant shift in the competency of these controls, posing a problem for a supranational system that is based on a principle of subsidiarity. As the Treaty of the European Communities states:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.⁶

The EU had followed this principle for the majority of the development of its economic integration, allowing for action justified by the requirement of a supranational level of implementation for uniform application. The dual-use export control system of 1994 was not an example of such a justified level of implementation.

In addition, the existence of a dual-use export control regime under the regulation of the EU was also against the principles of sovereignty in areas of national security that

⁵ Jones, Scott. “The Current System of Harmonized Export Controls.” Center for International Trade and Security. National Evaluation for the EU, 2000. http://www.uga.edu/cits/documents/html/nat_eval_eu.htm, (3-4).

⁶ Consolidated Version of the Treaty Establishing the European Community, Part One, Art. 5, § 2 [Official Journal C 80 of 10 March 2001]. (Hereafter referred to as the TEC)

the member states outlined in the Treaty of Rome.⁷ However there has been a trend of redefining sovereignty in the EU over the past fifty years. Where the classical sovereignty characteristics include a right to existence,⁸ provided the state is able and willing to ensure security, welfare and economic development, these characteristics were cast aside in favor of a multilevel interaction between supranational and state-level sovereignty coexistence as the maturity of the EU developed. However, despite the need for states to shift sovereignty in economic development and welfare characteristics due to the inability for states to provide these for themselves, security interests were closely guarded by states in the EU.⁹

Although this was a necessary first attempt, the result, despite being legally binding, had inefficient and unwieldy characteristics that allowed for dual-use export control loopholes. Since the implementation of the initial system, a second system, Regulation 1334/2000, which is also legally binding, has attempted to correct or eliminate these deficiencies. This second attempt came despite the previously stated problems, and, in fact, potentially strengthened the supranational power over the member states in relation to dual-use export controls. Although this may have corrected the problem of subsidiarity created by the initial system with the introduction of a system that could provide a more effective system of management than the member states,

⁷ Treaty Establishing the European Economic Community. Official Journal archives, 1957. (also referenced as the Treaty of Rome) available at <http://www.hri.org/docs/Rome57/>. See Article 223, §1; (a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security; (b) Any Member State may 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; such measures shall not, however, adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

⁸ UN Charter, Article 2, §1. - The Organization is based on the principle of the sovereign equality of all its Members.

there is still evidence of a slight power shift in this element of national security – a shift that was expressly forbidden by the member states in the founding years of the European Union.

The derivation from this prohibition indicates that actors other than the member states had an impact on the power shift related to the dual-use export control regime. Since the power shifted to the supranational institutions, they are immediately suspect in their motives and involvement. Similarly, interest groups on both the supranational¹⁰ and domestic levels could potentially have a motive for change. Regardless of their potential level of involvement, an investigation into whether they were able to impact the shift is necessary.

This brief glance at the key elements of the issue of increased dual-use regulation raises three very important questions: Does the current system actually improve the common dual-use export control policy for the EU that previously existed? If the current system has actually improved dual-use technology regulation by the EU, what explanation could provide an answer for how the EU was able to transfer sovereignty of this national security concern from the national governments to the integrated, supranational level of the EU institutions? Does this explanation have any possibility for further development in the area of national security transfers for the EU?

This thesis will include, in Chapter 2, a literature review of the development of the two export control regimes and the rationale for and exploration of regional integration

⁹ Wind, Marlene, *Sovereignty and European Integration: Towards a Post-Hobbesian Order*, New York, NY: Palgrave, 2001. (19-23).

¹⁰ In the context of this thesis, *supranational* is defined as transcending established national boundaries or spheres of interest, however, in the context of the European Community institutions, the supranationality refers additionally to the ability to impose legally binding action upon nations that may not agree with the action.

as an approach that potentially holds the greatest explanatory power. Chapter 3 will illuminate the working theory and hypotheses, followed by the operationalization of concepts based on the Center for International Trade and Security (CITS) methodology. Chapters 4 and 5 will include the analysis and conclusion based on the results of the test of the efficiency for the second system and the evidence for drivers of the shift in sovereignty for the member states.

CHAPTER 2

EU DUAL-USE SYSTEM AND THEORETICAL TOOLS

Common Dual-Use Export Control Policy of the EU

The current policy of export control for the EU finds its roots in the Treaty of Rome¹¹, establishing the economic and political Union on March 25, 1957. Although the member states were anxious to prevent another conflict on European soil through the use of economic regulation of resources, obvious concern was expressed regarding the potential future assumption by the EU institutions of national security interests of the member states. Hence the creation of Article 296¹² of the Treaty of Rome, which states: “the provisions of the Treaty shall not preclude the application of the following rules:

- (a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the interests of its security;
- (b) Any Member State may 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; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended specifically for military purposes¹³

This declaration within the Treaty is followed by a list of agreed items that are considered essential to national security, illuminating the importance of this subject and the unwillingness of member states to relinquish sovereignty over all aspects of integration.

¹¹ Treaty Establishing the European Economic Community. Official Journal archives, 1957. (also referenced as the Treaty of Rome) available at <http://www.hri.org/docs/Rome57/>.

¹² Article 223 was changed to Article 296 in the Treaty of Nice and will be referred to hereafter as Article 296.

¹³ TEC Article 296 (ex. Article 223).

This would seem to indicate the end of discussion regarding a possible common export control regulation within the internal market. However, the EU member states and institutions soon realized that the well-intentioned framework for the protection of national security interests created in the Treaty and “the absence of such a regime would enable exporters to evade strict export regimes by exporting their products to member states with lax export rules and subsequently re-export them to third countries”¹⁴ due to the existence of the freedom of movement of goods,¹⁵ a fundamental characteristic of the EU single market. Consequently, the only available resource for integration of export control policies for the member states to solve this dilemma was to find an alternative avenue for regulation within the Articles of the Treaty, while remaining conscious of this highly political national security issue.

This avenue was found in the creation of Common Rules on Exports for the EU¹⁶, which states that exports from the EU are not subject to quantitative restrictions in regards to all industrial and agricultural products. The member states, should they feel that quantitative restrictions are necessary, must inform the Commission of their action, and the Commission will subsequently inform the additional member states. Although the restriction, or control, will only apply to the Member State that initiated the action, the intent is to keep all member states aware of the security restrictions placed by others in an effort to induce harmonization. However, to the chagrin of proponents of export controls and the ease of trade for producers of nuclear, conventional and dual-use technology, this solution provided little more than an option that might be

¹⁴ Koutrakos, Panos. “The Reform of Common Rules on Exports of Dual-Use Goods Under the Law of the European Union.” *European Journal of Law Reform*, 2:2 (167-187), 2000. (167).

¹⁵ TEC Articles 28, 29, and 30.

considered by the member states, mainly because of a natural distrust of national governments to relinquish any control of these products to a supranational authority.

In an effort to encourage this absence of intended integration, Council Regulation 3381/94 came into force regarding the integration of dual-use export controls. Although this Regulation was “not intended to provide a complete harmonizing framework for dual-use goods,...[it] represents a first step towards the establishment of a common system for the control of exports of dual-use goods which is complete and consistent in all respects.”¹⁷ This Regulation, which has direct and binding effect on member states, created an EU-wide export license for dual-use goods. Although this is a general license for the Union, “the responsibility for authorizing exports will remain with the competent national authorities,...[and] the Regulation contains numerous provisions addressing specific details regarding further policy harmonization and interpretation.”¹⁸ This Regulation was accompanied by Council Decision 94/924/CFSP¹⁹, which is binding without direct effect, including five lists that detail the elements of dual-use controls, guidelines for licensing decisions, particular control destinations, global authorizations and specific requests within the Internal Market.

Following the development of this particular regime, there was discussion of the loopholes in relative enforcement among member states and the lack of integrated regulation of particular goods. There were several attempts by the European Council to smooth some of the deficiencies of the system for dual-use control. Some of these

¹⁶ Council Regulation (EEC) No. 2603/69 of 20 December 1969 establishing common rules for exports [Official Journal L 324, 27.12.1969].

¹⁷ Koutrakos 171.

¹⁸ Jones, 2000 (2).

¹⁹ Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the TEU concerning the control of exports of dual-use goods [Official Journal L 367 of 31.12.1994].

deficiencies included a lack of consistency in licensing among member states for the EU export license and further illumination of the specifics of what elements comprise arms and dual-use technology that require integrated regulation.²⁰ This was called the Code of Conduct on Arms Exports²¹, adopted on June 8, 1998, but the document was only a recommendation and a guideline for member states and was not legally binding, therefore holding little weight and producing little change. However, these guidelines acknowledged some of the deficiencies and served as a foundation for further development in the area of dual-use regulation. There were eight criteria set forth in the Code of Conduct that called for consideration in reference to export controls for arms exports in general, but also applied to the dual-use technology regime that had been previously created.²² It is also important to note that the Code of Conduct in Criterion Five reinforced the idea that “the national security of the member states and of the territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries”²³ while simultaneously acknowledging that these member states have failed to act in such a manner that protects the security of the Community and have potentially endangered the sovereignty of the other member states.

Realizing that these elements of dual-use export control integration were only providing helpful direction with limited results, these ground-breaking legal documents

²⁰ Jones, Scott. “The Emerging Export Control System of the European Union.” Center for International Trade and Security, under review at The Nonproliferation Review, 2003.

²¹ EU Code of Conduct for Arms Exports. Council of the European Union, adopted 8 June 1998, available at www.smallarmsnet.org/docs/caeu01.pdf.

²² EU Code of Conduct for Arms Exports, 8 June 1998, Operative Provision 6: The criteria in this Code and the consultation procedure provided for by paragraph 2 of the operative provisions will also apply to dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, where there are grounds for believing that the end-user of such goods will be armed forces or internal security forces of similar entities in the recipient country.

were re-evaluated and replaced with subsequent legislations: Council Regulation 1334/2000²⁴ and Council Decision 2000/402/CFSP.²⁵ These acts also shifted their legal basis from the restrictive Article 296 to the more supragovernmental oriented Article 113:

The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.²⁶

Through the use of this legislation, the Council was able to shift the competence from the member states to the Commission for regulation and integration. One of the major changes of this new export control regime for dual-use goods is the elimination of the ability of member states to provide licenses to exporters that were denied a license in another Member State. Now the “member states have to (a) inform each other on denials of export licenses; (b) consult with each other on their intention to undercut; and (c) explain their decision to do so.”²⁷ These regulations also provide for an integrated regulation of the transfer of knowledge in the form of software, oral communication and faxes, where these elements were detrimentally missing from the previous regime.²⁸

This brings us to the current level of export control in the EU, which clearly does not comprise a fully integrated and regulated export control regime, but the foundations are there and the integration and regulation has begun in particular areas, such as dual-

²³ EU Code of Conduct for Arms Exports, Criterion Five.

²⁴ Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology [Official Journal L 159, 30.06.2000].

²⁵ Council Decision 2000/402/CFSP of 22 June 2000 repealing Decision 94/942 CFSP on the joint action concerning the control of exports of dual-use goods [Official Journal L 159 of 30.06.2000].

²⁶ TEC, Art 113.

²⁷ Schmitt, Burkard. “The European Union and Armaments.” Chaillot Papers No. 63 Institute for Security Studies, Paris, 2003. (13).

use goods, with positive results. Further integration is necessary and should be championed for integration and regulation of both conventional arms and nuclear weapons in the EU. However, one must first understand the catalysts for this integration to realize the actors and issues that could drive future expansion of this export control regime within the EU.

Classical International Relations Theory vs. Regional Integration Theory

Classical international relations theory and its relationship with export controls have been neatly outlined in the introductory chapter of Arms on the Market.²⁹ The four theoretical approaches relate to the behavior of states and their motivation to develop export control systems (realism/neorealism, rational institutionalism, domestic political processes and liberal identity)³⁰. First, realism/neorealism assumes a “lack of central governing authority...[where] states must rely on their own wits and abilities as they attempt to achieve national security and maintain survival.”³¹ Second, rational institutionalism asserts, “within the scope of international institutions, states are induced to develop more cooperative policies because their interests are tied to the interests of others.”³² Third, domestic politics addresses the impact of domestic interest groups, elite state-level decision-makers, centralization of government, or bureaucratic implementation on domestic policy outcomes in terms of foreign policy and

²⁸ Council Joint Action 2000/401/CFSP of 22 June 2000 concerning the control of technical assistance related to certain military end-uses [Official Journal L 159 of 30.06.2000].

²⁹ See Bertsch and Grillot. Eds. Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union, New York, NY: Routledge, 1998. Chapter 1 by Grillot contains an in-depth analysis of these four theories relating to export controls.

³⁰ It is important to note that these are not the only theories that could be used with export controls, but merely the most commonly used, according to Grillot.

³¹ Bertsch and Grillot (3).

³² *Id*, at 5.

subsequently export controls.³³ Finally, liberal identity claims that “states choose cooperative policies, not because of some rational calculation of security threats, costs, or benefits, but because they ‘identify’ with others in a community of states.”³⁴ Although these theories are certainly appropriate for general export control evaluation, these particular elements of the four theories have been singled out to discuss some of the reasons why these classical international relations theories are inappropriate for analysis of the EU.

First, it is important to recognize that the EU integration in general can be defined in various forms. The EU can be seen as an international organization, as an example of regionalism, or *sui generis*, also known as an “*n* of 1.”³⁵ For the purposes of this work, it seems that the EU can be classified as more than an international organization or merely regionalism. There are institutions that have supranational power and regulations created by these institutions that could potentially be binding on certain member states that do not agree with their implementation. Clearly these are regional institutions that have a legal personality and a significant amount of power over the interests of the member states, even if the power is mainly economic, accompanied by effective regional interest groups that have European-wide interest and representation. In addition, interest groups have been created at the supranational level, much the same way that interest groups have developed and interacted on the classical state-level. Extraordinarily, all of this has been done without the use of force or general regret in membership over the last fifty years. The institutions of the EU have slowly

³³ *Id.*, at 6-8.

³⁴ *Id.*, at 9.

³⁵ For further discussion of these approaches, see Rosamond, Ben. The European Union Series: Theories of European Integration. New York, NY, St. Martin's Press, 2000. (introduction)

superceded the classical European state and, in response, the interest groups, responding to this power shift, have developed supranational-level relationships. These characteristics of the EU affect classical international relations theory in ways that do not recommend their value for this analysis.

The realism/neorealism approach assumes a state in an anarchic system, which is absent with the presence of specific governmental institutions with binding power over states' actions. Rational institutionalism assumes cooperation through institutions, which, although the cooperation certainly exists in the EU, can be negated with a legal action by the EU institutions that is directly enforceable, but not necessarily agreed upon by all states. The theories of domestic politics can certainly play a role in the individual states themselves, but, with the creation of supranational interest groups, bureaucracies, and checks and balances within the institutions themselves that prevent elite governance, this theory has little applicability. Finally, liberal identity espouses cooperation through connection in common purpose of peace. This theory actually has all of the necessary motivations and tenants for explanatory power, except, as in all of the previously stated theories, for the simple difference that the theory is based on the state as the primary actor. However, one might say that the national security interests, which have been a main characteristic of classical international relations theory regarding state interactions, has remained in the hands of the state and, therefore, even if the alternative theories assist in providing explanations for economic integration, the issues of national security for an EU Member State can still be explained by classical theory. What this work will examine, however, is not the national security interest of one Member State in their relationship with the EU, but the relationship that the EU shares

with its member states as it potentially assumes the national security of 15 member states.³⁶ Since the focus is not the member states themselves, but the EU and its institutions and interest groups as major theoretical actors, and provided the effectiveness of the second export control regime can be asserted, classical international relations theory, that has the state as the principle actor for theory application, is not appropriate for this study. A theory that involves the state as an actor, but acknowledges the supranational institutions and the existence of supranational interest groups, exists within regional integration theory.

Regional Integration Theory

There are two basic forms of regional integration³⁷ that fall into two general categories of *political* and *economic* regional integration theories. Within political regional integration there exists functionalism, neofunctionalism and intergovernmentalism, while economic theory has customs union theory, optimal currency area and fiscal federalism. There is also a framework that proposes an interaction of markets and political institutions under the motivations of improvement of economic growth and maintenance of political office, essentially an integration of integration theories.³⁸ However, for the purposes of this work and the characteristics of the subject addressed, only political regional integration theory will be examined,

³⁶ The changes and relationships explored in this case study will also apply to the 10 new member states in the EU due to the principle of *aqui communitaire*, or the assumption of all previously existing relationships and legislation by any new Member State.

³⁷ See Haas, Ernst. The Uniting of Europe: Political Social and Economic Forces 1950-1957. Stanford, CA: Stanford University Press, 1968. - Haas defines regional integration as "the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the existing ones..." (16).

³⁸ Mattli, Walter. The Logic of Regional Integration. London, England: Cambridge University Press, 1999. (20).

although the flow of exports and their controls clearly have economic implications. Political theory allows for an examination of institutions and interest groups as they relate to the member states and the evolution of the dual-use export controls regime. Each of these theories will be examined for their logic in explaining integration and, in particular, the elements of the theory that deal with the integration of security-related interests and their potential shift from the member states to the supranational institutions.

Functionalism: Or the Study of How It Works

The central tenants of functionalism include a slow integration through logical progressions from basic economic and human needs to complex political functions. These progressions are a roadmap that is illuminated by functionalism in an effort to provide an active interaction and integration of governments in the name of peace composed of agencies and institutions fitted to their respective function (Mitrany, 1966, 1975; Haas, 1964, 1968). Ernst Haas notes “functionalists, in the specific sense of the term, are interested in identifying these aspects of human needs and desires that exist and clamor for attention outside the realm of the political”.³⁹ Functionalism holds that conflict is created by political divisions, which can only be solved through establishment and regulation by supranational institutions that provide independent technical integration functions through mutually beneficial areas of coordination. David Mitrany, in his text *A Working Peace*, states “the function, one might say, determines the executive instruments suitable for its proper activity, and by the same process provides a need for

³⁹ Haas, Ernst. *Beyond The Nation-State: Functionalism and International Organization*. Stanford, CA: Stanford University Press, 1964. (6).

the reform of the instrument at every stage”.⁴⁰ According to the functionalist approach, this integration is best achieved through the creation of a common market rather than an integration of the political institutions, since institutional development will appear with the strength of the common market over time. Obviously, this process does include concerns over the issue of sovereignty, to which Mitrany claims:

...It would be sounder and wiser to speak not of the surrender of sovereignty but of the *sharing* of sovereignty. When ten or twenty national authorities, each of whom had performed a certain task for itself, can be induced to perform the task jointly, they will to that end quite naturally *pool* their sovereign authority insofar as the good performance of the task demands it.⁴¹

He shows that there is no boundary for how much sovereignty may be transferred to the supranational institution, in this case the EU, but there are particular minimum requirements for effective integration. The major element Mitrany addresses is security: “...there can be no real transfer of sovereignty until defense is entrusted to a common authority, because national means of defense are also means of offence and also of possible resistance to that common authority”.⁴²

One of the major drawbacks for functionalism is its inability to provide any process tracing for integration of a particular policy. It is only a guidebook with a discussion of particular outcomes, rather than a theory with explanatory power.⁴³ Functionalism deals only with initial change and shift, claiming gradual development, rather than allowing for a particular issue to have salience and a need for integration due to a shift in preferences or environment. Only the catalyst for a decision to integrate a complete system is discussed and the development is expected to follow from a

⁴⁰ Mitrany, David. A Working Peace System. Chicago, IL: Quadrangle Books, 1966.(72-73).

⁴¹ *Id.* at 31.

⁴² *Id.* at 30-31.

⁴³ Mattli, 1999.

purely economic standpoint to encompassing political institutions. However, as Haas notes, “power and welfare are far from separable”.⁴⁴ Despite the main characteristic of regional integration being the coalescence of states, which are traditionally territorial and self-interested, the agencies created under the functionalist approach are expected to remain flexible, adaptable and responsive to the fulfillment of these human needs championed by the member states. States do not seem to be the appropriate tool for regulation and integration of basic economic and human needs in any particular region.

Neofunctionalism: Better Theory, Bad Name

In reaction to a need for actors, or drivers, in the change evident through the development of European integration, neofunctionalism gave life to the stagnant outcomes of the functionalist approach (Haas 1968; Lindberg 1963; Schmitter, 1969). Within neofunctionalism, the primary actors exist above and below the nation-state in the form of supranational institutions or interest groups and political parties, respectively.⁴⁵ These actors are symbiotic in their relationship to the creation of integration policy. These policies, however, are subject to a positive or negative response of the third actor, the nation-state, which, by action or inaction, can reject or accept action by the actors above and below the national level since the existence of the state is fundamentally necessary for the existence of the supra- and sub-national actors. Anne-Marie Burley and Walter Mattli also show that the motives of the actors in neofunctionalism stem from an innate selfishness that is driven by their desire for a greater level of influence, in contrast with the functionalist view of a harmonious

⁴⁴ Haas, 1964, (23).

⁴⁵ Burley, Anne-Marie, and Walter Mattli. “Europe Before the Court: A Political Theory of Legal Integration.” International Organization, 47:1 (41-76), 1993. (54).

motivation.⁴⁶ There are two neofunctionalist assumptions that are necessary for effective integration. First, the sectors that are encouraged or required to integrate have a direct or indirect effect on additional sectors of the economy or political system that must also be integrated to increase the efficiency of the original sector, exponentially increasing the number of sectors involved in integration. Second, new interest groups, on both the national and supranational levels, tend to develop as the integration of sectors increases due to the greater efficiency of integration on economic systems.⁴⁷ This self-interested motivation is evident where interest groups and political parties seek to enhance their interests through the supranational level only in situations where there is significant strategic gain for the party or interest group. Likewise, supranational institutions only act when it is in an effort to increase their power over the nation-states, or to increase their power relative to other participating institutions.⁴⁸

Neofunctionalism attempts to fill the void in explanatory power that exists in functionalist theory. There are three particular aspects of neofunctionalism that allow for some explanatory capability: functional spillover, political spillover and upgrading common interests, as described by Haas in his texts Beyond the Nation State and The Uniting of Europe. Functional spillover is the effect of one sector of the economy directly or indirectly affecting another sector, and, since all sectors are assumed to be affected by a change in another, the integration in a few will inevitably lead to the integration of a significantly larger number, increasing the authoritative capacity. Political spillover is characterized by just the opposite; sectors in a political context will not necessarily be affected by other political changes. However, “if the actors, on the basis of their interest-

⁴⁶ *Id.* at 53.

⁴⁷ *Id.* at 54.

inspired perceptions, *desire* to adapt integrative lessons learned in one context to a new situation, the lesson will be generalized".⁴⁹ Finally, the upgrading of common interests is a characteristic of an impossibility of common agreement, resulting on concessions and bargaining by the nation-states. This reduces an inherent reliance on veto-powers by the members and an increase in value and power in the supranational institutions that provide the role of an independent arbitrator, increasing the power of the supranational institutions and decreasing the national sovereignties to the point where the states involved in the integration cannot dissolve the institutions due to the intensity of evolution of the integration.⁵⁰

Intergovernmentalism: A Rational Reaction

In reaction to the strong advance of neofunctionalism, critics responded with a shift in drivers of integration from the interest groups and institutions, returning to the state level (Moravcsik, 1993). Moving from functionalism's inevitability and neofunctionalism's complexity of driving factors, intergovernmentalism suggests classical drivers. This major shift between both functionalist approaches and intergovernmentalism is that the head of state represents the main actor for this particular theory. Although it is particularly important to note that this theory differs from classical state-driven international relations theory in that it acknowledges the role of the institutions and interest groups in integration, but only in moments deemed appropriate by the member states. This theory, championed by Andrew Moravcsik⁵¹, focuses only on interstate bargaining and the dominance of large states over small states through the

⁴⁸ *Id.* at 54-55.

⁴⁹ Haas, 1964 (48).

⁵⁰ Haas, 1961.

use of concessions. The determination of whether the issue is particularly salient for the large states to address is directly related to the convergence of preferences for the nation-states. Reduction of national sovereignty, as a rule, is carefully and tactfully avoided if it is possible to reach integration on a particular issue without any forfeit by the nation-state. This particular theory has several flaws, namely a lack of emphasis on “defining events that precede interstate bargains...and events that follow interstate bargains appear to be irrelevant,”⁵² assuming that if there is no importance of integration for an issue, then there is a particular lack of convergence in preferences for the nation-states. According to intergovernmentalists, if there is no action, then there is a shift in preferences from integration to other matters, resulting in supranational integration inertia.⁵³

Liberal Intergovernmentalism

In response to some of these criticisms of his earlier work, Andrew Moravcsik returned with a new theory of *liberal* intergovernmentalism that attempted to address some of the shortcomings of intergovernmentalism (Moravcsik 1998). Moravcsik, in his text The Choice for Europe, claims “integration can be seen as a process in which [governments] define a series of underlying objectives or preferences, bargain to substantive agreements concerning cooperation, and finally select appropriate international institutions in which to embed them”.⁵⁴ These choices in regards to preference are not linked to any particular chain of importance for interests, but rather “national interests tend instead to reflect direct, issue-specific consequences...as a

⁵¹ Moravcsik, Andrew. The Choice for Europe: Social Purpose and State Power from Messina to Maastricht. New York, NY: Cornell University Press, 1998.

⁵² Mattli (29).

⁵³ Moravcsik, 1998.

reflection of the economic incentives generated by patterns of international economic interdependence”.⁵⁵ This approach illuminates government action by the heads of state. Domestic politics drive the preferences of the member states in their interactions with each other in the process of integration and in their interaction with supranational institutions. They tend to cooperate on issues of sovereignty “by their effort to enhance the credibility of commitments. Governments transfer sovereignty to international institutions where potential joint gains are large, but efforts to secure compliance by foreign governments through decentralized or domestic means are likely to be ineffective”.⁵⁶ However, supranational institutions are considered relatively unimportant in as an active driver, merely as a tool or outlet for implementation, in the development of outcomes for integration.

Dual-Use Regulation and Regional Integration

From the Treaty of Rome in 1957 to the specifics of oral transfer of technology regulation in 2000, the development of export controls has spanned forty years without very large claims to a robust export system. The dual-use technology regulations were just introduced in the 1990’s, despite its discussion and debate prior to the first attempt. It may seem that the issues of export controls do not have much to show, but what lies just below the shell of the seemingly inactive progress for EU export controls finds its roots in age old arguments. One must consider that “[q]uestions of national security, the maintenance of strategic industries, security of supply, and relations between states lurk beneath the surface – all matters which reach right to the heart of the question of

⁵⁴ *Id.* 5.

⁵⁵ *Id.* 6.

⁵⁶ *Id.* 9.

national sovereignty.”⁵⁷ These are the chains which prevent the institutions from acting in sweeping export control integration. However, what should have prevented them completely ensuring ultimate retention by the member states, has allow them to develop some controls with hints of more to come.

This section has allowed us to look into the surface development of the dual-use export control system and the theoretical tools that might explain its potential success. The next section will give details on the theory, hypothesis and operationalization of this thesis and the expectations of an analysis. The analysis that follows will break the “shell” of the export control development and provide some answers for the questions that lurk beneath.

⁵⁷ Jones, 2003 (2).

CHAPTER 3

THEORY, HYPOTHESES AND OPERATIONALIZATION

Power Structure Shifts for National Security

Given the chronology and critique of the development of the dual-use export control system in the literature review and the justification and evaluation of regional integration as a reasonable explanatory framework, a clear delineation of the intent of this work and the methodology appropriate for the task is required. Since the initiation of dual-use regulation by the EU, issues of sovereignty and national security interests have plagued the debate of the member states, the institutions and the interest groups with vested interests. I believe that once there has been a test for improvement within the evolution of the dual-use export control system, then one will begin to see that there has been a minute, but extremely significant shift in the power structure of the institutions, interest groups and the member states. *Intense economic regional integration can eventually lead to the assumption of national security interests by supranational institutions, despite the strength of member states' original intentions.*

Credible Development and Who Is At the Wheel

This theory can be further divided in three hypotheses as they illuminate the three stages that are necessary for the exploration of the power shift for this particular case study involving the EU. The first of the hypotheses deals with the explicit development of the dual-use export control system requiring a qualitative, comparative test of the 1994 and 2000 systems. Provided the first hypothesis is proved correct, the second

hypothesis requires a discussion of the ability of this regulation to impact national security of the member states. Finally, hypothesis three illuminates, through a qualitative analysis, the drivers for the shift in competence for dual-use export controls in an effort to explain the type of integration process that best accounts for this important shift.

Hypothesis 1

Dual-Use Regulation 1334/2000 increases levels of dual-use export control integration from Dual-Use Regulation 3381/94.

Hypothesis 2

Increased levels of dual-use export control integration through regulation decreases levels of national security control for member states.

Hypothesis 3

Supranational institutions and supranational interest groups positively influence the strength of dual-use export control integration through regulation.

In addition to the claim that these three hypotheses provide an explanation for dual-use export control development and, subsequently, the actors that were able to stimulate the power shift in national security, there are null hypotheses and an alternative hypothesis. First, it is plausible that Dual-Use Regulation 1334/2000 does not change export control system from Dual-Use Regulation 3381/94. Second, even if

the evidence shows that there are strong indications or proof that the export control system has improved, increased levels of dual-use export control integration through regulation may have no effect on levels of national security control for member states, consequently needing no credible reaction from the member states. Finally, if it is shown that not only is the regulation an improvement, but the power shift did occur, the member states could have positively influenced the strength of dual-use export control integration through regulation, believing that it is in their interest to harmonize the system, acting in coordination with the supranational interest groups and institutions.

CITS: Concepts and Methodology

For the first hypothesis, the evaluation of the two export control systems will be tested through the use of the CITS methodology.⁵⁸ This methodology is a test of ten elements that comprise effective export control systems, and it will be used comparatively for both regulatory regimes. The current methodology of CITS involves the completion of a questionnaire for policies, institutions and behavior related to the ten elements listed below. However, since the EU necessarily creates a multi-tiered relationship with its member states, the behavioral questions in the questionnaire would be best answered through fifteen evaluations, one for each of the current member states. Given the nature of this thesis, a study of that magnitude is not possible at this time. Further research is necessary concerning the behavior and actual implementation of controls by the member states to fully grasp the value and objectives of this methodology. However, general trends may be evaluated through the changes in the related legislations. For the purposes of this study, the policies and institutions will be

⁵⁸ Bertsch and Grillot. Eds. Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union, New York, NY: Routledge, 1998. (see Chapter 1)

evaluated qualitatively based on the ten necessary elements of a successful export control system for the EU dual-use technology export control regimes, as created by CITS. The ten elements are as follows:

1. Licensing System/Legal Framework
2. Control Lists
3. Administrative Process
4. Customs Authority
5. Regime Adherence
6. Catch-all Clause
7. Information Sharing/Gathering
8. Verification
9. Training
10. Penalties

Following the analysis and evaluation of the export control regimes for the EU, there will be a qualitative analysis of the institutional proceedings of the EU, including draft reports and communications, and statements of defense industry interest groups, including position papers and press releases, related to the creation and criticism of the first and second regulation. If the CITS methodology proves that there is significant change in the system and evidences a significant shift in sovereignty in this national security arena, and interest groups and institutions can be singled out as credible drivers, then neofunctionalism may have explanatory value regarding the “spillover” from the Common Commercial Policy to the CFSP. Through an evaluation of industry and political preferences in the time between the initial regime and the current regime through the institutional framework, there could be evidence regarding a particular shift in which of these drivers caused the effective spillover into national security. This could have potentially larger implications in future development of the CFSP in terms of, specifically supranational export control for biological, chemical and nuclear weapons, and generally, a unified foreign policy for the European Union.

CHAPTER 4

ANALYSIS AND EVALUATION OF DUAL-USE SYSTEM

Test of the Two Systems

Licensing System/Legal Framework

As previously stated in the literature review, there has been significant activity in the development of a legal framework and licensing system for the EU in dual-use technology exports. Since 1994, with the introduction of Council Regulation (EC) 3381/94, there have been quite a few additions and modifications of the legal framework of the dual-use export control regime of the EU (see Table 1). There are basically four major texts that provide for the foundations of the two export control regimes. However, despite the necessary modifications, the four major texts establish a fairly robust framework for the existence of a legal system regarding dual-use technology. Since the regulations are binding on the member states, the actions by the member states must coordinate with the mandates of the regulations. With its inception, Regulation 3381/94, issued by the EU, brought several changes contributing to the harmonization of dual-use export controls in the EU. The Regulation called for, in Article 3, mandatory license requirements for all export and re-export of dual-use technology and goods from the EU, as issued by the member states. It is important to note that this major regulation⁵⁹

⁵⁹ Borchardt, Dr. Klaus-Dieter, ABC's of Community Law, Brussels, Belgium: European Commission, 2000 – Definition of a regulation is recognizable by two parts: "Their Community character, which means that they lay down the same law throughout the Community, regardless of international borders, and apply in full in all member states. A Member State has no power to apply a regulation incompletely or to select only those provisions of which it approves as a means of ensuring that an instrument which it opposed at the time of its adoption or which runs counter to its perceived national interest is not given effect. Nor can it set up provisions or practices of domestic law to preclude the mandatory application of a

does not cover the transfer of knowledge, services or transit trade. When this license is issued, it has validity throughout the EU, as stated in Article 6, potentially undermining some of the stricter controls of other member states. Article 7 allows for consultation among member states, but any opposition to a license by one Member State is not required to be acknowledged by another.

TABLE 1: EU Legislation on Dual-Use Exports

<i>Council Regulation (EC) No 3381/94 of 19 December 1994</i> Setting up a community regime for the control of exports of dual-use goods
<i>Council Decision 94/942/CFSP of 19 December 1994</i> On the joint action adopted by the Council on the basis of Article J.3 of the TEU concerning the control of exports of dual-use goods
EU Code of Conduct for Arms Exports of 8 June 1998
<i>Council Regulation (EC) No 1334/2000 of 22 June 2000</i> Setting up a Community regime for the control of exports of dual-use items and technology
<i>Council Joint Action 2000/401/CFSP of 22 June 2000</i> Concerning the control of technical assistance related to certain military end-uses
Council Decision 2000/402/CFSP of 22 June 2000 Repealing Decision 94/942 CFSP on the joint action concerning the control of exports of dual-use goods
Council Regulation (EC) No 2889/2000 of 22 December 2000 Amending Regulation (EC) No 1334/2000 with regard to intra-Community transfers and exports of dual-use items and technology
Council Regulation (EC) No 458/2001 of 6 March 2001 Amending Regulation (EC) No 1334/2000 with regard to the list of controlled dual-use items and technology when exported
Council Regulation (EC) No 2432/2001 of 20 November 2001 Amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology
Council Regulation (EC) No 880/2002 of 27 May 2002 Amending Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology
Council Regulation (EC) No 149/2003 of 27 January 2003 Amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology

Source: Official Journal of the European Union contains texts of all of the regulations, decisions and joint actions listed in this table. Italics have been added to the table to emphasize major legislation. Note: The EU Code of Conduct is not legally binding.

regulation. Direct applicability, which means that the legal acts do not have to be transposed into national law but confer rights or impose duties on the Community citizen in the same way as national law. The member states and their governing institutions and courts are bound directly by Community law and have to comply with it in the same way as with national law.” (65).

Subsequently, Regulation 1334/2000 attempted to correct some of the deficiencies and actually succeeded in covering the transfer of knowledge and services, although not transit trade. Transit trade is still left to the capacity of the Member State. Council Joint Action 2000/401/CFSP, amending Regulation 1334/2000, dealing with software, technical support or instruction and specifically notes “oral forms of assistance”⁶⁰ covers controls of knowledge and services in the dual-use export control regime. Regulation 1334/2000 includes the prohibition of authorization of dual-use export licenses with deference only to public security or human rights considerations in Article 5. The member states have been removed from Article 5 as a requirement for notification, leaving only the Commission as the required institution where the Member State denying dual-use export licenses should provide notification. Article 9 prohibits member states from issuing licenses that have been denied by other member states for identical transactions. The Member State must first consult the other member states and, then if it still decides to issue the license, must provide extensive written documentation for the decision to the member states where the license was previously denied. The Regulation has also included a model form purposes of standardization of license issuance (see Appendix 1). This form is a visual representation of the harmonization of these dual-use export controls as the shift in binding power moves from the member states to the EU institutions.

Control Lists

The control lists for the dual-use technology exports are extremely extensive given the nature of the dual-use goods. There have been some updates of the previous

⁶⁰ Council Joint Action 2000/401/CFSP of 22 June 2000 concerning the control of technical assistance related to certain military end-uses [Official Journal L 159 of 30.06.2000], Article 1 § (b).

list of 1994 as one can see from the extension of the annexes of the regulations. The first decision⁶¹ contains five annexes that identify specific items and destinations subject to control.

*Council Decision 94/942/CFSP*⁶²

Annex 1: Provides a list of products subject to export control.

Annex 2: Provides a list of countries to which these products are usually allowed.

Annex 3: Provides guidelines on export policies agreed upon by member states.

Annex 4 and Annex 5: Provides a list of highly sensitive goods that are subject to controls for intra-community trade.

There are various elements missing from, Council Decision 994/942/CFSP, which Article 11 of Regulation 1334/2000 attempts to correct, insisting that the lists must be kept in coordination with contemporary national and international obligations and commitments.

*Council Regulation (EC) 1334/2000*⁶³

Annex 1: Provides a common list of dual-use goods that require export authorization when exiting the borders of the European Union. Including:

⁶¹ The Council of the European Union's Common Foreign and Security Policy/European Security and Defence Policy defines several instruments of the Council, since the instruments of the Council for CFSP differ from the instruments of the Council for the Community, being under separate pillars: 1. *Common Positions:* The Council can adopt common positions defining the Union's approach to a particular geographical or thematic issue, vis-à-vis a third country or at an international conference for example. The member states then ensure that their national policies are in line with the common position. Countries which are candidates for accession to the EU may align themselves to these common positions. 2. *Joint Actions:* The Council adopts joint actions in certain situations requiring operational action committing the member states of the European Union. Each action specifies its objectives, scope, the means to be made available to the Union, the conditions for its implementation and (if necessary) its duration. 3. *Decisions:* In the context of the CFSP, the Council can also adopt decisions which, like common positions and joint actions, are binding on the member states. See <http://ue.eu.int/pesc/> under Instruments of the CFSP.

⁶² Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the TEU concerning the control of exports of dual-use goods [Official Journal L 367, 31.12.1994]. (Annexes 1-5)

⁶³ Regulation 1334/2000 (Annexes 1-4)

1. Nuclear Materials, Facilities, and Equipment
2. Materials, Chemicals, "Microorganisms" and "Toxins"
3. Materials Processing
4. Electronics
5. Computers
6. Telecommunications and "Information Security"
7. Sensors and Lasers
8. Navigation and Avionics
9. Marine
10. Propulsion Systems, Space Vehicles and Related Equipment

Annex 2: Provides authorization for a general European Community export license, with the exception of particularly sensitive dual-use goods which do not have intra-Community authorization. Also included is a list of friendly countries where export controls are not as strict and the conditions and requirements for the use of the export authorization.

Annex 3: Provides a model form for dual-use export licenses (see Appendix 2) and provides a form for the guidelines for publication of the license to the European Community.

Annex 4: Provides a list of dual-use goods that could possibly require national (Member State) authorization before being eligible for intra-Community trade. Similarly, there is a list of goods of which there is no requirement of national authorization before the ability for intra-Community trade.

Although it is possible for member states to add to the lists that currently exist for the Regulation, there are few countries who do since the list is much more exhaustive than the previous Regulation.⁶⁴ However, additions to this list must be notified to the Commission and approved.⁶⁵ It is also important to note that the list was moved from the pillar of the CFSP into the European Community's pillar to require that the list is

⁶⁴ Germany and Britain had additional, stricter controls for dual-use before Regulation 1338/2000.

binding without question upon the member states. It is no longer a Decision in CFSP, but integrated into the Regulation.

Administrative Process

The two regulations have stipulated, through Article 16 and Article 19, respectively, that the Commission should provide a representative to set up a Coordinating Group to be attended by representatives of the member states. This group, suggested originally by the Committee on Energy, Research and Technology in the European Parliament⁶⁵, provides information to member states on how to inform exporters on their obligations under the regulations, develops clear relationships with European industries, and, recently under Regulation 1334/2000, assistance for the accurate completion of the export authorization forms (see Appendix 1). Very little has changed in relation to the administrative capacity of the EU for dual-use exports. Much of the daily administrative duties are coordinated within the bureaucracy of each Member State (see Appendix 2).

Customs Authority

Regulation 3381/94 allows for any customs authority to refuse, annul, suspend, modify or revoke an export license for dual-use goods within the Community.⁶⁷ If the license is from another Member State, the acting state must inform the issuing state and the European Commission with notification of the action, as stated in Article 9. These actions, according to Article 10, can be taken if the Member State feels that the situation regarding the issuance of the original license has changed during the time the license

⁶⁵ Regulation 1334/2000, Article 5, §1-3.

⁶⁶ Draft Opinion of the Committee on Industry, External Trade, Research and Energy for the Committee on Foreign Affairs, Human Rights, Common security and Defense Policy on the Code of Conduct on Arms Exports – First Annual Report (11384-1999 – C5-0021/2000 – 200/2012 (COS)).

was issued and then presented to the challenging Member State attempting to export dual-use goods. The Member State can hold the goods to be exported for 10 working days while the issuing Member State and the Commission is consulted, at which point the Member State must release the goods, unless there is an exceptional threat to the national security of the Member State. Member states may also determine the offices for the customs authorities, as stated in Article 11, provided that the Commission is informed of all necessary contact information (see Appendix 2).

Regulation 1334/2000 in its complementary Article 9 provides additional restrictions on the exporters and authority for the customs officials. Article 9 states that if a Member State has previously denied a license to an exporter for an “essentially identical transaction”⁶⁸ in the last three years, the Member State where the license is being requested must consult with the previously denying Member State to assert the rationale for denial. If the issuing Member State then decides to issue the license, it must inform the Commission and the previously denying Member State. This measure effectively ensures that one more loophole has been closed and the customs authority for the member states has the authorization to complete Community security measures.

The previously stated situations, regarding the relationship between the member states and the EU, under Regulation 3381/94 Articles 10 and 11, now Articles 12 and 13 of Regulation 1334/2000, have remained the same except for one important change: the stipulation that the member states could still deny suspicious export of dual-use goods for matters of national security has been removed. In its place rests the substitution of an additional 30 working days with the original 10 working days, after

⁶⁷ Regulation 3381/94, Article 7, § 3.

⁶⁸ Regulation 1334/2000, Article 9 § 3.

which the dual-use goods must be released immediately, and a subsequent reporting to the Commission.

Regime Adherence

There are four international export regimes that are acknowledged by the CITS methodology, including the Australia Group (AG), the Nuclear Supplier's Group (NSG), the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA). These four multilateral export control regimes each have their own control lists and membership. Membership in all of these regimes indicates a strong commitment to export controls, noting that none of these regimes are legally binding upon their members. The relationship that the EU has with each of these regimes is particularly unique in that all of its member states are members of these multilateral export control regimes, but the EU is not necessary represented.

The EU, however, shares a particular external legal relationship with its member states that can be found in the text of the most recent Treaty of Nice elaborating on the competency of the EU to act on behalf of the member states in terms of international trade. Article 133 of the Treaty states the EU will act:

...to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers... [, and] where agreements with one or more States or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.⁶⁹

⁶⁹ Consolidated Version of the Treaty Establishing the European Union, Article 133 §1, 3.

This specific directive for the EU Commission is realized in the DG Trade and is compatible with Article 2 of the Treaty which states that the institutions of the EU will act:

...to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and social protection, equality between men and women, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.⁷⁰

Therefore, given this legal justification, the EU Commission acts on behalf of all of the member states, clearly including the states that are members of the export control regimes, to negotiate issues of international trade. The DG Trade promotes the external economic and political interests of the European Community. It covers all the main aspects of trade in goods and services (tariff and non-tariff barriers, trade defense, particularly in cases of dumping and subsidies, export loans, and export controls) as well as key aspects of intellectual property, investment and competition.⁷¹ There are certain restrictions, however, that even the EU cannot overcome. If the multilateral export control regime does not allow for the observers, then the EU cannot participate. However, a cohesive and unified action must still be implemented when member states voice their concerns and issues in these regimes. There have been some developments between the first and second regulations on dual-use exports that have increased the role of the EU in these multilateral regimes.

⁷⁰ Id. Article 2.

Multilateral Export Control Regimes:

AG: All EU member states held membership before 1994. In this case, the Australia Group granted full membership status to the European Commission in 1997.

NSG: All EU member states hold membership in the NSG. The NSG allows observers and the European Commission is a permanent observer.

MTCR: All EU member states held membership before 1994, however, the MTCR does not recognize observer status. The European Commission participates in coordination with the EU Delegation to the MTCR.

WA: All member states hold membership to the WA. As the first global multilateral arrangement covering conventional weapons and sensitive dual-use goods and technologies, the WA holds special significance for this study. The arrangement was established in 1996, after the implementation of the first Regulation, strengthening the commitment of the member states, however, the WA does not permit observers, so the European Commission participates in coordination with the EU Delegation to the WA.

The European Commission and its particular relationships with the decision-making of the multilateral export control regimes have clearly increased over the last decade. Although the member states have been members of these regimes since before the first Regulation controlling the exports of dual-use, with the exception of the WA as the most recently created regime, the relationships between the member states and these multilateral regimes, even when the European Commission is not represented, has

⁷¹ Commission Directorate General for Trade,
http://europa.eu.int/comm/trade/whatwedo/work/index_en.htm.

changed as the EU stretches its legs in the realm of harmonization of international trade policies. This structural shift has altered the relationships with other independent nations in international institutions and regimes to create an effective legally binding bloc in EU external relations.

In addition to the membership of the EU and its member states, the Regulation 1338/2000 adjusts the control lists for dual-use technology to be in harmonization with the control lists of the multilateral export control regimes that each of the member states has pledged commitment and any applicable international treaties that they may have signed regarding dual-use technology controls⁷². Additionally, the Regulation calls for periodic amendment and updates according to the requirements of these particular regimes. This is a significant change from the previous legislation that was a conglomeration of various member states' control lists and frequently created discrepancies among the member states and their national lists.

Catch-all Clause

The catch-all clause, or the need for an export license to the extent that an exporter has knowledge of the intended military-related use of the good, was present in the first Regulation. Regulation 3381/94 stated that the "an authorization shall be required for the export of dual-use goods not listed...if the exporter has been informed by his authorities that the goods in question are or may be intended, in their entirety or part, for use in connection with..."⁷³ any form of proliferation, creation or development of WMD, leaving the burden on the Member State rather than the exporter to enforce the

⁷² Regulation 1338/2000, Article 11.

⁷³ Council Regulation (EC) No. 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods [Official Journal L 367, 31.12.1994] Article 4, § 1.

catch-all clause.⁷⁴ The exporter was also required to report these possibilities, but only if he is aware. The final paragraph in Article 4 allows for member states to create their own national legislation to increase the enforcement of reporting by the exporter. However, this was not mandatory for the member states and provided a weak alternative to a potentially robust catch-all system. This was changed significantly in Regulation 1334/2000 where, not only were the member states required to provide authorization for suspected WMD use by third parties, but exporters must now take into consideration sanctions imposed by the UN or OSCE, EU legislation that imposes restrictions on countries or destinations, and suspected military end-use of the dual-use goods even if they are not listed in the Annexes of the Regulation. This catch-all clause was significantly enhanced despite some of the strong objections of the member states. Although Britain and Germany retained higher catch-all standards throughout the decade of the initial dual-use regime, the remaining member states felt that the issue of a catch-all clause should remain as a tool of national security discretion for the Member State rather than increasing the integration of the catch-all clause into Community legislation.⁷⁵

Information Sharing/Gathering

Clearly, information sharing and gathering is happening within the EU, as is evidenced by the Articles in both regulations that require reports to the European Commission regarding export denials, grants superceding previous denials, and threats to national security.⁷⁶ However, in addition to these specific requirements, there is the Coordinating Group, referenced earlier, and the mandate the member states should

⁷⁴ Jones, 2000 (4).

⁷⁵ *Id.* at 4.

“take all appropriate measures to establish direct cooperation and exchange of information between competent authorities”⁷⁷ This is not quite an initiative for gathering of information, but the stipulations for information sharing is clearly evident in both regulations.

Verification

Regarding the indications of import certificate/delivery verifications (IC/DV), end-use/end-user and pre-license/post-license requirements, no mention of IC/DV or pre-license/post-license requirements were addressed, but the statement of end-use and re-export of dual-use goods were addressed in Article 6(2) of Regulation 3381/94 as a possible requirement by the member states' customs authorities. Subsequent legislation does not add to the absence of the IC/DV or the pre-license/post-license. Regulation 1334/2000 shifted the reference stating that the statement of end-use may be obligatory if appropriate without mentioning the member states' authorities, indicating that the EU institutions might have a possibility for requests of the statements prior to authorization. However, no evidence of such a transaction exists.

Training

Training of the licensing officials, border guards and customs officials is the responsibility of the member states and is not referenced in the regulations, with the possible exception of the Coordinating Group which promotes informing exporters of their obligations and assistance with export license forms, as stated in Article 18 of Regulation 1338/2000.

⁷⁶ Regulation 3381/94 Article 13, §1 and Regulation 1334/2000 Article 15, §1.

⁷⁷ *Id.*

Penalties

Penalties related to the control of dual-use exports were alluded to in Regulation 3381/94 under Article 17 where the Member State is required to “ensure proper enforcement of all of the provisions in the Regulation. In particular it shall determine the penalties to be imposed in the event of breach of provisions...[and] must be effective, proportionate and dissuasive.”⁷⁸ Although the penalties are at least addressed, the loopholes for weak enforcement are wide open. Regulation 1334/2000 merely stated the exact phrase in its respective Article 19. Penalties still, and likely will, remain in the hands of the Member States. This could pose a problem as the regime stiffens the requirements and stipulations. States with weaker enforcement will attract exporters that have less to lose by violating the Regulation.

Regulation Improvement?

Given the analysis presented here in relation to the strong emphasis on increasing the strength of the direct legal force of Regulation 1338/2000 in most of the ten criteria for an effective export control system, it can be assumed that the situation for dual-use regulation has improved. Although these are fairly detailed examinations of the regulations and their relevant articles, the true test would be a visual examination and verbal communications on the relationships between the legislations and their enactment and enforcement in member states. However, this examination certainly provides a first glance at the regulations themselves and how they match with proven, vital elements of effective export control systems. Now that improvement has been asserted, the next task is to determine the cause for this improvement and how the potential actors in this relationship were able to boost the effectiveness of the system.

System Creation Drivers: Who Made It Better?

Institutional Proceedings

The European Commission

Various proposals and reports came from the Commission during the period between the first and second regulations on dual-use technology export controls. The opinion of the Commission, which was shared with the other institutions and eventually to the member states through the Official Journal of the European Union, addressed some of the major concerns that arose from the Regulation 3381/94. In a proposal presented by the Commission in 1998 it stated flatly that “after two years of application, it has become clear that the present common export control mechanism is not functioning satisfactorily.”⁷⁹ The Commission cited some of the dire problems such as the need to rectify the variance of national licenses through harmonization, the sharing of information on sensitive end-users, and that “due to an insufficient convergence of national policies and practices, the system is too complex to be routinely enforced by customs with a sufficient degree of automaticity.”⁸⁰ These concerns were clarified to the Commission by the Union of Industrial Employers’ Confederation of Europe (UNICE), the European Round Table of Industrialists (ERT) and other interest groups. A precedent was evidenced in the reference to the European Court of Justice⁸¹ rulings in favor of Article 113 of the TEC, while maintaining that national security is a necessary

⁷⁸ Regulation 3381/94, Article 17.

⁷⁹ Proposal for a Council Regulation (EC) Setting Up a Community Regime for the Control of Exports of Dual-use Goods and Technology: White Paper from the Commission to the European Council, COM (98) 257 final at 98/0132 (ACC) (2).

⁸⁰ On the Application of Regulation (EC) 3381/94 Setting Up a Community System of Export Controls Regarding Dual-use Goods: Report to the European Parliament and the Council, COM (98) 258. (6).

⁸¹ According to the ECJ, an integrated system is permitted only if Community law alone cannot provide a sufficient legal basis. In the case of dual-use goods, the integrated system was therefore a violation of Community law under Article 296. See ECJ, Case C 83/94 Leifer Judgment of 17.10.95.

element for the member states. Bearing this in mind, the Commission, in the proposal that followed, removed the reference to national security (Article 296, ex. Article 223) from Regulation 3381/94 and stated “it considers Article 113 to be the appropriate legal basis for a Community export-control regime concerning dual-use goods.”⁸² The critical tone of the Commission and its reliance on the viewpoints of defense interest groups provides important indications for a joint effort by the Commission and the European defense industries to change the dual-use system to their mutual benefit.

The Parliament

The European Parliament in its reports from two particular committees states that the dual-use system represents a positive first step, but a weakened text with the abundance of loopholes for exporters and member states. In an annual report from the Committee on Foreign Affairs, Human Right and the Common Defense Policy on the EU Code of Conduct, the Parliament expressed its views on exports. Similar to the Commission’s earlier statement, the Parliament affirmed that the “European Defense Industry is an important contributor to the EU economy and remains strategically important to the EU.”⁸³ In a statement regarding arms export development, the Parliament stated that the policy must:

- a) ensure the consistency of the EU’s external action,...
- b) satisfy the security imperatives of the EU
- c) meet the needs and challenges of the European Defense Industry
- d) contribute to the development of the Common Defense Policy⁸⁴

⁸² Proposal for a Council Regulation (EC) Setting Up a Community Regime for the Control of Exports of Dual-use Goods and Technology: White Paper from the Commission to the European Council, COM (98) 257 final at 98/0132 (ACC) (4).

⁸³ Draft Report on the Council’s 1999 Annual Report on the Implementations of the EU Code of Conduct on Arms Exports (11384-1999 – C5-0021/2000 – 2000/2012 (COS)). (6). Note: This affirms that the defense industry interest groups have a noticeable impact on the institutions.

⁸⁴ *Id.* at 7.

The report also stated that the Parliament feels that the member states in regards to their national security, “should only invoke Article 296 in *exceptional* circumstances in which they regard the *essential* interests at risk”⁸⁵ Although the Parliament did not try to remove the Article from legislation regarding export controls, the explicit statement of the restrictive use of the Article sends the same message. In a subsequent report of the Committee on Industry, External Trade, Research and Energy, went so far as to directly suggest in its conclusions that “the possible deletion of Article 296 of the EU Treaty only makes sense if the level of Community controls is raised beforehand.”⁸⁶

Defense Industry Interest Groups

From a glance at the position papers of the industries related to dual-use technology and goods, one can quickly see the similarities in the statements issued from the interest groups and the reports of the Commission and Parliament. The European Chemical Industry Council (CEFIC) in a position paper regarding the draft regulation for dual-use goods stated that they “strongly urge the Commission to ensure that the legislation gives unambiguous direction to member states to establish an effective control regime for trade external to the Community.”⁸⁷ They claimed that there was a need for control lists where national discrepancies would not be accepted, an elimination of the catch-all clause, and implied that the license arrangements might give member states too much discretion, opting for greater harmonization and integration.⁸⁸ They finally noted that “any legislation that stops short of fully harmonizing national

⁸⁵ *Id.* at 7. (Italics added for emphasis)

⁸⁶ Draft Opinion of the Committee on Industry, External Trade, Research and Energy for the Committee on Foreign Affairs, Human Rights, Common security and Defense Policy on the Code of Conduct on Arms Exports – First Annual Report (11384-1999 – C5-0021/2000 – 200/2012 (COS)). (6-7).

⁸⁷ “CEFIC Comments on the Draft Council Regulation on the Control of Exports of Certain Dual-use Goods and Technologies and of Certain Nuclear Products and Technologies,” European Chemical Industry Council. Position Paper, 1992. [www.cefic.be/position/Tea/pp_tm009.htm] (1-2).

export control laws at a Community level and does not take due account of the points raised above will perpetuate discrimination, will be ineffective and will be contrary to the spirit of a true Internal Market.”⁸⁹

The European Defence Industries Group (EDIG), in a recent agenda for the intergovernmental conference, stated its views on the regulation of dual-use export controls of the EU. They blatantly declared, “[t]he Article 223 [currently 296] of the Rome Treaty should be maintained *for the moment*. It constitutes the only protection which may be used by the Governments, if necessary during the transition period leading to the establishment of a Common European Defense Policy.”⁹⁰ They called for the strengthening of the export controls through harmonization of intra-Community trade by the institutions and a complete integration of export controls to third countries. The EDIG also stated, “export controls today are an integral part of national sovereignties...[but, t]he importance given to defense products export as an instrument of foreign policies leads to disparities between national policies.”⁹¹ The EDIG called for a “European authority” to remedy and regulate export policy discrepancies, not a harmonization of national policies.

The Drivers and Their Effect

These supranational institutions and drivers have certainly provided evidence to strongly indicate that their involvement in the creation of legislation and subsequent dual-use export control regime was characterized by an effort to ensure the reduction of

⁸⁸ *Id.* at 3.

⁸⁹ *Id.* at 4.

⁹⁰ “The European Defence Industry – An Agenda Item for the 1996 Intergovernmental Conference” European Defence Industries Group, Memorandum by the EDIG, 1996.

[www.europarl.eu.int/hearings/igc2/doc66aen_fr.htm] (2). (Italics added for emphasis)

⁹¹ *Id.* at 9.

national security for the member states. The emphasis ranged from a strong desire to fix the system through harmonization to eliminating national security in export controls completely. This, of course, could have been motivated by a desire to increase the power of their respective roles in the EU, or, purely for a need to harmonize the system that previously allowed too many breaches of security. Further examination is needed to determine the motivations of these particular drivers. Where the member states were unable to provide security effectively, however, the defense industries and the EU institutions were more than willing to intercede.

The first null hypothesis, regarding the effectiveness of Regulation 1334/2000, can be rejected since the CITS methodology claims that that evidence of an increase in the ten necessary elements of an export control system contributes to the increased effectiveness of the export control system. Of course, it is important to note, the CITS methodology test is based on a three-tiered approach and this thesis only evaluates two: policy and/or legal foundation, and, briefly, institutions and procedures for member states. The remaining approach, behavior/implementation of the export control, given the need to evaluate all fifteen countries, is left for further research. At least, there has been significant effort to improve the regulation through the ten elements of an effective export control system, and, therefore, levels have increased to a certain degree.

National sovereignty, by definition, includes the element of national security. If a country is unable to retain the one element, national security, that contributes most to the definition of sovereignty, then the sovereignty is lost or relinquished. This can be seen in the ability of the member states to adjust the control lists to what they feel would

potentially enhance their security, either on the bottom for economic advantage in removal of items from the list, which the regulation forbids, or, at the top, in the addition of items to the list, which, according to the current legislation, is only available for situations related to reasons of “public security or human rights considerations”⁹². There must be immediate justification to the Commission and full compliance with multilateral export control regimes. Here, dual-use export controls, which are undoubtedly an element of national security, have been successfully regulated upon by the EU, including some portion of the national security as a portion of national sovereignty from the fifteen member states. The member states have previously relinquished significant portions of national sovereignty over concerns of welfare and economic development. What this analysis asserts is that this dual-use export control regulation, with export controls being an element of national security, is the beginning of the assumption/relinquishment/cooperative movement towards the remaining element of national sovereignty for the member states: national security, not that it has no effect, thus rejecting the second null hypothesis. I then subsequently argue that there are indications that it is *assumption*, not relinquishment or cooperation, of national security given the statements of the supranational institutions and supranational interest groups in influencing the creation of the second regime. I believe that, given the statements and positions of the interest groups and institutions presented here, this can be asserted as having a strong impact in changing the regime. Although, again, a previously stated, further research through personal interviews would assist in solidifying this assertion. Finally, it is important to recognize that this research does not touch on potential influences outside the EU, such as the impact of the multilateral export control regimes,

⁹² Regulation 1334/2000, Article 5, §1.

or the origins of the first legislation. I do not believe that these are particularly relevant intervening or antecedent variables for this argument given the limited six-year focus of this thesis.

CHAPTER 5

CONCLUSION

Does Regional Integration Explain?

Given the above analyses of the increase the effectiveness of the dual-use system by the EU and the key drivers that caused a significant change, I would like to address possible theories of regional integration that might help us to interpret this power shift. I believe, of the four theories of regional integration, neofunctionalism provides the greatest explanatory power for the marked improvement in dual-use export control system and the underlying shift in national sovereignty over security interests of the member states. Most notably, the particular emphasis placed on Article 296 and Article 133, that provided the majority of the legal basis for the legislation and the majority of the concern of the supranational interest groups and institutions, helps to define this theoretical association. Article 296, promoting the strength of national sovereignty, was bypassed by the EU institutions and interest groups in favor of Article 113, allowing institutions to supercede the security interests of the member states and legislate in a manner that has direct and binding effect, diminishing the collective national sovereignties. This illuminates the “role of the Commission under Article 113 of the Treaty of Rome (and a functionalist approach to integration) and that of the member states under Article 223 [currently 296] (and the intergovernmental approach)”⁹³ as the Commission, with the assistance of the Court of Justice, the Parliament and defense

⁹³ Davis, Ian. *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK*. Oxford, England: Oxford University Press, 2002. (63).

industry groups were able to assume and exercise power that removed, however minute the amount may be, some portion of national sovereignty in security interests. In addition to the lack of intergovernmentalism within Article 113, the intergovernmentalist approach requires large states to dominate over small states and no reduction of national sovereignty is tolerated, except in extreme cases, which dual-use technology certainly does not constitute. Supranational institutions and interest groups are also not considered to have any significant impact on the outcomes of integration. The institutions and interest groups examined here clearly have an important impact.

This leaves the remaining functionalist approaches as they both relate to the legal and political ramifications of the dual-use export control development and national sovereignty reduction. First, functionalism and neofunctionalism both espouse a slow integration with logical progressions as they develop in the economic relationship between states to more complex political developments. The motivations for the formation of the European Union came from the basic common desire to eliminate single control over the resources of war: steel and coal. This has since developed into a highly complex, economic integration and the birth of a common market that has intertwined the member states of the EU that may believe that, even if the member states wanted to remove themselves from the Union, the resulting economic impact would be so devastating as to be politically undesirable for any Member State. However, where functionalism would only allow for a descriptive analysis of the current state of the relationships in the EU, due to its lack of process tracing, neofunctionalism can allow for a study of the drivers for the complex political integration that follows the economic development. In this case neofunctionalism emphasizes the role of

supranational interest groups and institutions as important and influential drivers in the realm of political development, or national sovereignty issues. These institutions and interest groups only act when it is to their advantage in relation to their potential increase in power relative to the member states or other institutions or interest groups. As shown in this evaluation, the dual-use export control regulations provided the perfect outlet for institutions to move into security concerns of the member states. This is unprecedented in the realm of export controls since none of the multilateral export control regimes that currently exist have any binding effect on any of its members. Now, 15, soon to be 25 states, in the world are legally bound to adhere to the control lists set forth by the multilateral export control regimes, especially in the realm of dual-use technology.⁹⁴

Where Do We Go From Here?

Due to the limitations of this analysis and evaluation, it would be unwise to generalize without further exploration. Namely, behavioral questions regarding the actual implementation by each of the member states, ideally following the addition of the 10 new members of the EU, need to be answered and added to the evaluation of the current and previous system. Second, interviews with persons creating the policy and strategies on dual-use export control for the EU institutions and for the defense industry interest groups would allow for increased strength concerning the assertions in the drivers of the evolving EU export control system. Despite these concerns, there are strong indications that there has been a case of “spillover” into security concerns, sometimes to the chagrin of member states. This could have significant impact on the future development of the CFSP for the EU especially with the interest group

⁹⁴ See controls lists on dual-use technology created by the Wassenaar Arrangement.

statements so matter-of-fact on CFSP development and the eventual elimination of national sovereignty. Although the institutions moved the legislation from the CFSP (second pillar) to the EEC (first pillar), the subject matter has not changed – it is still national security. This merely emphasized the lack of foundations and development for the CFSP, and indicates strength in the resolve of the institutions and the interest groups to maintain security as a priority despite member states' concerns. It is important to remember, as Stanley Hoffman has reminded us, that “between the cooperation of existing nations and the breaking of a new one there is no stable ground. A federation that succeeds becomes a nation; one that fails leads to secession; half-way attempts...must either snowball or roll back.”⁹⁵ If the EU plans to develop credibility in its CFSP, the actions taken here in the area of dual-use technology export controls could be the window that the institutions and interest groups have been waiting for to “snowball” these policies in order to promote the substantial foundations needed for growth in EU foreign policy and security.

⁹⁵ Hoffmann, S.. “Obstinate or Obsolete? Reflections on the Nation-State in Western Europe” Daedalus 95, 1966 (910).

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APPENDIX 1

MODEL FORMS FROM ANNEX III FOR EXPORT AUTHORIZATIONS
(referenced in Article 10 (1) of Regulation 1334/2000)

EUROPEAN COMMUNITY		EXPORT OF DUAL-USE ITEMS (Reg. (EC) No ...)	
L I C E N C E	1. Exporter	No	2. Identification number
			3. Expiry date (if applicable)
			4. Contact point details
	5. Consignee	6. Issuing authority	
	7. Agent/Representative (if different from exporter)	No	8. Country of origin (if applicable)
			Code(s)
			9. Country of consignment (if applicable)
			Code(s)
	10. End-user (if different from consignee)	11. Member State of current or future location of the items	
			Code(s)
		12. Member State of intended entry into the customs export procedure	
		Code(s)	
		13. Country of final destination	
		Code(s)	
14. Description of the item(s)		15. Commodity code (if applicable)	16. Control list No
		17. Currency and value	18. Quantity of the items (if applicable)
19. End-use		20. Contract date (if applicable)	21. Customs export procedure
22. Additional information required by national legislation (to be specified on the form)			
Available for pre-printed information At discretion of Member States			
For completion by issuing authority			
		Signature	Stamp
		Issuing Authority	
		Date	

(1) See Regulation (EC) No 1172/96 (OJ L 118, 25.5.1996, p. 10), as subsequently amended.
(2) If needed, this description may be given in one or more attachments to this form (2(a)). In this case, indicate the exact number of attachments in 11(a) box.

EUROPEAN COMMUNITY		EXPORT OF DUAL-USE ITEMS (Reg. (EC) No ...)	
L I C E N C E	1. Exporter	2. Identification number	
	14. Description of the items		15. Commodity code
			16. Control list No
			17. Currency and value
			18. Quantity of the items
	14. Description of the items		15. Commodity code
			16. Control list No
			17. Currency and value
			18. Quantity of the items
	14. Description of the items		15. Commodity code
		16. Control list No	
		17. Currency and value	
		18. Quantity of the items	
14. Description of the items		15. Commodity code	
		16. Control list No	
		17. Currency and value	
		18. Quantity of the items	
14. Description of the items		15. Commodity code	
		16. Control list No	
		17. Currency and value	
		18. Quantity of the items	
14. Description of the items		15. Commodity code	
		16. Control list No	
		17. Currency and value	
		18. Quantity of the items	
14. Description of the items		15. Commodity code	
		16. Control list No	
		17. Currency and value	
		18. Quantity of the items	

Note: In part 1 of column 24, write the quantity still available and in part 2 of column 24, write the quantity deducted on this occasion.

23. Net quantity/value (net mass/other unit with indication of unit)	24. In numbers	25. In words for quantity/value deducted	26. Customs document (Type and number or extract (No) and date of deduction)	27. Member State, name and signature, stamp of deduction
	1			
	2			
	1			
	2			
	1			
	2			
	1			
	2			
	1			
	2			
	1			
	2			

COMMON ELEMENTS FOR PUBLICATION OF GENERAL EXPORT AUTHORIZATIONS

(referred to in Article 10(3))

- (1) Title of general export authorisation
- (2) Authority issuing the authorisation
- (3) EC validity. The following text shall be used:
 'This is a general export authorisation under the terms of Article 6(2) of Regulation (EC) No 1334/2000. This authorisation, in accordance with Article 6(2) of that Regulation, is valid in all Member States of the European Community'.
- (4) Items concerned: the following introductory text shall be used:
 'This export authorisation covers the following items'
- (5) Destinations concerned: The following introductory text shall be used:
 'This export authorisation is valid for exports to the following destinations'
- (6) Conditions and requirements

APPENDIX 2

EU MEMBER STATES' ADMINISTRATIONS IN CHARGE OF DUAL-USE ITEMS⁹⁶

	BELGIUM	DENMARK
a) Licensing Policy	Ministère des Affaires Etrangères Rue Quatre Bras, 2 B-1000 Bruxelles * : (32-2) Fax : (32-2) E-mail:	Ministry of Foreign Affairs, N.4 Asiatisk Plads 2 DK-1448 Copenhagen * : (45-33) 92.00.00 Fax : (45-33) 92.08.12 E-mail: um@um.dk
b) Licensing Office	Mr M. Moreels Administration des Relations Economiques - 2 ^e Division Rue Général Leman 60 B-1040 Bruxelles * : (32-2) 206.58.05 Fax : (32-2) 230.96.24 E-mail: michel.moreels@mineco.gov.be	Mr Bjarne Bitsch National Agency for Enterprise and Housing Langelinie Allé 17 DK-2100 Copenhagen Denmark * : (45-35) 46.62.82 Fax : (45-35) 46.66.32 E-mail: bi@ebst.dk
c) Customs	Ministère des Finances Administration des Douanes et Accises CAE Tour Finances - Boîte 37 B-1010 Bruxelles * : (32-2) Fax : (32-2) E-mail:	Ms Mette Krog Ministry of Taxation, Central Customs and Tax Administration Østbanegade 123 DK-2100 Copenhagen * : (45-35) 29.24.22 Fax : (45-35) 29.29.17 E-mail: Mvk@tu22.ccta.dk
d) Permanent Representations	Représentation Permanente belge Rue Belliard, 62 B-1040 Bruxelles * : (32-2) Fax : (32-2) E-mail:	Mr Preben Pettersson Représentation Permanente danoise Rue d'Arlon, 73 B-1040 Bruxelles * : (32-2) 233 09 02 Fax : (32-2) 233.08.91 E-mail: Prepet@um.dk
e) Consultations Point of Contact	Mr M. Moreels * : (32-2) 206.58.05 Fax : (32-2) 230.96.24 E-mail: michel.moreels@mineco.gov.be	Mr Bjarne Bitsch * : (45-35) 46.62.82 Fax : (45-35) 46.66.32 E-mail: bi@ebst.dk
f) Web sites	www.mineco.fgov.be	www.efs.dk
	GERMANY	GREECE
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⁹⁶ Source: DG Trade – Dual-Use: see <http://europa.eu.int/comm/trade/goods/dualuse/contacts.htm>

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f) Web sites	www.vn.fi/ktm/vientiv	http://europa.eu.int/comm/trade/goods/dualuse/index_en.htm

APPENDIX 3

ACRONYMS

AG: Australia Group

CEPIC: European Chemical Industry Council

CFSP: Common Foreign and Security Policy (PESC)

CITS: Center for International Trade and Security (The University of Georgia)

DG: Directorate General

EDIG: European Defence Industry Group

EEC: European Economic Community

ERT: European Round Table of Industrialists

EU: European Union

IC/DV: Import Certificate/Delivery Verifications

MTCR: Missile Technology Control Regime

NSG: Nuclear Supplier's Group

OSCE: Organization for Security and Cooperation in Europe

TEC: Treaty Establishing the European Communities

TEU: Treaty on European Union

UN: United Nations

UNICE: Union of Industrial Employers' Confederation of Europe

WA: Wassenaar Arrangement