

Export Control

This learning unit will introduce the history and rationale behind arms and dual-use export controls, and what these controls cover. It will also present the multilateral instruments which provide standards for export controls, and how these have developed over time, including in the European Union (EU). The unit will also examine how arms and dual-use export controls are implemented at the national level, as well as some of the current challenges associated with the implementation of arms and dual-use export controls, and how these challenges are being addressed.

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Cite as: Lauriane Héau, Giovanna Maletta and Kolja Brockmann, "Export Control" in EUNPDC eLearning, ed. Niklas Schoernig, Peace Research Institute Frankfurt. Available at <https://eunpdc-elearning.netlify.app/lu-12/>, last modified 4 December 2025

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1. Introduction

Introduction to the authors and the unit

Trading arms and dual-use items – that is, items that can potentially be used for both civilian and military applications – is different from trading any other type of goods or services. It comes with risks and potential security concerns, and as such, states have long asserted rights, accepted obligations and imposed controls that do not exist in other areas of trade.

Chapter 1 of this learning unit will cover the history of how controls over the trade in arms and dual-use items, often abbreviated to ‘export controls’, came about, why states developed them, and what activities and items they cover today.

Although they share similarities, the rationales for the controls on transfers of arms and dual-use items are not the same, which is reflected in the multilateral instruments and standards that states developed in this field. Therefore, to explore each of them in more detail, Chapter 2 focuses on conventional arms and Chapter 3 on dual-use items.

Over time, the European Union and its member states decided to establish their own standards and regulations for the trade in arms and dual-use items at a regional level, leading to a more detailed set of agreed rules than in any other region – this will be explored in Chapter 4.

In Chapter 5, we will look at national export control systems, through which states implement and apply multilateral and regional obligations and standards. We will take a look at the various elements that these national export control systems often share, and at the main actors involved in their implementation.

Finally, Chapter 6 will provide a summary of what we’ve learned throughout the unit. It will also highlight some of the common challenges that arms and dual-use export controls currently face, and explore ways to address these challenges.

Trading arms and dual-use items – that is, items that can potentially be used for both civilian and military applications – is different from trading any other type of goods or services. It comes with risks and potential security concerns, and as such, states have

long asserted rights, accepted obligations and imposed controls that do not exist in other areas of trade. This learning unit will cover the history of how controls over the trade in arms and dual-use items, often abbreviated to ‘export controls’, came about, why states developed them, and what activities and items they cover today.

Although they share similarities, the rationales for the controls on transfers of arms and dual-use items are not the same, which is reflected in the multilateral instruments and standards that states developed in this field. Export controls on conventional arms and on dual-use items will therefore be explored separately. Part of the learning unit will also focus on the European Union and its member states, as they decided to establish their own standards and regulations for the trade in arms and dual-use items at a regional level, resulting in a more detailed set of agreed rules than in any other region.

At the national level, states implement and apply multilateral and regional obligations and standards through their national export control systems. We will take a look at the various elements that these national export control systems often share, and at the main actors involved in their implementation. Finally, we will conclude with some of the common challenges that arms and dual-use export controls currently face, and explore ways to address these challenges.

For as long as states have exported military and security items there have been examples of them applying limitations and restrictions to this trade. As early as the Middle Ages, for example, Charlemagne ordained, in 805, a prohibition on the trade of weaponry with his enemies.

What are dual-use and arms trade controls?

For as long as states have exported military and security items there have been examples of them applying limitations and restrictions to this trade. As early as the Middle Ages, for example, Charlemagne ordained, in 805, a prohibition on the trade of weaponry with his enemies.



Charlemagne (748-814), King of the Frankish Empire
Courtesy of Domkapitel Aachen, all rights reserved

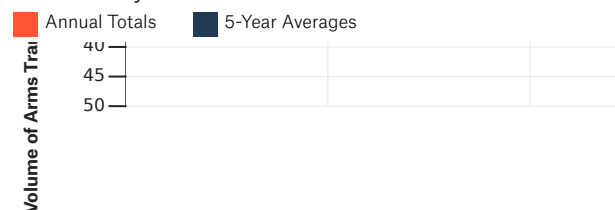
Interestingly, the restrictions applied not only to swords but also to exports of related equipment (e.g. coats of chainmail). These early restrictions were mainly driven by concerns related to national security – especially the risk that transferred arms and related knowledge and technology could help adversaries. While the arms trade continued, there are many other examples, throughout history, of states placing limitations on the trade of specific military items for national security reasons. Much later, in the 20th century, these restrictions and their underlying motivations have expanded, to include preventing exports that may exacerbate existing conflicts, contribute to destabilising military build-ups or be used in connection with violations of international human rights law (IHRL) or international humanitarian law (IHL).

As we will explore in the unit, states developed controls over the international trade in arms and dual-use items to address particular sets of concerns.



Grübelfabrik, CC BY-NC-SA

But the trade in these goods has continued to be seen as legitimate, and continues to be promoted in order to contribute to other objectives, including enhancing a state's international profile or supporting their national defence industry, foreign policy, security and strategic goals. The Stockholm International Peace Research Institute (SIPRI) has collected data on the volume of transfers of major conventional arms since 1950, an overview of which you can see in the graph on the screen. The graph shows a sharp increase in the volume of transfers in the 1960s and the 1970s, followed by a decline towards the end of the Cold War, with an upward trend in international transfers of major arms being observed since the beginning of the 21st century.



The trend in international transfers of major arms, 1950-2023
SIPRI Arms Transfer Database, Graphic: PRIF

In the modern era, the significant increase in the international movement of goods, people and scientific knowledge led states to set up more complex national

systems of controls over the trade in goods and technology they deemed sensitive. Aside from exports from one state to another, there is a range of other activities to which controls can and do apply, including imports, brokering or transit and transshipment. The policies states put in place to govern all these activities are often referred to as transfer controls, strategic trade controls or export controls. 'Export controls' is the term that we will use throughout the unit, but keep in mind that the scope of activities we will look at is broader than just 'exports'.

In terms of controlled items, export controls cover arms or military items, which encompass lethal military equipment as well as some combat support equipment necessary for the conduct of military operations, such as body armour, helmets or transport vehicles.^[1]



Grenade launchers ready to use
James Bevan/Conflict Armament Research

But with technological advances, the line between military goods and technologies and civilian ones also became increasingly blurred. Therefore, states broadened the scope of the controls to also include dual-use items. These are items which have the potential to be used for both civilian and military applications. Many of them can, for example, contribute to a nuclear, biological or chemical weapon, or to the vehicles that deliver them (such as missiles). Controlling the trade in dual-use items is therefore a key means of preventing the spread of weapons of mass destruction (WMD).



Dual-use item: Cascade of gas centrifuges to produce enriched uranium
U.S. Department of Energy

States also progressively recognised the need for and agreed on common standards at the multilateral level to coordinate and harmonise their export controls, thereby making them more effective. This led to the development of a set of multilateral instruments, including treaties and export control regimes, to address export control issues. That being said, ultimately it is states that remain responsible for adopting, implementing and enforcing the controls.

Before moving on to the rest of the unit, it is worth noting that arms and dual-use export controls regulate the legal trade in these items, and that – although related – this unit will not cover the scope or dynamics of the illicit trade in arms and dual-use items.

A brief history of developments of export controls

Pre-World War I:

It is possible to trace attempts to control the trade in military equipment and technology back to as early as antiquity, but states developed more modern forms of controls from the 17th century onwards, mainly during wartime, to address national security concerns.

Key developments pre-World War I

419 · A Rome edict prescribes death as the punishment for any Roman who taught shipbuilding skills to any Barbarian tribes

805 · Charlemagne ordains a prohibition on the trade of swords and coats of chainmail manufactured in the Frankish empire with his enemies

1853-1856 · During the Crimean war, the UK establishes a system of export licensing to prevent arms from reaching Russia

1890 · the Brussels Act is adopted by colonial powers prohibiting arms transfers to large parts of Africa

(see LU20 for more historic examples) [/1u-20/]

Between the world wars:

Following World War I, states started using export restrictions in an attempt to promote peace and prevent armed conflict. This led to increased efforts to make the import and export of military materiel more transparent, and to the development, in the main industrialised states, of national export control systems.

Key developments between WW I and WW II

1919 · Nine states including France, the US and the UK impose an arms embargo on China during the ongoing civil war

1923 · League of Nations resolution requests the Secretariat to collect and publish information on imports and exports of arms and ammunition

1930s · Development of national export control legislation in the UK (1931), Belgium (1933), the USA, Sweden, and the Netherlands (1935), and France (1939)

(see LU20 for more historic examples) [/1u-20/]

During the Cold War:

With the beginning of the Cold War, export controls became a tool used both by the Warsaw Pact and NATO states to limit the opposing bloc from accessing key technologies. The US, NATO allies (except Iceland), Australia and Japan set up an informal agreement, the Coordinating Committee for Multilateral Export Controls (COCOM), to control exports on a list of military and dual-use items to the Soviet Union, other Warsaw Pact states and (from 1957) China. Their goal was to limit the ability of these actors to obtain Western technology and develop their defence and technological industrial bases.^[2]

It is during this period that many states developed their national export control systems. And, as national security concerns related in particular to WMD grew, groups of like-minded states also established multilateral export control regimes. The first UN arms embargoes were also adopted, as states increasingly sought to use sanctions and export controls to pursue conflict prevention, non-proliferation and humanitarian objectives.

Key developments during the Cold War

1950 · Creation of the Coordinating Committee for Multilateral Export Controls (COCOM)

1963 · UN Security Council Resolution 181 establishes the first UN arms embargo, calling on all states to cease arms sales to apartheid South Africa

1974 · Creation of the Nuclear Suppliers Group, with a focus on nuclear-related items

1985 · Creation of the Australia Group, with a focus on chemical weapons-related (and later also biological weapons-related) items

1987 · Creation of the Missile Technology Control Regime, with an initial focus on controls on ballistic missiles capable of delivering nuclear weapons

After the Cold War:

After the end of the Cold War, states on both sides of the former East-West blocs took a more cooperative approach to develop common standards in export controls and increase transparency of international arms transfers.^[3] An example of this was the establishment in 1991 of a UN Register of Conventional Arms (UNROCA), as a confidence-building measure to encourage states to help 'prevent excessive and destabilising accumulation of arms'.

The United Nations Register of Conventional Arms (UNROCA) website [<https://www.unroca.org/>]

The United Nations Register of Conventional Arms (UNROCA) website serves as a platform promoting transparency in the global arms trade. Users can access detailed reports on international transfers of major conventional weapons, including battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. The site offers an interactive feature where visitors can click on a country to view its reported arms transfers, providing insights into global arms trade dynamics. Additionally, the website provides information on participation, reporting guidelines, and categories of conventional arms, supporting efforts to monitor and regulate arms transfers worldwide.

Concerns around the proliferation of WMD also led states, especially following 9/11 and the discovery of the A.Q. Khan's nuclear proliferation network (see Box in Chapter 3), to adopt UN Security Council Resolution 1540. For the first time, this Resolution required every UN member state to put in place adequate export controls, and included a series of measures aimed to prevent WMD proliferation to non-state actors, including terrorist organisations.

States and non-governmental organisations (NGOs) also continued to pursue the establishment of arms control measures grounded in humanitarian concerns. One area they increasingly focused on was the role of SALW in fuelling violence and conflicts, and the need to strengthen SALW controls⁴¹. These efforts were a key motivator for many of the NGOs and states that promoted the negotiation and adoption of the ATT, which entered into force in 2014. The ATT is the first international treaty to set obligations in the field of the international trade in conventional arms.

At the EU level, states worked closely together to increase the level of convergence in the field of export controls, which resulted in the adoption of common regulations for the trade in arms and dual-use items in the 1990s. Both sets of controls continue to be developed and expanded, as will be addressed in Chapter 4.

Key developments after the Cold War

1991 • Establishment of the UN Register of Conventional Arms and the P5 guidelines for conventional arms transfers

1993 • Adoption of EU's Common Foreign and Security Policy, giving the EU the legal power to adopt arms embargoes

1994 • Dissolution of COCOM

1994 • EU adopts two pieces of legislation for regulating the intra and extra-EU trade in dual-use items

1995 • Ceation of the Wassenaar Arrangement on export controls for conventional arms and dual-use goods and technologies

1998 • Adoption of the EU code of conduct on arms exports defining common rules for arms export controls

2001 • Adoption of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons

2004 • Adoption of UN Security Council Resolution 1540

2008 • Adoption of the EU Common Position, replacing the EU code of conduct

2009 • Adoption of the EU Dual Use Regulation, consolidating EU controls in a single legal instrument

2014 • Entry into force of the Arms Trade Treaty (ATT)

Defining 'arms' and 'dual-use items'

'Arms' are generally subdivided into two main categories: conventional weapons and WMD.

Weapons of mass destruction, which include chemical, biological and nuclear weapons, are covered in more detail in Learning Units 2 (Chemical Weapons), 3 (Biological Weapons), 4 (Nuclear Weapons 1) and 5 (Nuclear Weapons 2). In terms of definitions, this learning unit will focus on conventional arms, which encompass a wide range of weaponry, from major arms (e.g. warships, armoured combat vehicles, missiles and combat aircraft) to SALW (e.g. guns, machine guns, rifles) and their ammunition.



AK-47 assault rifle
Flemish Peace Institute



Machine gun
Conflict Armament Research



US Bradley Fighting Vehicle (used by the U.S. Army).
U.S. Army photo by Pfc. Santiago Lepper (public domain)

Although there is no internationally agreed definition of 'arms', several instruments – namely COCOM, UNROCA, the ATT and the Wassenaar Arrangement – have made efforts to define what constitutes 'conventional arms', 'arms' or 'military items' for the purposes of export control standards. This has resulted in a variety of definitions and scopes depending on the instruments, covering both physical items and some software and technology 'specially designed' for military purposes.

Dual-use items cover physical goods as well as technology which have the potential to be used for both civilian and – conventional or WMD – military applications. While these items were not specifically designed or modified for military use, they may have a military application. National authorities therefore need to evaluate the risk that the item in question could have a significant impact on military capabilities, be misused or contribute to WMD proliferation. If this is the case, national authorities can decide to control the transfer of this item by adding it to a control list. This results in the transfer of many items with day-to-day civilian applications being subject to an authorisation process – a license application – because of their dual-use nature. For example, triethanolamine, a chemical that is widely used in the soap and beauty industry but also happens to be a precursor for mustard gas, is controlled under the Chemical Weapons Convention and the Australia Group control list (see Learning Unit 2). In the realm of missiles, space launch vehicles (SLVs) share many technological similarities with ballistic missiles. These similarities have even increased with the recent development in small and micro launchers, which are technologically closer to medium and intermediate-range ballistic missiles than previous types of SLVs.^[5] Therefore, SLVs, as well as their parts and components, are controlled within the Missile Technology Control Regime (MTCR) (see Learning Unit 7) ^[1u-07].

As well as physical items, arms and dual-use export controls also cover certain software and technology, which take a non-physical – intangible – form. Controlled software includes for example certain types of encryption software, which uses cryptography to secure access to digital information, as well as AI software specially designed to be used in conjunction with a controlled military or dual-use item. Technology includes knowledge and technical assistance, such as instruction, training or consulting services, as well as technical data, such as blueprints, plans and diagrams. An example of technical data is the digital build files which contain technical specifications for 3D printers to produce missile parts, or 3D printed guns.

Intangible transfers of technology (ITT) cover the export of this software and technology which takes place through non-physical means, such as electronic transfer (e.g. by email, or via cloud computing), phone calls or in-person meetings.

Although not new, ITT have progressively taken on a growing importance in recent years. This comes with challenges, as some methods of enforcing the controls (e.g. physical checks at the border) are not applicable for ITT.^[6] As a result, strengthening compliance and outreach towards companies and other relevant actors is especially important in this domain

Why do states develop export controls?

Arms export controls were initially established by states to address national security concerns. States first imposed ad hoc controls during wartime to prevent their adversaries from accessing key military technologies. Many states then established more complex systems to regulate arms transfers, also during peacetime.^[7]

National security concerns remain a key motive for arms export controls today, but over the course of the 20th century, concerns around the humanitarian impact of the use of weapons grew, which led to a progressive expansion and strengthening of the controls in place. As a result, states established rules and treaties which go further and entirely ban the transfer, as well as production, stockpiling and use of specific types of conventional weapons, including anti-personnel mines and cluster munitions, due to the unnecessary and indiscriminate suffering these weapons can cause.

For other types of weapons whose transfer is not banned, arms export controls also now include provisions to prevent arms from being diverted, from being used to exacerbate existing conflicts, from contributing to destabilising military build-ups or from being used in connection with violations of international human rights law (IHRL) or international

humanitarian law (IHL) see Learning Unit 17 [/1u-17/].

States' policies on arms export controls and their decisions to approve or deny particular transfers are weighed against foreign policy, economic and strategic considerations. For example, major supplier states have traditionally been protective of their national defence industry and arms exports have often been viewed as playing an important role in this strategy.

Dual-use export controls have been more closely associated with the prevention of WMD proliferation, but human rights and IHL considerations have become more prominent in recent years. For example, since the 2010s, states have adopted controls on the transfer of certain types of cyber-surveillance tools (both software and hardware), such as mobile telecommunications interception equipment and intrusion software. Moreover, the breadth of what is covered by controls on dual-use items mean that a broad range of considerations can influence state policy in this area. For example, policies on the transfer of dual-use items can also be linked to development goals, such as for items that have key applications in medicine or agriculture. More generally, states try to ensure that the controls preserve the economic and technological opportunities that dual-use items can provide in the civilian realm.

Quiz

View quiz at <https://eunpdc-elearning.netlify.app/1u-12/>

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2. Multilateral instruments and standards for arms export controls

The way multilateral standards and instruments have emerged and expanded in the field of arms export controls reflect multiple goals:

- To mitigate the impact of the arms trade on international and regional security and conflict
- To mitigate the humanitarian impact of the irresponsible and unregulated arms trade
- To promote transparency and build confidence among states
- To ensure a level playing field for the arms industry through the adoption of common standards

With the exception of arms embargoes, the multilateral standards and instruments in the field of arms export controls mainly started to develop in the 1990s.^[1] Initial efforts were made in part because many states, including the five permanent members of the UN Security Council (the P5), saw the role that arms exports played in enhancing Iraq's military capabilities in the run-up to the invasion of Kuwait.



Gulf War 1991: USAF aircraft over Kuwait
U.S. Air Force

This was a key driver for action in setting up standards to promote restraint and prevent military build-ups, as well as to increase coordination and information sharing among arms exporters. A first step in this direction was the development of the 1991 P5 guidelines for conventional arms transfers and the adoption of the 1996 UN guidelines for international arms transfers. Another line of effort focused on increasing transparency in arms transfers as a confidence-building measure through the launch of the **UN Register of Conventional Arms** (UNROCA) in 1991.

Further, in 1995, a group of exporting states established the **Wassenaar Arrangement**, as a follow-on multilateral export control regime to the

Coordinating Committee for Multilateral Export Controls (COCOM). Through the Wassenaar Arrangement, states exchange information on transfers of conventional weapons and dual-use goods and technologies with a view to preventing destabilising accumulations that would endanger international and regional security and stability.

States also progressively started to establish regional and sub-regional instruments with provisions on export controls, in the European Union (see Chapter 4), in the Organization for Security and Co-operation in Europe (OSCE), but also in Africa and in the Americas.

A common understanding gradually emerged among NGOs, the UN and many states that the uncontrolled spread and availability of weapons, particularly small arms and light weapons (SALW, see Learning Unit 10) [10-10/] was responsible for a great deal of human suffering.^[2] This resulted in a series of efforts to embed humanitarian considerations in arms transfer controls.



Grüebelfabrik, CC BY-NC-SA

A particular focus was placed on having states adopt standards on SALW controls. This led to the establishment of the 2001 UN Programme of Action on SALW (PoA), a politically binding document setting minimum standards for controls on the manufacture, storage, sale, transfer and disposal of SALW, with the aim of tackling the illicit trade in these weapons.

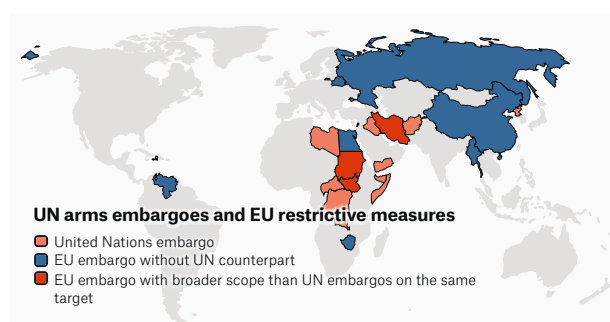
These initiatives, combined with the ambition of exporting states to globalise the standards on arms export controls that they had already adopted at the national or regional level, led the way to the adoption, in 2013, of the ATT, the first international and legally binding treaty to set standards for the international trade in arms.

Arms Embargoes

Arms embargoes imposed by UN Security Council are the only legally binding international instruments that apply to all UN member states which prohibit arms

transfers to specific recipients (under UN Charter, Chapter VII, Article 41). Arms embargoes are used to put pressure on states or other actors whose behaviour is deemed a threat to international peace and security. These arms embargoes have also been established in response to violations of IHL, as in the case of Rwanda in 1994 and the Sudan region of Darfur in 2004. Importantly, their implementation is monitored by sanctions committees and UN panels of experts.

The EU also imposes arms embargoes under its Common Foreign and Security Policy (CFSP). These are binding for EU member states and form part of what the EU generally refers to as 'restrictive measures' (see Chapter 4).



UN arms embargoes and EU restrictive measures

Sources: European Commission/EU Sanctions Map, NaturalEarth. Licensed under CC BY 4.0.

The Wassenaar Arrangement

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (see also Chapter 3) is a politically binding multilateral export control regime that aims to prevent transfers that contribute to 'destabilising accumulations' of conventional weapons and dual-use goods and technologies that could threaten international and regional security and stability. States participating in the Wassenaar Arrangement also seek to promote 'transparency and greater responsibility' in the transfers of such weapons and technologies. Participating states have produced best practice documents and voluntary guidelines, which also include provisions on assessing the risk that weapons could be used to violate human rights or the laws of armed conflict (Wassenaar Arrangement, n.d.).

INSTITUTION

Wassenaar Arrangement

Established 12 July 1996 42 Members

The Wassenaar Arrangement is a multilateral export control regime established on July 12, 1996, in Wassenaar, Netherlands. It aims to promote transparency and responsibility in transfers of conventional arms and dual-use goods and technologies, thereby preventing destabilizing accumulations. Participating states implement national policies to ensure that such transfers do not contribute to the development or enhancement of military capabilities that undermine regional and international security. The Arrangement facilitates information exchange on transfers and denials of specified controlled items to non-participating states, enhancing cooperation among members. It is not legally binding and decisions are made by consensus. The Wassenaar Arrangement's Secretariat is located in Vienna, Austria.

The Arms Trade Treaty

The adoption of the Arms Trade Treaty

The ATT is the first legally binding international agreement to establish standards for the international trade in conventional arms, to prevent their misuse and illicit transfers. The Conference of States Parties (CSP) is the main decision-making body of the ATT. The CSP convenes once a year for one week. It is supported by the ATT's permanent Secretariat, based in Geneva.



Costa Rica's Vice President Alfio Piva Mesen signs the ATT at UN headquarters in New York, June 3, 2013
Keith Bedford/INSIDER IMAGES (UNITED STATES) (CC BY 2.0)

The steps that led to the adoption of the ATT are the result of longer-term advocacy efforts conducted by civil society organisations and like-minded states calling for stronger controls on transfers of SALW and the inclusion of human security principles in more stringent and legally binding regulations on the international arms trade.^[3] The ATT also emerged out of attempts by Western states to 'globalise' the standards in arms export controls they had adopted at the national level or as part of their participation to the

Wassenaar Arrangement and adherence to EU instruments.^[4]

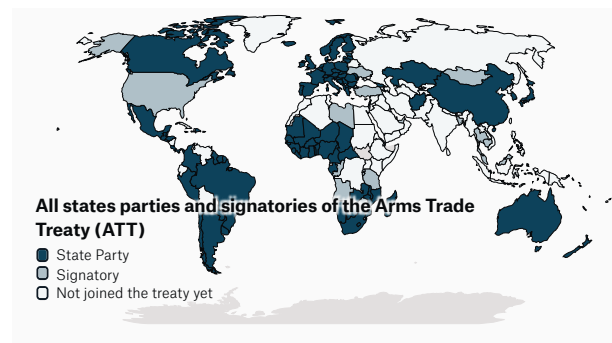
The process of negotiating the ATT, which brought together civil society, states and other stakeholders, began in 2006, following the adoption of a UN General Assembly resolution tasking the UN Secretary General to undertake exploratory work towards a future arms trade treaty. A UN Conference was convened in July 2012 to conduct the negotiations. However, states failed to achieve consensus on the final text in the negotiations. Another approach was taken and the ATT was adopted in April 2013 by a vote of the UN General Assembly. It entered into force in December 2014.^[5]

Treaty status

TREATY															
Arms Trade Treaty															
Effective 02 April 2013 116 Member States															
The Arms Trade Treaty regulates the international trade in conventional arms and aims to prevent illicit trading and diversions.															
Current Adoption															
		MWI	COL	ALB	AND	ATG	ARG	AUS	AUT	BHS	BRB				
BEL	BLZ	BEN	BIH	BRA	BGR	BFA	CPV	CMR	TCD	CHL	CRI				
CIV	HRV	CYP	CZE	DMA	DOM	SLV	FIN	FRA	GEO	DEU	GHA				
GRC	GRD	GTM	GIN	GNB	GUY	HND	HUN	ISL	IRL	ITA	JAM				
LVA	LBN	LSO	LBR	LIE	LTU	LUX	MDG	MWI	MLI	MLT	MRT				
MEX	MNE	MOZ	NAM	NZL	NER	NGA	MKD	NOR	PLW	PAN	PRY				
PER	PHL	POL	PRT	KOR	MDA	ROU	KNA	LCA	VCT	WSM	SMR				
STP	SEN	SRB	SYC	SLE	SVK	SVN	ZAF	ESP	SUR	SWE	CHE				
TGO	TTO	TUV	GBR	URY	ZMB	AFG	GMB	BWA	CAN	CAF	CHN				
GMB	KAZ	MDV	MUS	MCO	NIU	PSE	GAB	JPN	NLD	AGO	BHR				
BGD	BDI	KHM	COL	COM	COG	DJI	SWZ	HTI	ISR	KIR	LBY				
MYS	MNG	NRU	RWA	SGP	THA	TUR	UKR	ARE	TZA	USA	VUT				
ZWE	ARM	AZE	BLR	BOL	BRN	BTN	COD	COK	CUB	DZA	ECU				
EGY	ERI	ETH	FJI	FSM	GNQ	IDN	IND	IRN	IRQ	JOR	KEN				
KGZ	KWT	LAO	LKA	MAR	MHL	MMR	NIC	NPL	OMN	PAK	PNG				
PRK	QAT	RUS	SAU	SDN	SLB	SOM	SSD	SVR	TJK	TKM	TLS				
TON	TUN	UGA	UZB	VAT	VEN	VNM	YEM								

☐ Adopted by ratification
☐ Adopted by accession, acceptance, or succession
☐ Signed but not adopted
☐ Not adopted

Data: United Nations Treaty Collection



All states parties and signatories of the Arms Trade Treaty (ATT)

Data: The Arms Trade Treaty, Natural Earth. Graphic: PRIF
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Main provisions of the ATT

What does the ATT control?

The ATT outlines common standards for the transfers of conventional arms – including SALW – as well as ammunition, parts and components.^[6]

These standards apply to export, as well as import, transit, transshipment and brokering. To implement the standards, the ATT requires states parties to establish and maintain effective national control systems, which includes the adoption of a national control list and establishment of a competent national authority. Promoting transparency in arms transfers is one of the main principles guiding the implementation of the ATT which, for this purpose, establishes reporting obligations for states parties.

When should states not authorise arms transfers?

At the core of the ATT are provisions defining circumstances in which arms transfers should be prohibited. These restate the obligations that all states already have under international law, such as the prohibition of arms transfers to a recipient subject to a UN Security Council arms embargo. The ATT prohibits arms transfers where states have knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 or other war crimes. The ATT also reiterates states' obligation to refrain from supplying weapons in the event that these may be used to commit IHL violations. This directly arises from states' duty to 'ensure respect' of IHL 'in all circumstances' as enshrined in article 1 common to all 1949 Geneva Conventions.^[7]

In cases where the transfer is not prohibited, the ATT requires states to assess whether the items that they export 'would contribute to or undermine peace and security' as well as to assess the risk of them being used to commit or facilitate serious violations of IHL or human rights law or offences under international conventions or protocols relating to terrorism or international organised crime. States shall deny transfers in the event that such risks are 'overriding'. The ATT is also the first legally binding instrument to explicitly acknowledge the linkages between conventional weapons and gender-based violence (GBV). States parties to the ATT must take

into account the risk of the arms being used to commit or facilitate serious acts of GBV or violence against women and children. Specific provisions also address the risk of arms diversion. States parties are required to take measures both to assess and mitigate the risk of diversion, and to cooperate with other states parties, e.g. through information sharing.

Challenges to arms export controls

Efforts to establish and promote instruments and standards regulating the international arms trade, which culminated in the adoption of the ATT, contribute to mitigating the negative impact that irresponsible, unregulated and illicit arms transfers can have on security, human suffering and sustainable development.

However, there are still several gaps in the implementation of the current framework and it also presents some challenges:

- **Effective implementation of arms export controls:**

The introduction of prohibitions and risk assessment criteria has had a positive impact in terms of restraining decision-making processes regarding arms transfers. However, there remain varying interpretations of the provisions of the ATT and arms are still being transferred to countries with a problematic record in terms of respect of human rights and IHL.

- **Universalisation:** Despite China's ratification of the ATT in 2020, some of the major arms exporters are still not states parties to the ATT. For example, Russia has not signed the ATT. The United States has signed but not ratified the treaty, and has indicated that it does not intend to join the ATT. More generally, the process of universalising the ATT is currently undergoing a phase of stagnation. Gaps in membership are also particularly apparent in certain regions, such as the Asia-Pacific and the Middle East, even though these are affected by rapid military build-ups, increasing levels of military expenditure and regional tensions.

- **Transparency and reporting:** Reporting on arms transfers is declining both in the context of the ATT and other relevant instruments, such as UNROCA, thus undermining overall transparency in arms transfers.^[8]

Quiz

View quiz at <https://eunpdc-elearning.netlify.app/lu-12/>

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3. Multilateral instruments and standards for dual-use export controls

Dual-use items are goods and technologies that can be used for both military and civilian purposes. For example, some of the chemicals that are used in the production of toothpaste



Putting toothpaste on a toothbrush
Thegreenj/Wiki Commons

and many other items we use in our day-to-day lives are also required for the production of chemical weapons. Rather than prohibiting the trade in such items, many states use export controls to apply a level of control by imposing licensing requirements and reporting obligations. This enables states to have oversight over and, where necessary, to prevent the export of dual-use items. However, unless a state holds a monopoly over a certain item, unilaterally imposing controls has limited effectiveness. Therefore, states gradually took steps to coordinate restrictions and controls in order to be more effective and to maintain a 'level playing field' for suppliers across states.

The first generation of modern multilateral export control regimes on dual-use items was focused on controlling trade with a specific set of adversarial target countries. The Coordinating Committee for Multilateral Export Control (COCOM) was the first modern 'multilateral export control regime' through which NATO allies coordinated the restrictions and controls they imposed on exports to the members of the Warsaw Pact. The emergence and codification of the international norms against nuclear, chemical and biological weapons created an obligation for states to take steps to prevent the proliferation of such weapons and reflected a common understanding that failure to do so poses a threat to international peace and security.

Even before the end of the Cold War, driven by revelations about nuclear and chemical weapon programmes benefitting from the illicit procurement of

dual-use goods and technology, states began creating informal groups through which they could coordinate their export control policies and control lists. These groups evolved into three multilateral export control regimes: the Australia Group, concerned with chemical and later also biological weapons; the Missile Technology Control Regime (MTCR); and the Nuclear Suppliers Group (NSG). The Wassenaar Arrangement replaced COCOM in 1996. In the 2000s, the focus of export controls was expanded to include transfers to non-state actors – particularly terrorists – and UN Security Council Resolution 1540 introduced the first international obligation for all states to have adequate export control systems in place.



A **Land Rover Defender** used by the Royal Air Force fire service. It is almost identical to the versions used by civilian agencies such as the police or fire brigade
UK Emergency Vehicles



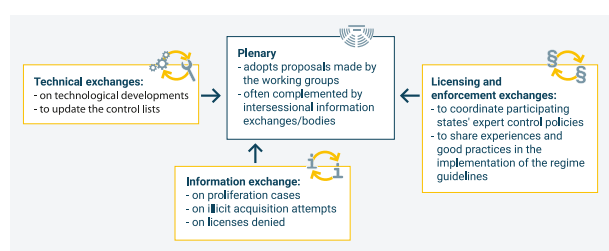
Additive manufacturing (often called 3D printing) might cause severe problems in the future. While 3D printers can be used to easily produce civilian objects, they can also be used to produce, for example, spare parts for restricted weapons or even whole weapons. Example: Prototype of FGC-9.
JStark1809/Wikimedia



****Software code**** can also be considered dual use, for example software for decryption or encryption or to enhance communication.
JStark1809/Wikimedia

The multilateral export control regimes

The four main multilateral export control regimes differ in their composition of participating states, primarily exporters and key technology-holders in their respective areas.



Regime functions
Grübelfabrik, CC BY-NC-SA

The participating states coordinate export control policies, share good practices on the implementation of these policies, and exchange information on proliferation cases, illicit acquisition attempts and on licences they have denied. The participating states continuously update the regimes' control lists and discuss relevant technological developments. The regimes create important forums for exchange among national policy and licensing officials, technical experts, and enforcement and intelligence officers.

The regimes are neither international treaties nor legally binding agreements between states but, over time, their functions have become increasingly institutionalised. The participating states take all decisions within each regime by consensus, thus increasing the likelihood of decisions being implemented by all participating states – but also making it more difficult to reach an agreement on decisions. Each participating state is individually responsible for implementing export control mechanisms, licensing criteria, and control lists and good practices, prescribed by the regime, through national laws and their domestic licensing and

enforcement systems. All licensing decisions are taken by the exporting state at the national level.



How ChatGPT visualizes export controls for international security
Image generated using artificial intelligence (AI) via OpenAI's DALL-E tool

The multilateral export control regimes are important international instruments because they provide de facto international standards and helpful resources for all states, including those that are not members, which otherwise require significant domestic technical expertise and resources. The membership of the regimes expanded, particularly during the 1990s and early 2000s, but since the 2010s has largely stagnated for all regimes.

The Nuclear Suppliers Group

The NSG is currently the main multilateral export control regime concerned with the non-proliferation of nuclear weapons. The NSG was created in 1974 as the 'London Club' comprising seven major nuclear supplier countries, in response to the first nuclear weapon test conducted by India – a state not recognised as a nuclear weapon state under the Treaty on the Non-proliferation of Nuclear Weapons (NPT). The NSG initially created a set of guidelines incorporating a list of items triggering IAEA safeguards and remained largely dormant between 1978 and 1990. In 1992, the NSG established guidelines for transfers of nuclear-related dual-use equipment, material and technology, an information exchange, an exchange of denial notifications, and a requirement for trigger list item recipients to have signed a full-scale safeguards agreement. The NSG has 48 participating governments and permanent observer status has been granted to the European Commission and the chair of the Zangger Committee.

The Australia Group

The Australia Group is a multilateral export control regime harmonising export controls to prevent states from contributing to the proliferation of chemical and

biological weapons. The UN investigations into the use of chemical weapons in the Iran–Iraq War was a catalyst for the Australian initiative that ultimately led to the creation of the Australia Group in 1985. The investigations had found evidence for illicit procurement of precursor chemicals and materials from several Western states by both Iran and Iraq. Since its creation, the scope of the Australia Group has expanded to include chemical and biological weapons and equipment, materials and technology relevant to their development, production and use. Its membership has also increased from its 15 founding members to currently 42 states and the European Union. One state has submitted a political declaration to formally adhere to the Australia Group guidelines and control lists.^[1]

The Missile Technology Control Regime

The MTCR was created in 1987 by the Group of Seven largest industrialised states and has since grown to include 35 participating states, referred to as the partners. Another three states have unilaterally declared their formal adherence to the guidelines and control lists of the MTCR, but have not been admitted as partners. The purpose of the MTCR is to contribute to preventing the proliferation of nuclear weapons by impeding the proliferation of missiles and other uncrewed nuclear weapon delivery systems. The scope of the controls expanded to include ballistic and cruise missiles and all uncrewed aerial vehicles (UAVs) capable of delivering chemical, biological or nuclear weapons. The MTCR partners committed to deny – in all but the most exceptional circumstances – licence applications for transfers of uncrewed delivery systems with a ‘payload of at least 500 kg to a range of at least 300 km’ or which are destined to be used to deliver chemical, biological or nuclear weapons (Category I). The MTCR further prescribes that transfers should be subject to case-by-case licensing decisions by partner governments for missiles and UAVs with a maximum range of at least 300 km and a wide range of dual-use goods, materials and technologies for missile, UAV and space launch vehicle applications (Category II).^[2]

The Wassenaar Arrangement

The Wassenaar Arrangement became operational in 1996 (Wassenaar Arrangement, 2022a). The membership of the Wassenaar Arrangement has since expanded to include 42 participating states (Wassenaar Arrangement, 2022b). The objective of the Wassenaar Arrangement is to increase transparency and responsibility in transfers of conventional arms as well as dual-use goods and technologies related to conventional military capabilities. The Wassenaar Arrangement guidelines seek to harmonise export controls to prevent transfers from contributing to ‘destabilizing accumulations’ of conventional arms and dual-use items that would endanger international and regional security and stability, later expanded to include preventing such transfers to terrorists. The

Wassenaar Arrangement also established control lists and information exchange mechanisms between participating states on licence denials, and in some cases on licences granted for especially sensitive items.

Dr Abdul Qadeer Khan (1936–2021) was a Pakistani metallurgist who was both instrumental in the development of Pakistan’s nuclear weapon and missile programmes and headed the largest known international proliferation network that has been uncovered to date. Following his studies in Europe, Khan began working for a subcontractor to the European uranium enrichment consortium ‘URENCO’. He obtained and later transferred technology and know-how on centrifuges for uranium enrichment to Pakistan. Khan became head of Pakistan’s enrichment programme and used his contacts to set up an illicit procurement network for the Pakistani nuclear programme. However, Khan’s activities also expanded to exports of nuclear enrichment and weapons technology and imports of missile technology. While certain parts of his activities had been uncovered previously by law enforcement and intelligence agencies, it was not until 2003, after the seizure of a shipment of centrifuge components en route to Libya and resulting revelations, that substantial information on Khan’s proliferation activities – involving Iran, North Korea and others – was made public. The revelation of Khan’s proliferation network and activities resulted in increased support for strengthening international export controls and related non-proliferation efforts, including the adoption of United Nations Security Council Resolution 1540 and the reform of the Nuclear Suppliers Group.^[3]

United Nations Security Council Resolution 1540

Following the terrorist attacks of 11 September 2001 and the exposure of the activities of A. Q. Khan’s proliferation network in 2003, the international community, led by the United States, initiated a new focus on the threats posed by non-state actors, particularly terrorists, in the area of nuclear, chemical and biological weapons. The UN Security Council entered into consultations that resulted in a binding resolution being adopted under Chapter VII of the UN Charter as UN Security Council Resolution (UNSCR) 1540 in 2004. Since its adoption, the resolution has proved instrumental in significantly increasing the global creation and strengthening of export control systems, including through the numerous assistance and capacity-building programmes that have subsequently been implemented.

According to one of the main operational provisions of UNSCR 1540 all states shall:

take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials'

United Nations Security Council, 2004

As the first resolution binding on all UN member states to address all CBN weapons, UNSCR 1540 has been widely used as a legal reference justifying the establishment of new export controls, increased engagement with industry and academia and the adoption of export control systems by all states.

The multilateral export control regimes have generally opted to choose technical parameters to characterize controlled items so that only the most relevant items with particularly desirable performance characteristics trigger a licensing requirement. However, to avoid controls being circumvented by procurement of items not (yet) listed or just under the threshold of listed technical parameters, all regimes introduced so-called catch-all controls that enable states to impose controls on items that do not appear on their control lists but which are likely to be used for a proscribed end-use. Under a catch-all provision, national authorities can inform an exporter of a possible proscribed end-use to impose a licensing requirement, and an exporter that becomes aware of such a possible end-use is required to inform the authorities which can then decide whether to require a licence. Notably, this also makes catch-all controls particularly reliant on access to relevant intelligence and the exercising of due diligence by exporters. Catch-all controls enable states to balance security-driven control requirements with economically driven trade facilitation imperatives, by avoiding the introduction of broad list-based controls while retaining the ability to impose controls based on available information on the likely end-use.

Contemporary export control challenges: Emerging technologies

One of the key challenges when it comes to export controls is developing appropriate and effective controls for emerging technologies see also Learning Unit 15 [/1u-15/].

Several characteristics shared by most emerging technologies make it difficult for appropriate export controls to be created and implemented:

- Rapid speed of technological development
- Lack of agreed technical standards that lend themselves to serving as control list parameters
- Lack of shared assessment of the risks posed by the technology
- Relevance of technologies for multiple multilateral export control regimes
- Ambiguity over the technological and economic potential of emerging technologies and their implications for domestic industry

As a result, the multilateral export control regimes struggle to create timely control list entries for emerging technologies as the participating states require sufficient time to agree on technical parameters and their positions on whether and what type of controls should be introduced diverge. It is also difficult both for licensing authorities and for exporters to classify items related to emerging technologies and when to apply catch-all controls. In this context, it is particularly challenging to establish consistent licensing practices without creating disparities between states in terms of how they apply controls.

Quiz

View quiz at <https://eunpdc-elearning.netlify.app/1u-12/>

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4. The development of arms and dual-use export control instruments by and through the European Union

This Chapter provides an overview of the process that led to the establishment of the EU export control framework and elaborates on the functioning of some of its key components

The European Union (EU) is currently the only regional organization with a common legal framework for controls on the export, brokering, transit and transshipment of dual-use items and also, to a certain extent, military items. Among the key elements of this legal framework are the EU Common Position on Arms Exports, the EU Dual-Use Regulation, the Directive on Intra-Community Transfers (ICT), the EU's arms embargoes and the Foreign Direct Investment (FDI) Screening Regulation. These instruments vary in scope and legal basis, and their implementation is overseen by different EU institutions or even specific sections within them. The EU already began to use arms embargoes as a foreign policy instrument in the 1980s (for example in 1989, the EU adopted a politically binding arms embargo on China). However, the instruments mentioned above are mostly the result of a process of progressive harmonization that started at the beginning of the 1990s and has, since then, undergone a series of developments and changes:

- In 1998, the EU adopted the politically binding Code of Conduct on Arms Exports which included standards for the export of conventional weapons outside of the EU
- In 2008 the Code was turned into the legally binding EU Common Position on Arms Exports
- In parallel, the EU also sought to facilitate the transfer of military materiel among EU member states through the adoption, in 2009, of the Intra-Community Transfers (ICT) Directive
- Regarding the regulation of the transfer of dual-use goods, the first EU legislation in this field was adopted in 1994. Most recently, the EU Dual-Use Regulation went through a process of being recast which was concluded in 2021
- In 2019, the EU also adopted a Foreign Direct Investment (FDI) Screening Regulation which further complemented the EU strategic trade controls framework

EU milestones regarding export controls

1989 • Politically binding EU arms embargo on China

1993 • Common Foreign and Security Policy (CFSP)

1994 • First EU legislation on dual-use export controls

1998 • EU Code of Conduct on Arms Exports

2008 • EU Common Position on Arms Exports

2009 • Lisbon Treaty – Art. 296 exempts the 'production of or trade in arms, munitions and war material' from EU treaty provisions; gives the European Parliament co- decision in Common Commercial Policy

2012 • Intra-Community Transfer Directive enters into force

2019 • Foreign Direct Investment (FDI) Screening Regulation enters into force

2021 • Revised EU Dual-Use Regulation enters into force

The EU Common Position

Although EU treaty law always exempted issues related to arms export control and security and defence from its provisions, in the early 1990s a series of factors created a suitable context for the development of common standards and greater convergence in this field:^[1]

- Efforts to consolidate the EU arms industry prompted calls for further convergence in EU member states' licensing systems
- A series of scandals implicating European companies in illegal or irresponsible transfers of arms and dual-use items led some EU member states to adopt stricter export controls
- The increased international interest in conflict prevention, human rights and international humanitarian law (IHL) in states' foreign policies led to calls for these standards to be reflected in their export controls
- The adoption of the Common Foreign and Security Policy (CFSP) in 1993 and the European Security and Defence Policy (ESDP) in 1999 created both the legal basis and the framework to pursue further convergence in arms export controls

As a result, in 1998, EU member states adopted the EU Code of Conduct on Arms Exports, which provided common standards regulating the export of military goods. In 2008, the Code of Conduct was turned into the EU Common Position 2008/944/CFSP on Arms Exports^[2]. Although the EU Common Position is legally binding for all EU member states, since it is a CFSP instrument, member states are free to determine the means of its application at the national level and EU institutions have no power to sanction noncompliance. However, the EU has been assuming a more prominent position in arms export policy and related export control instruments since the establishment of the European Peace Facility (EPF) in 2021.

The EU Common Position contains eight criteria. These outline four sets of risks (criteria 1–4) that member states are required to treat as grounds for denying an export licence, and four sets of factors (criteria 5–8) that states are required to ‘take into account’ when assessing an export licence application. The list of items that are subject to control are outlined in the EU Common Military List (CML), which is based on the control list of the Wassenaar Arrangement. In order to assist member states in their implementation of the EU Common Position and the application of the criteria, EU member states developed and maintain a dedicated User’s Guide.^[3]

The EU Common Position also contains transparency and reporting obligations. In particular, EU member states are required to submit data to the European External Action Service (EEAS) for the compilation and publication of an annual EU report on arms exports (which is also available as an online searchable database), and to publish national reports on their arms transfers.

Overview of the eight criteria of the EU Common Position

1. Respect for the international obligations and commitments of member states, in particular the sanctions adopted by the United Nations Security Council or the restrictive measures adopted by the European Union, agreements on non-proliferation and other subjects, as well as other international obligations
2. Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law
3. Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts
4. Preservation of regional peace, security and stability
5. National security of member states and of territories whose external relations are the responsibility of a member state as well as that of friendly and allied countries
6. Behaviour of the buyer or recipient country with regard to the international community, in particular

its attitude to terrorism, the nature of its alliances and its respect for international law

7. Existence of a risk that the military technology or equipment will be diverted within the recipient country or re-exported under undesirable conditions
8. Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the country of final destination, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.^[4]

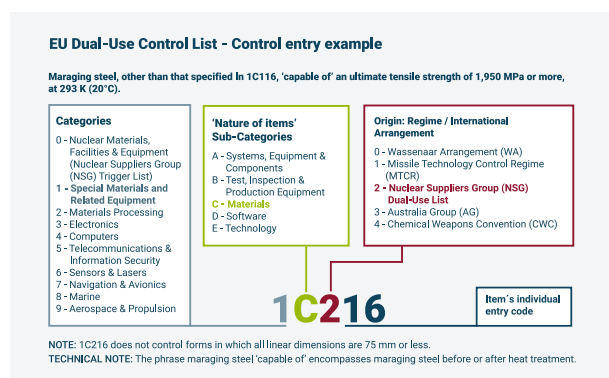
The European Peace Facility (EPF), an off-budget mechanism established under the CFSP in March 2021, provides funding for EU external actions in the field of crisis management and conflict prevention that have military and defence implications. These actions can encompass assistance measures to strengthen the military and defence capacities of third states, including through the supply of lethal military materiel (i.e. weapons). This represents the first time that resources pooled and coordinated at the EU level can be used to fund arms transfers. The EU, through the EEAS, has a key role in the implementation of EPF assistance measures which also entails conducting export control-related activities, such as a preliminary assessment of the risks that arms transfers can generate (including the risks of diversion and misuse) and conducting on-site verifications in the recipient country.^[5]

The EU Dual-Use Regulation

The EU is currently the only regional organisation with a common legal framework for export controls on dual-use items. The EU Dual-Use Regulation covers controls on the export, re-export, brokering, transit and transshipment of dual-use goods, software and technology. It is a directly applicable law in EU member states, but each member state implements and enforces the regulation through their respective national export control system. This means that while there is a common legal framework, all licensing assessments and decisions are left to the member states. It also means that there can be a certain degree of variation in how certain provisions are interpreted and assessments are conducted.

Following the creation of the single market in 1993, the EU first introduced a community regime for export controls on dual-use items in 1994, to ensure harmonisation of export control practices, while eliminating such controls for intra-community trade. The legislation that set up the EU’s regime for export controls was subsequently repealed or recast several times in line with major steps in European integration and the allocation of exclusive and shared competences.

Most recently, the EU Dual-Use Regulation was recast as Regulation (EU) 2021/821. It implements the guidance provided by the multilateral export control regimes, and it combines the regimes' control lists (with a small number of additions) into one unified list of dual-use items. The regulation also includes several catch-all provisions that apply to exports of non-listed items where the exporter is aware or has been informed that they are or may be used for a proscribed nuclear, chemical or biological weapon end-use, or a military end-use in a destination under an arms embargo. Additional catch-all mechanisms may apply to certain non-listed cyber-surveillance items, or non-listed items – including emerging technologies – for reasons of public security or the prevention of terrorism and human rights violations.[6]



How the EU dual-use list works
 Grübelfabrik, CC BY-NC-SA

The Intra-Community Transfers Directive

While the EU Common Position establishes common standards on military exports to recipient countries outside of the EU, the ICT directive covers the transfer of defence-related products within the EU.

The ICT directive was adopted in 2009 and entered into force in 2012. Its implementation is overseen by the European Commission and it forms part of the EU's internal market, which is a shared EU competence. This means that while its provisions are binding and the EU is able to sanction noncompliance, EU member states can decide how to implement them internally[7]. The ICT directive was adopted to remove barriers to European defence industry cooperation by enabling EU member states to follow simplified export licensing procedures for the transfer of defence-related products within the EU. However, many EU member states have retained existing restrictions and the set of items covered by them has varied across the EU which has limited the potential impact of the ICT directive.

EU restrictive measures

The EU can adopt what it refers to as 'restrictive measures' towards third countries, entities or individuals to respond to certain activities or behaviours that are in violation of the EU's values and objectives. These restrictive measures include arms embargoes but also other forms of sanctions, such as economic-related measures (EEAS, n.d.).[8]

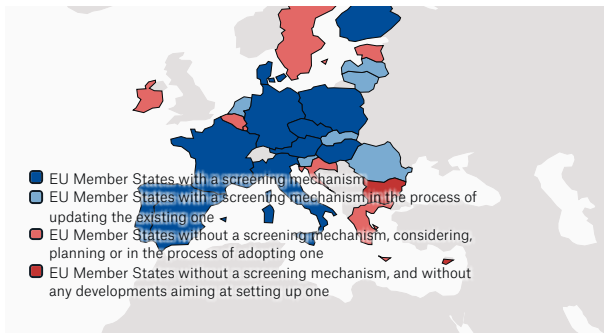
EU arms embargoes are adopted by the Council of the EU and either reproduce or expand upon embargoes imposed by the UN Security Council or are entirely stand-alone measures. While EU embargoes typically cover items in the common military list, they can also encompass dual-use goods and technologies (e.g. the measures adopted in 2022 against Belarus and Russia)[9]. Unlike arms embargoes issued by the UN Security Council, EU arms embargoes do not come with any mechanism to monitor compliance and implementation. However, in 2023, EU member states decided to increase convergence in the way EU restrictive measures are enforced, including by aligning penalties in cases of violation[10].

Beyond traditional export controls: Foreign direct investment screening

Some third countries have increasingly been using foreign direct investment (FDI) as a means to acquire rapidly developing technologies – e.g. artificial intelligence technology – which are expected to have significant implications for the capabilities of conventional arms and nuclear, chemical or biological weapons. Foreign direct investment is 'investment from one country into another (normally by companies rather than governments) that involves establishing operations or acquiring tangible assets, including stakes in other businesses' and usually also involves other aspects, such as management, know-how, organisational skills and transfer of technology.[11]

In 2016, several EU member states began raising concerns about the target and origin of the FDI they were observing and started working towards strengthening controls. As a result, in 2019, the EU adopted a regulation establishing a framework for the screening of FDI into the EU. The regulation establishes basic requirements for member states' FDI screening mechanisms, an obligation to share information and mutual comments on FDI cases under consideration. However, the regulation does not require member states to set up a screening mechanism. Under the regulation, the European Commission can issue non-binding opinions on FDI cases where there are security or public order concerns that could affect specific EU projects and programmes.

(At the time of writing this e-learning unit, the FDI screening regulation is in the process of being revised.)



Map of the legislative status quo of EU Member States as by 2022

Based on European Commission, Second Annual Report on the screening of foreign direct investments into the Union {SWD(2022) 219 final}, p.8. Graphic: PRIF Licensed under CC BY 4.0.

Quiz

View quiz at <https://eunpdc-elearning.netlify.app/lu-12/>

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3. [<https://data.consilium.europa.eu/doc/document/ST-6881-2025-INIT/en/pdf>]
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5. The national implementation of export controls

The current multilateral architecture on arms and dual-use export controls consists of a complex set of instruments, from treaties to UN Security Council resolutions, export control regimes and transparency measures – each with a different membership.

States then need to implement these instruments at the national level. The legal nature of each multilateral instrument has implications for the degree of freedom that states have to structure and apply the controls:

- At the EU level, for example, all member states have a legal obligation to implement the EU Common Position on Arms Exports and the EU Dual-Use Regulation.
- When it comes to export control regimes, all regime members have a political obligation to control transfers of all items on the control lists.
- And in both cases, the decision on whether or not to grant an export licence remains with each individual state.

To implement the obligations and standards arising from multilateral instruments on dual-use and arms export controls, states have developed national export control systems. These include a legal framework and control list, competent authorities with defined competencies and a system for enforcing the controls. The overall objective of such a system is to have control over exports of arms and dual-use items and to be able to prevent certain transfers from taking place, as well as to detect, investigate and prosecute violations should they occur.

While states have substantial freedom in how they choose to develop their national export control system, there are features that are common to many of these systems, in terms of the framework, the actors involved in the controls and the different stages at which the controls are implemented. This chapter will cover those features.

Elements of a national control system

- As a first step, states must adopt legislation to regulate arms and dual-use transfers, authorisation procedures, their enforcement and how to sanction any violations. This regulatory framework should also establish a 'national control list', i.e. a list of items that are subject to export controls.
- The framework should also identify a competent authority responsible for issuing export authorisations or licences to companies and other entities (e.g. universities) for the transfer of arms or

dual-use items. A decision on whether to grant a licence tends to be based on two factors: the end-use and the end-user within the destination country (which may give rise to specific risks or issues of political acceptability). Therefore, applicants usually have to provide information about the end-user and the end-use the items will be put to, as well as the type of items. This information will then be assessed by the licensing authority. For assessments that are particularly sensitive, an inter-agency committee can be set up with representatives from the defence, foreign policy, economic, intelligence agencies and/or ministries.^[1]

- To enforce the controls, several entities and methods are commonly used, including customs controls, border controls, telecommunications monitoring, criminal investigations and computer surveillance. A key element of enforcement is frequent checks at the borders, using trained customs officers with adequate resources and up-to-date procedures which allow them to selectively target some of the riskiest shipments. But these physical checks are not sufficient, especially with the increasing volume of ITT. Complementary investigative methods, such as intelligence gathering are therefore also used.
- Authorities also raise awareness and conduct outreach activities among industry and other actors that could be subject to the controls. Outreach can focus on the applicable regulations as well as the risks that come with noncompliance, such as the proliferation of technologies which can be used in WMD, or the diversion of arms and ammunition to unintended end-users. Through outreach, the authorities can also establish a dialogue and communication channels with the actors subject to controls, and gain insights on the practical challenges they are facing.^[2] In addition to this, compliance and due diligence processes within companies are essential.^[3]

Main actors

In a national export control system: Licensing Authorities

Licensing authorities are the competent authorities responsible for issuing export authorisations or licences. In some countries, the competent authority is located within the Ministry of Foreign Affairs, in others in the Ministry of Defence or Economy. In other countries, this authority is autonomous and not part of a particular ministry.

Customs and Law Enforcement

Customs, border control authorities and other law enforcement authorities such as the police are in charge of enforcing the controls, including at the state's borders, and are involved in the investigation of export control violations.

Inter-Agency Committees

Relevant ministries and agencies in the fields of defence, foreign policy and economy usually participate in inter-agency committees to provide advice, or in many cases to jointly assess licence applications.

Parliaments

Parliaments are involved in drafting and adopting national legislation, and in some cases in the ratification of treaties and international commitments. In a very limited number of states, the parliament has a role in overseeing the implementation of national export control systems (for example through the work of specialised oversight committees). Many parliaments are also involved in the scrutiny of national reports on arms transfers, which they sometimes need to approve.

National Courts

National courts prosecute export control violations. In some states, national courts also play a role in examining challenges to state decisions to grant or approve licences.

In the transfer of arms and dual-use items: Industry

Exporting companies, brokers and actors providing other services, such as traders, transport agents and freight forwarders; as well as banks and insurance companies.

Research Organisations

Universities and research institutes can also be subject to export controls. In particular, they can be involved in ITT through collaborative research projects and through the production and dissemination of their research findings.



Actors in a national export control system
Grüebelfabrik, CC BY-NC-SA

Controls throughout the transfer chain

States apply export controls before, during and after the transfer of arms or dual-use items:

Pre-transfer controls:

- Context analysis and risk assessment by the competent authority, which considers a range of prohibitions and risks. Prohibitions are circumstances in which states must prohibit transfers of arms or dual-use items. They include UN arms embargoes (all UN member states), as well as EU arms embargoes for EU member states. When an export is not prohibited, the state assesses the potential risks that this export entails. The Wassenaar Arrangement good practices, the Arms Trade Treaty and the EU Common Position are useful in this regard as they clarify the application of standards relating to IHL/IHRL, economic development, conflict prevention and diversion, and promote harmonisation of national practices.^[4]
- Beyond this, states also take into account their own foreign and security and economic concerns, such as their industrial and political relations with foreign states and their wider foreign and security policy priorities.^[5]

In-transfer controls:

- arms and dual-use items are particularly vulnerable to diversion to illicit markets during their transfer, especially through transit and transshipment via third countries. A transit refers to the transportation of goods from a country of origin to a country of destination through the territory of a third country, during which the goods remain on board the transport facility (boat, plane, train or lorry). If they are unloaded and reloaded, this constitutes a particular type of transit called transshipment.^[6]

Post-shipment controls:

- the granting of authorisations may also be conditional on the acceptance of additional requests and guarantees by the recipient country, such as the signature upon delivery of the military materiel or the prior signature of a certificate confirming the presence of the agreed end-user of the materiel. Some countries also make it a condition that physical 'post-shipment on-site inspections' of the supplied items be carried out a few years after delivery.

Post-shipment on-site inspections are one of the post-shipment control measures that some states have used to mitigate arms diversion risks. Post-shipment on-site inspections involve an exporting state requiring and then conducting physical checks on the territory of the importing state of military materiel the exporting state previously transferred. [7] Such inspections can be helpful in verifying that an importing state is adhering to end-user assurances, as well as enabling a dialogue between importing and exporting states about measures to prevent diversion – thereby building trust and fostering cooperation.

Historically, the US has implemented several programmes which foresee post-shipment checks, including the Blue Lantern programme since 1990. [8] These post-shipment checks can be carried out on all exports and are based on the extra-territorial application of US export controls. This is a very comprehensive approach, developed over a long period of time. In the last decade, a growing number of European states have also decided to adopt and start conducting on-site inspections. These states mostly use on-site inspections in a more targeted way, focusing on certain types of materiel and destinations where diversion risks are deemed to be higher.

Post-shipment on-site inspections are just one example of the many pre and post-shipment control measures that states can adopt. They also come with a range of challenges, including political sensitivities and resource constraints, which states that implement them need to address. [9] Yet, states using this tool have highlighted that it can be an effective way to reinforce cooperation between importing and exporting states with a view to mitigating the risk of diversion

Quiz

View quiz at <https://eunpdc-elearning.netlify.app/lu-12/>

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6. Summary and reflections on the future of export controls

Summary

In this learning unit, we have explored why and how states have developed controls over the trade in both arms and dual-use items, and how these controls are implemented. Controls and prohibitions have been established for a range of reasons: to address national security and WMD proliferation-related concerns, but also to pursue humanitarian objectives. Importantly, the history of export controls has shown how their development was, in many cases, linked or in response to broader geopolitical developments (e.g. wars and their subsequent impact) and technological trends.

States and international and regional organisations have established multilateral instruments and standards to regulate the legal trade in arms and dual-use items and to achieve a greater level of coordination and harmonisation. In the area of arms export controls, in 2013, states adopted the Arms Trade Treaty (ATT) to establish global, legally binding standards for the international trade in conventional arms in order to prevent their misuse and illicit transfers. In the area of dual-use export controls, the four multilateral export control regimes have proved instrumental in facilitating coordination on export controls among groups of supplier states. They carry out the important function of developing and updating control lists which are used by a much wider range of states beyond the regime members. United Nations Security Council Resolution 1540, adopted in 2004, has led to a significant increase in the development and strengthening of national export control systems in many countries across the world.

Over time, the EU and its member states decided to establish common standards and regulations for the trade in arms and dual-use items, leading to a more detailed set of agreed rules than in any other region. The three main instruments that are part of this framework are EU restrictive measures, the EU Common Position on Arms Exports and the EU Dual-Use Regulation.

Finally, zooming in on national export control systems, we also saw how states meet international and regional obligations and standards by implementing national laws, and how they enforce the relevant controls.

Looking ahead

The implementation and future development of export controls, as well as multilateral and international cooperation in this field, faces a series of challenges:

- **Gaps remain in the universalisation** of export control standards globally. Not all states have adopted an effective system for arms and, in particular, dual-use transfer controls, and many remain outside some or all of the relevant multilateral frameworks. While there are various reasons for this, capacity-building and awareness-raising activities are one of the available tools that states and international organisations can use to promote adherence to and strengthening of the implementation of existing instruments and standards. The EU plays an important role in this regard, as it is an active and long-term provider of assistance in the field of arms and dual-use export controls to non-EU countries. In addition to bilateral contributions to the work of international or regional organisations, including non-governmental organisations, the EU maintains its own capacity-building programme, the EU Partner-to-Partner (P2P) Export Control Programme.
- The speed with which **technological developments** are occurring in fields such as additive manufacturing, artificial intelligence or biotechnologies is creating new proliferation risks and challenges. To address this, states and multilateral instruments can, where relevant, add new items to the control lists, or adapt the regulations if needed. States are also making increasing use of catch-all controls to capture transfers of concern. At the same time, these changes are bringing new actors into the scope of export controls, which creates challenges for their implementation and enforcement. In this context, it is even more important to strengthen both outreach and due diligence, as developments in dual-use and military technologies – such as space launch vehicle technology or cyber-surveillance items – extend to new sectors and a growing number of private actors.
- The **challenges to multilateralism** resulting from rising international tensions and the growing global strategic competition also affect instruments for arms and dual-use export controls. States are increasingly using export controls to pursue national economic and security objectives. This approach, which is not new and shares similarities with the development of COCOM during the Cold War, brings challenges for multilateral cooperation. Despite this, cooperation within multilateral forums is essential to better understand how controls are implemented at the national level and to strengthen cooperation where relevant. For example, the work being done within the multilateral export control regimes,

including the regular exchanges on technical matters, are crucial to make sure that necessary updates to the control lists are made, and where relevant, additional policy tools, such as catch-all controls, are developed.^[1]

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