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EXPORT CONTROL OF SPACE ITEMS IN EUROPE: LEGAL AND POLITICAL CONSTRAINS

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ABSTRACT

The United States satellite and space components industry is struggling with the necessity to adjust the national export control system to focus on 21st Century security threats and commercial trends. The U.S. export control regime does not appear to be doing what it was intended to do: protect U.S. national security interests in the context of defence trade activity. Indeed, the U.S. industry has been severely impacted, mainly by the U.S. International Traffic in Arms Regulations (ITAR). The result is that the U.S. market share in the commercial satellite-manufacturing sector has declined and this downturn has given an edge to European manufacturers. This perspective gives a unique opportunity to Europe to increase the relevance of European firms in the global marketplace of commercial space on condition of a coherent export control policy supported by an effective legal framework. Unfortunately, the current situation in Europe is one of disharmony due to the composite institutional organisation of the European Union. The EU system provides little more than political and economic expedience and compromise cloaked as a positive aspect of further overall EU integration.
This paper identifies the effectiveness of the existing European system and discusses the chances of resolving the existing political issues by employing legal instruments that are mostly absent at present. Notably, this paper will highlight the need to establish a Common/Harmonised EU Export-Control Regime, and to create legally binding instruments for the free movements of items between the EU Member States as well as more specific regulations dedicated to space items.

INTERNATIONAL MULTILATERAL EXPORT-CONTROL INITIATIVES

It is important to underline that the EU/EC and the United States are members of several multilateral export-control initiatives, regimes and agreements. These seek to prevent the proliferation of nuclear, radiological, biological and chemical (NRBC) weapons, their means of delivery, such as ballistic missiles, as well as dual-use technologies[1]. The legal instruments are the following:

Multilateral export-control initiatives:
Wassenaar Arrangement (WA) on Dual-Use Goods and Munitions
Missile Technology Control Regime (MTCR)
The International Code of Conduct Against Ballistic Missile Proliferation
Proliferation Security Initiative
UN resolution 1540
The G-8 Global Partnership Against the Spread of Weapons and materials of Mass Destruction

[1] Richard Grimmett, *Military Technology and Conventional Weapons Export Controls: the Wassenaar Arrangement*, CRS Report RS 20517, March 27,2000.

The signatory members of the WA are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States. To know more about the WA see also: http://www.wassenaar.org/list/WA-LIST%20(04)%202.pdf.

All the above agreements affect commerce of space products and technologies.

- The Wassenaar Arrangement (WA) on Dual-Use Goods and Munitions is the principal international regime that regulates dual-use technologies. The WA was started in 1996 as a successor to the Coordinated Committee (CoCom, the dual-use control regime during the Cold War era). Space related activities are listed in Category 5-Communications, Category 6-Sensors and Lasers, Category 7-Navigation and Avionics and Category 9- Propulsion[2].
The eleventh Plenary meeting of the Wassenaar Arrangement (WA) was held in Vienna (Austria) on the 13th and 14th of December 2005. The meeting reviewed the accomplishments of the year and considered further export control measures.
The WA considered growing international concerns about unregulated "intangible" transfers, such as by oral or electronic means, of software and technology related to conventional weapons and dual-use items.
In view of the threat posed by terrorist acquisition of man-portable air defence systems (MANPADS), the Plenary welcomed practical steps by a number of Participating States in implementing Wassenaar Elements for Export Controls of MANPADS, for example through the destruction of stockpiles of such weapons.

- The Missile Technology Control Regime (MTCR) is an informal and voluntary association of countries established in 1987 which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation. The MTCR rests on adherence to common export policy guidelines applied to an integral common list of controlled items (the MTCR Equipment, Software and Technology Annex). Concerning space activities, there is a list of related technologies that includes ballistic missiles, space launch vehicles, sounding rockets, cruise missiles and other UAVs[3]. The MTCR was initiated partly in response to the increasing proliferation of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Following the collapse of the Soviet Union, the risk of proliferation of WMD has been recognized as a threat to international peace and security, including by the UN Security Council in its Summit Meeting Declaration of January 31, 1992. While concern traditionally focused on state proliferators, after the tragic events of 11 September 2001 it became evident that more has to be done to decrease the risk of WMD delivery systems falling into the hands of terrorist groups and individuals. This is highly influenced by U.S. interests (See for example the discrepancy of treatment, in this field, between Iran and India by the U.S.). One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD.

- The International Code of Conduct Against Ballistic Missile Proliferation (ICOC) was introduced on the 25th of November 2002 by the MTCR member states to supplement the Missile Technology Control Regime[4] for the purpose of including other countries into ballistic anti-proliferation efforts[5].

- The Proliferation Security Initiative was launched by President Bush in 2003 in order to create a partnership of UN member states to prevent the actual transit of NRBC weapons, their delivery systems and related

[2] http://www.wassenaar.org/list/WA-LIST%20(04)%202.pdf

[3] http://www.mtcr.info/english
[4] http://www.state.gov/t/np/rls/fs/27799.htm
[5] http://www.basicint.org/pubs/Notes/2002international_code.htm

materials to hostile nations and groups[6].

- The UN Resolution 1540, proposed on April 2004 by President Bush, requests UN Countries to introduce non-proliferation rules and sanctions into their domestic laws[7].

- The G-8 Global Partnership Against the Spread of Weapons and Material of Mass Destruction was proposed by President Bush and implemented by the G-8 leaders in June 2002. The purpose is to help the countries of the former USSR to decommission in a secure way their NRBC arsenals that are no longer needed, by preventing hostile regimes and groups from obtaining these technologies[8].

THE U.S. EXPORT CONTROL SYSTEM: DISADVANTAGES FOR THE INDUSTRY

The current situation in the U.S. space industry is one in which American companies, primarily those that produce satellites, components and/or furnish launch services, have great difficulty competing in the world market. The most serious barrier to US competitiveness in this field is the government policy on export controls. One relevant point in the debate is the trade-off between national security and economic benefits. If advanced technology is exported to potentially hostile countries, this will undermine national security. Concurrently, forbidding Americans to export their products and services to certain countries and groups reduces the demand for the firms' products and services and therefore their potential profitability.

As a result, the export regulatory regimes of the United States have been frequently criticized.

The outcome of nearly 20 years of cooperation and joint ventures with partners such as Chinese and Russian space firms to provide launch vehicles and services[9], is a system with a rigid interpretation of ambiguous statutory requirements and a confusing licensing process that often leads to long delays and uncertain results. The main problem is identified in the length of time it takes to obtain International Traffic in Arms Regulations (ITAR) or Commerce Department approvals in the case of dual-use items. According to the reports of American manufactures[10], the time to get a licence goes from 104 to 150 days[11]. One recent example is the implementation of the partnership for the International Space Station (ISS).

As the ISS partners get ready for the first flight of Europe's Automated Transfer Vehicle (ATV) this year, U.S. export controls are slowing down important cooperation that is needed between U.S. and European Contractors. The ITAR regulations require U.S. contractors to obtain a Technical Assistance Agreement (TAA) to share controlled information and technologies with non-U.S. citizens. And any modification to a TAA can take months to make its way through the relevant agencies of State and Defense. This system has already caused inefficiencies and makes it difficult to get information on each others systems, needed in order to operate together in a timely way. NASA Administrator Michael Griffin, acknowledging those and other difficulties of U.S. contractors, sent a letter in December 2006 to U.S. Secretary of State Condoleezza Rice, seeking some

[6] http://usinfo.state.gov/products/pubs/proliferation/

[7] http://www.un.org/Docs/sc/unsc_resolutions04.html

[8] http://www.state.gov/e/rls/rm/2002/12190.htm

[9] In 1988 for the first time President Regan established technology-safeguard and cooperation agreements on specific space launch activities with China, and two years later president G.H.W. Bush negotiated similar agreements with Russia.

[10] Center for Strategic and International Studies, "Regulating Satellite Exports", March 12, 2002, http//:www.csis.org/tech/satellites/.

[11] For a detailed analysis of export licensing time lines see GAO Report No.**GAO-01-528** and http://www.pmddtc.state.gov/processtime.htm

improvements in ITAR process to enable U.S. industry to be more competitive in the international market place, but so far, there as been no response to this point.
Another frequent point of difficulty concerns which U.S. Government department is responsible for licensing decisions and the time frame and transparency of the licensing review process[12].
In the U.S., the export of dual-use technologies not normally for military use is regulated by the Department of Commerce. However, the policy surrounding the export of commercial satellites and components is, by the 1999 congressional act, under the jurisdiction of the Department of State's Munitions List.

U.S. export-control regime
Arms Export Control Act (AECA) 1976
International Traffic in Arms Regulation (ITAR) 1976, 22 CFR (Code of Federal Regulation), Part 120-130
Export Administration Act (EAA) 1979
Strom Thurmond National Defence Authorisation Act for FY, 1999
NASA Export-Control Program NPR 2190.1 NASA (10 April 2003 – 10 April 2008)

- The Arms Export Control Act (EACA) of 1976, established the requirements for what became the International Traffic in Arms Regulations (ITAR). The purpose of the regulation, stated in the same document, is the following: "*Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. It is the purpose of that subchapter to implement this authority*".
The ITAR is administrated by the Office of Defence Trade Controls (ODTC), the Bureau of Political and Military Affairs of the Department of State, and in cooperation with the Department of Defence and other authorities of the U.S. Government. The exports of certain articles of greater value require Congressional involvement.
The Office of Defence Trade Controls has the power to issue export licences under the ITAR to U.S. companies and citizens; however, registration at ODTC is compulsory prior to applying for authorization to export "defence articles" and "defence services".
The ITAR encompasses the **United States Munitions List (USML)**. This is a list of defence articles and defence services that are classified as weapons, munitions or other military items; there are 21 different categories. These are in close coherence to the Munitions List of the Wassenaar Arrangement (see paragraph below), but it also includes rockets and the **Missile Technology Control Regime Annex**, in Category XV ("Spacecraft Systems and Associated Equipment"), includes Satellites and Ground Stations. Furthermore, the **Technical Assistance Agreement (TAA)** includes any agreement for the provision of "Defence Services" such as the disclosure of technical data.

- The Commerce Department administrates the Export Administration Act (EAA) of 1979, as revised by Presidential authority. Within this regime, the **Export Administration Regulations (EAR)** constitutes the "code of conduct" for the administration of the act, and a **Commerce Control List (CCL)** is compiled in cooperation with Department of Defence, Department of Commerce, State Department and Department of Energy. EAR bans the export of the objects that are on this list (which is divided into 10 categories), and the **Commerce Country Chart (CCC)** classifies the conditions of licence for the target States according to strategic and control considerations.

[12] IFRI, Centre Francais sur les Etats-Unis (CFE) – « *Space Export-control Update* » September 2004 to November 2005 – Rapport CFE Espace 7-2005, November 2005, p.4.

From 1992 until 1999, the Commerce Department had authority for export licensing of initially most, and subsequently, all aspects of commercial communications satellites and their components.

- Strom Thurmond National Defence Authorisation Act for FY 1999. This act returned jurisdiction for the export of commercial communication satellites from the Commerce Department's Commerce Control List to the State Department's Munitions List which covers the export of these and other spacecraft systems and associated equipments from the United States. However it does provide lesser restrictions in the case of commercial communication satellites exported to NATO Member States and non-NATO major allies of United States, e.g. Australia and Japan.

- The NASA Export-Control Program (NPR 2190.1 NASA (10 April 2003 – 10 April 2008)) is a NASA system established to ensure that exports and transfers to foreign parties in the course of approved international activities are consistent with ITAR and Export Administration Regulations (EAR). Indeed, the NASA Procedural Requirements (NPR) provides basic procedures for fulfilling NASA's obligations to comply with all U.S. export control laws and regulations in its transfer of commodities, software, or technologies to foreign parties in the course of the approved international activities.
This NASA NPR program contemplate a wide range of export control related aspects: the NASA Export Control Process (chapter 3), the EAR Procedures (chapter 4), the International Traffic in Arms Regulations (ITAR) Procedures (chapter 5), the NASA Export Control Program Education and Training (chapter 6), the NASA Export Control Program Auditing (chapter 7) and Questions of Compliance and Violations (chapter 8), providing licensed procedures and definitions for each of them.

Within this frame, U.S. competitiveness in the international satellite market was seriously compromised in the last 10 years. The current export control of dual-use items policy has increased the cost associated with doing business for U.S. commercial satellite manufacturers while at the same time decreasing their ability to compete in the global marketplace. The U.S. market share in the commercial satellite manufacturing sector has declined and may continue to do so for years to come. Based on the Satellite Industry Association data, the U.S. share of global satellite sales decreased from 64 percent of the 12.4 billion Dollars market in 1998 to 36 percent in 2002[13].
This downturn has given an edge to other players and, most notably, European manufacturers. Indeed, by far, the greatest benefactor to U.S. export policies has been Alcatel Alenia Space, since last April denominated Thales Alenia Space[14], which is a joint venture formed in 2005 by combining the space businesses of Alcatel and Finmeccanica. In the early 2000s, Alcatel announced that they would build an "ITAR-free" spacecraft (i.e. no U.S. components subject to U.S. export controls). By 2004, Alcatel had been able to double their market share from around 10% in 1998 to over 20% in 2004. Besides, in early 2004 the European Space Agency (ESA) launched the EEE European Components Initiative (ECI) inviting the national space agencies to participate. This programme will develop production lines for systems that are critical to satellites but currently available only from U.S. companies. Going along with the present trend, European companies will gain

[13] Bernard Schwartz, Presentation at James A.Baker III Institute for Public Policy Workshop, September 17, 2003.
[14] On the 5th of April 2006, Alcatel decided to sell its share in Alcatel Alenia Space to the Thales Group, the European Union gave the definitive approval one year later, the 10th of April 2007.

a larger market share. The U.S. commercial satellite industry no longer leads the way, and U.S. technology is no longer the benchmark. This is an advantage that Europe must keep. But, in order to comply with this aspiration, Europe must face and overcome some weakness of its own export control system.

THE EXPORT CONTROL SYSTEM IN EUROPE: ITS EFFECTIVENESS

In Europe, space-related security concerns play a different role than in the U.S., and tackling the issue of export control is not easy. The European Union covers a broad range of different national interests. Only to give an example that can clarify the picture, two of the main countries involved in Space activities, France and the U.K., are permanent members of the UN Security Council and have long-standing relationships with clients in the Middle and Far East. Germany, conversely, has severe legal restrictions on any defence export trade, and Sweden maintains a tradition of strict nonalignment and self-sufficiency. As a consequence, design of a single cohesive policy to which all EU Member States can agree is problematical. The key issue is the link between "commercial competitiveness" on one side, and the compatibility with the principles of "fair competition" and "free trade" within the European Community on the other side (including the issues of "industrial policy" and "control of final destination").
In order to support the European objective to sustain European firms in the global marketplace of commercial space, an export control policy for commercial satellite technologies needs to be tailored on these aspects. But good policy needs a coherent and enforceable legal base. Therefore, the question is: does Europe have an adequate legal framework to support these ambitions? To answer this question, different levels of problematic need to be tackled.
An export-control regime at national and international levels already exists, and provides detailed lists of dual-use items subject to restrictions. One specific observation is that these lists refer to all dual-use items. As a result, it is not possible to make a distinction between dual-use "space" technology items and "non-space" ones. In fact, the latter, even if not directly related to space activities, can be relevant if used in outer space, for instance, as part of the equipment of a satellite or a rocket. This consideration makes clear that *there is no export-control legislation devoted exclusively to space activities*. Therefore, in order to have a complete picture of the issue of the export-control regime for space items in Europe, one has to refer to three different *corpus juris*: the international space law, the international law relating to dual-use goods and technologies, and the EU Law[15].

International space law currently consists of the five United Nations treaties on the law of outer space. With respect to the international law related to dual use goods and technologies, as already explained in paragraph 2, there are several multilateral export-control initiatives, regimes and agreements[16] that are fully operational under EU internal law. Due to the complexity of the EU's institutional structure, the latter is constituted by several different regulations and juridical instruments. In fact, besides the Member States, there are the European Council, the Council of Ministers and the Commission that play at different levels in defining the juridical instruments on export-

[15] Discussing the effectiveness of the current export-control system in the EU taken from: A. Bini, "Export control of space items: preserving Europe's Advantage", 23 Space Policy, pp. 70-72 (2007).
[16] To remember the main one: Wassenaar Arrangement on Dual-Use Goods and Munitions, Australia Group, Nuclear Suppliers Group (NSG)/ The Zangger Committee and the Missile Technology Control Regime (MTCR).

control on the basis of their competencies established by the EU Treaty.

The question of having "EU-wide export controls" was initially put forth in the context of the completion of the Internal Market. In Europe, the integration process of economic and political structures occurred along with the disintegration of traditional areas of national control; since 1995, a coordinated export-control security policy proceeds in the same direction. However, even if the driving force was clearly the political wish of facilitating the trade of the European products, the present EU system of export controls suffers some limitations within a borderless internal market composed of 27 Member States.

The current EU Regime for the export-control of dual-use items, the *acquis communautaire*, is a partially harmonized system based on two legal acts.

In 2000, the Council approved the Regulation (EC) No 1334/2000 which entered into force on the 28th of September of the same year, and since then it has been amended several times[17]. The Regulation builds on the previous regime[18], but is now based completely on Article 133 of the EC Treaty, relating to **Common Commercial Policy**.

Given regulation is obligatory law for all the EU Member States, and the implementation and enforcement are done nationally by the responsible national Authorities. The Regulation lays down strict procedures for controlling exports of all dual-use items identified for control in the four international export control regimes and the Chemical Weapons Convention. The Regulation includes a single Control List, which combines the Export Control Regimes' lists of all the items that, due to the EU open market, are free to move between the EU Member States, and provides a basic provisions for the Member States to control exports of any non-listed dual-use item they consider presents proliferation risks.

The two pillars on which both the Regulation and the EC Treaty rest on are: Community competence, and joint action under Common Foreign and Security Policy (CFSP).

The primly objective of this system is to remove the barriers to the free movement of dual-use goods within the internal market of the Community and, in so doing, improve the international competitiveness of European industry. But the removal of these barriers, and thus the elimination of internal controls, implies the application of effective controls based on common standards for the export of goods outside the Community. Such controls are necessary to protect the "essential national security interests" of the Member States and to ensure that the international commitments of the member states and the EU, especially as to non-proliferation, are complied with.

The joint action between this Regulation and the provision of the art.133 of the EC Treaty, leads to the establishment of a **common list of dual-use goods** that are subject to control when exported from the European Community. This list implements internationally agreed dual-use controls including the Community strategic controls, MTCR, NSG (Nuclear Suppliers Group), and Australia Group. The key element of the regulation is that a license is required for exports from the Community for all the goods in this list. The responsibility for authorizing such exports remains with the

[17] OJ L 159, 30.6.2000, Category 9 of this Regulation is dedicated to Propulsion Systems, Space Vehicles and related. The enforcement of the amendments to the list of control has entered into force on 11 April 2006. The last proposal amending and updating the regulation was issued on the 19th of July 2007, COM(2007) 419 final.

[18] The Council Regulation (EC) No 1334/2000 proceeds from the Council Decision 94/942/CFSP adopted on a joint action concerning the control of export of dual-use goods, as part combined system of dual-use export controls which included the Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a **Community Regime for the Control of exports of dual-use items**.

member state. However, the license is then valid throughout the Community. There is a common list of destinations for which simplified formalities may be applicable and a set of guidelines that Member States will take into account in deciding whether to grant an export authorization that includes the Common Criteria. For many, this arrangement was seen as a liberalization of the previous restrictions, but it is clear that this compromise goes to the very heart of the European debate.

In these last years, the DG Trade of the Commission seriously considered a reform of the EU Regime for Export Control of Dual-Use items. On the 21st April 2006, a meeting with exporters of dual use items organised by DG Trade took place in Brussels[19]. The main objectives of the meeting were to inform economic actors of the perspectives for the reform of the EU regime on export control of dual use items and to get their feedback on possible options.

On 18 December 2006, the European Commission presented to the Council a Communication[20] and a proposal for a recast Council Regulation[21] setting up a Community regime for the control of exports of dual use items and technology. It takes into account the conclusions of the 2004 Peer Review of Member States' implementation[22] of the Regulation and the results of a subsequent 2005-2006 impact assessment study[23], as well as the EU's obligations under UNSCR 1540.

The Commission now is involved in the ongoing discussions in the Council and has collected comments from exporters on its proposals at a meeting held in Brussels on the 26th of January 2007. Proposals currently discussed also involve the creation of new community general export authorisations as proposed in the Annex V of the above mentioned Communication.

In line with this trend, on the last 18th of July 2007 the Commission adopted the new Proposal for a Council Regulation amending Regulation (EC) No. 1334/2000 with regard to the list of dual-use items and technology when exported. This proposal states that: "*the list of dual-use items set out in Annex I shall be updated in conformity with the relevant obligations and commitments that each member state has accepted as a member of the international export control arrangements*"[24].

This stipulation is important. In fact, in the actual status of the European export-control system, there still are discrepancies due to the fact that not all new Member States have yet been accepted in these international regimes, in particular in the Wassenaar Arrangement and the MTCR. This situation represents certainly a weakness in the European system and represents an obstacle that needs to be overcome in order to make Europe a stronger partner for third Countries.

EU export-control instruments:
Australia Group
Nuclear Suppliers Group
Missile Technology Control Regime (MTCR)
Wassenaar Arrangement
Council Regulation (EC) No 1334/2000 (22 Jun 2000) setting up a **Community regime** for the **control of exports of dual-use items and technology** (Amended and updated by the Council regulation (EC) 149/2003 of 27 January 2003)

[19] European Commission, TRADE-E04 D(2006) chaired by M. Perreau de Pinninck, Head of Unit, DG TRADE E-4.

[20] http://trade.ec.europa.eu/doclib/html/131827.htm

[21] http://trade.ec.europa.eu/doclib/html/131830.htm

[22] In June 2003 the European Council Adopted the Action Plan against Proliferation of WMD and in December of the same year, the EU Strategy against the proliferation of WDM. Both these documents include a commitment to reinforce the effectiveness of export-controls on dual-use goods in an enlarged Europe. Following, a Peer Review of Member States produced a number of recommendations. The implementation of these recommendations has been taken forward as a priority by the Council Working Party on Dual-Use Goods under the leadership of the Luxembourg and UK presidencies. http://trade.ec.europa.eu/doclib/docs/2005/january/tradoc_121250.pdf

[23] http://trade.ec.europa.eu/doclib/html/127589.htm

[24] COM(2007) 419 final.

Council Regulation (EC) No 3381/94 of 19 December 1994
Council Communication COM (2004) final of 3.2.2004
Council Joint Action of 22 June 2000 (2000/0401/CFSP), concerning the control **of technical assistance** related to certain military end-uses.
Council Regulation (EEC) 2913/92 establishing the **Community Custom Code** and in particular its new Section 1A on the **Authorized Economic Operator**.
European Union **Code of Conduct on Arms Export** (1998) adopted on the base of Luxembourg and Lisbon European Councils in 1991 and 1992).
Council Declaration of 13 June 2000 (2000/C 191/01) establishing a common **list of military equipment** covered by the European Union code of conduct on arms exports
Council Common Position 2003/468/CFSP of 23 June 2003 on the control of **arms brokering**
List of Council Decisions or Regulations adopting **restrictive measures** (embargos) against definite countries or non-states actors.
Council Regulation (COM 2005) 498 final
Council of the European Union 15826/05
CGEA Community General Export Authorization
National General Licenses

EUROPEAN EXPORT CONTROL POLICY: CHALLENGES

Various questions are raised by the European export control system. Although individual states reserve the right to make decisions on national security at the government level, pursuant to Article 133 of the EC Treaty, the EC has been given exclusive competence to create common commercial policy in the field of external trade relations. This reflects the dual nature of export controls, which seek to secure national security interests on the one hand while providing a level playing field for trade on the other. But who is more competent to determine which countries are friendly and which are not? National governments or European bodies? Who is to decide the ground rules for fair and unfair trade in dual-use exports? What happens if one EU country's civil export trade accidentally poses a security threat to another EU state? When is the export of dual-use technology a matter of simple trade and when is it part of the furtherance of foreign policy and security objectives? And what would happen if one EU country pursued an entirely different export policy from the other member states? Eventually it will be up to the European Council, which represents the member governments at the European level, to decide on where the exact margins of competency lie and how commonly agreed guidelines can be policed. But even here the picture is less than clear.

The above considerations make evident that while the Commission has largely achieved the goal of ensuring free movement of dual-use goods inside the Community, it has failed to establish a fully credible Community control regime for exports to third-countries. Indeed, the present EU system provides little more than political and economic expedience and compromise cloaked as a positive aspect of further overall EU integration. The rational behind these limitations is the Member States' political and economic interests. Hence, the present system is limited in scope and, consequently, effectiveness. The lack of a coherent unique European Policy on the dual-use items in this field underlies this situation. One important further step was, as already said in the paragraph before, the meeting with exporters of dual use items organised by the DG Trade of the Commission, which took place in Brussels on the 21st April 2006[25] and the following Proposal amending Regulation (EC) No. 1334/2000. This document represents an important political achievement, but is still not enough. There certainly is the acknowledgement that a Common European effort, supported by a clear political

[25] European Commission, TRADE-E04 D(2006) chaired by M. Perreau de Pinninck, Head of Unit, DG TRADE E-4.

programme, is highly recommended. Nevertheless a legal coherent framework is still missing. In order to achieve a greater competitiveness with third countries, the main issue would be the establishment of a Common/Harmonised EU Export-Control Regime, and the major aim should be to create legally binding instruments for the free movements of items between the 27 EU Member States. The key-issues would be: better security, better regulatory environment for EU industry, and promotion of greater coordination of export controls at the international level.

There may be a number of different scenarios already proposed to meet the weakness of the current European export control policy. But, recalling also what was already discussed above regarding the U.S. regime, one of the main Achilles' heel of the current harmonised system is the export licensing scheme. In fact, in the Community, several national general licences coexist in a complex system which has direct consequences for companies and customers. In an era of globalization in which Europe should speak with a single voice to the rest of the world, a solution that could be considered would be to replace the national licence with a Unique General Community Licence supported by a formal delegation of authority to member states with the responsibility for updating the list of controlled goods and, possibly, the establishment of a List Group for this purpose. It is realistic, in the development of this scenario, to realize also the abolition of the majority of the licensing requirements for intra-community trade in dual-use items as well as the reinforcement of the administrative cooperation between the member states regarding sensitive exports.

CONCLUSIONS

In order to meet the increasing expectations for the effectiveness and scope of the European system for the control of exports, there is the need to develop a *common export control policy*, one that protects national security interests while, at the same time, allows industries to compete globally and remain on the cutting edge of research and development. One way in this direction would be a consistent and more harmonised export-control regime, and more specific regulations dedicated to space items, where possible.

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[11] GAO Report No.**GAO-01-528** and http://www.pmddtc.state.gov/processtime.htm
[12]2 IFRI, Centre Francais sur les Etats-Unis (CFE), *Space Export-control Update, September 2004 to November 2005* – Rapport CFE Espace 7-2005, November 2005.
[13] Bernard Schwartz, Presentation at James A.Baker III Institute for Public Policy Workshop, September 17, 2003.

Note: Discussing the effectiveness of the current export-control system in the EU taken and developed from: A. Bini, *Export control of space items: preserving Europe's Advantage*, 23 Space Policy, 70-72 (2007).