
Multilateral export controls: improving coordination among like-minded industrial suppliers and enhancing global legitimacy

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Theme

The efficiency of existing multilateral military and dual-use technology export control regimes requires enhanced coordination amongst relevant like-minded suppliers and between the latter and non-members through outreach and cooperation.

Summary

Multilateral export control regimes, established in the 20th century to balance commercial interests with legitimate security concerns, are now in the spotlight. Recent [findings concerning the use of Western technology](#) in weapons used by countries of concern have raised doubts about the effectiveness of existing export control mechanisms. The latter will continue to be the pillars of secured global trade of sensitive technologies in an ever more challenging environment, and the setting of important technical debates amongst relevant industrial suppliers, including strategic competitors. However, the time is ripe for upgrading export control mechanisms through improved international coordination among like-minded industrial suppliers. At the same time, more should be done through outreach diplomacy to enhance cooperation with non-members and get their support for the legitimacy of export controls, thus averting the criticism of those who claim that existing regulatory mechanisms are inadequate.

Analysis

After the Second World War, the first multilateral Export Control Regime (ECR) was created –the Coordinating Committee for Multilateral Export Controls (COCOM)–, initially conceived in 1949 by the US, the UK and France to achieve a coordinated embargo policy against the USSR. The COCOM was an informal regime to coordinate the national export controls on military and dual-use technology, and strategic materials.¹ It had three control lists: the Nuclear List, the International Munitions List and the Industrial List (the latter contained dual-use items not included in the other two lists). COCOM members performed regular reviews of each of the control lists to update them with technological developments.

¹ The COCOM members were Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the UK and the US. See: Technology and East-West Trade: Multilateral Export Control Policy: The Coordinating Committee (CoCom). Princeton University, 1979, <https://www.govinfo.gov/>; Henshaw, John H., The Origins of COCOM: Lessons for Contemporary Proliferation Control Regimes. Washington: The Henry L. Stimson Center, 1993, <https://www.princeton.edu/~ota/disk3/1979/7918/791810.PDF>.

Other multilateral ECRs followed. The NPT came into effect in 1970, and multilateral consultations led to the establishment of the Zangger Committee in 1971 under the auspices of the IAEA. Between 1975 and 1987 three ECRs were founded: NSG, AG and MTCR. In 1992, in a different geopolitical context after the Cold War, COCOM members agreed to open participation to countries of Central Europe and the former Soviet Union. The COCOM was finally replaced by the Wassenaar Arrangement in 1996. These four ECRs share some common features: they are based on informal agreements (neither international organisations nor treaty-based); they have export guidelines, control lists and a system of information exchange; they hold regular meetings; their main goal is to balance legitimate commercial interests with common security concerns; and all their decisions are taken by consensus. The US, Japan, Republic of Korea, Canada, Australia and most of the EU are Participating Governments in all of them, forming a hard core of like-minded States. India and Russia participate in three of them, while China is member of the NSG.

The **Nuclear Suppliers Group** (NSG) was established in 1975 to implement export controls on nuclear technology.² The NSG has gradually become the most important nuclear export control regime, leaving the Zangger Committee –which still exists– in the background. It currently comprises 48 countries that pursue the objective of contributing to the nuclear non-proliferation regime through guidelines to control nuclear-related exports. Both Russia and China are members of the NSG. In recent years interaction within this multilateral regime has been dominated by geopolitical issues due to several reasons. First, the implementation of nuclear-related restrictive measures on Iran and North Korea has been a source of diplomatic tensions within the group. Secondly, India's candidature to join the group was rejected by China in 2016, after long and tense negotiations. Finally, the Russian military aggression on Ukraine in February 2022 introduced another factor of distress in the NSG's dynamics. Despite these obstacles, the technical work has moved forward, although the pace of necessary decisions and updates (by consensus) has always lagged behind technological innovation and global market realities.

The **Australia Group** (AG) was created in 1985 when several Western governments adopted specific measures to regulate the export of industrial chemicals that could be used in the manufacture of chemical weapons.³ The AG is committed to compliance with the existing international treaties on chemical and biological non-proliferation.⁴ The AG has a more homogenous membership than other ECRs, since strategic competitors never joined this group, making it more efficient in practical terms. The admission of India in 2018 has increased its global reach. However, the absence of relevant industrial

² The Point of Contact is at the Embassy of Japan in Vienna. INFCIRC/539/Revision 7, 1. 2019. The Nuclear Suppliers Group: Its Guidelines, Origins, Structure, and Role, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1997/infcirc539r7.pdf>.

³ This process was motivated by Iraq's violation of the 1925 Geneva Protocol in the war against Iran, and evidence that Iraq had obtained much of the material necessary for its chemical weapons programme through international trade. AG lists include chemical, biological and dual-use products.

⁴ The 42 member States are Parties to the 1925 Geneva Protocol, the Bacteriological and Toxin Weapons Convention and the Chemical Weapons Convention. The EU is also a member of the AG, but Russia and China are not.

powers, such as China and Russia, is seen as a gap by some analysts. These two countries can perform the role of major suppliers of listed products in the global market, limited only by the BTWC and the CWC, thereby leaving many dual-use products out of its scope. Compared with the NSG, the advantage of the AG's technical efficiency is counterbalanced by its restricted membership.

The [Missile Technology Control Regime](#) (MTCR) was created in 1987 and currently has 35 members, including Russia, a major aerospace and missile technology supplier, as well as India.⁵ However, China has not joined the group. Like the NSG and the AG, the MTCR does not have a secretariat, but a Point of Contact. However, in the absence of a multilateral treaty regulating the transfers of missiles or missile-related technologies, it lacks a universal legal framework or reference. In theory, members share the same goals of non-proliferation of delivery means for weapons of mass destruction by coordinating their respective national export control systems, with common guidelines and control lists. The MTCR has been regarded for many years as an efficient ECR, but geopolitical controversies with Russia have introduced tensions in the group: the implementation of restrictive measures on Iran and the DPRK, the Russian military aggression against Ukraine and, more recently, the transfers of missile and UAV technology between the DPRK, Iran and Russia.

The [Wassenaar Arrangement](#) (WA) was established in 1996, replacing the COCOM, to contribute to international security and stability through transparency measures and accountability criteria in the national management of exports of conventional weapons and dual-use technology. The WA currently has 42 members, including Russia, a major military technology supplier, as well as India, but China has not joined this group. The tensions and controversies on military transfers began in 2014 after the invasion of Crimea by Russia, and they have been exacerbated since the full-scale invasion of Ukraine in 2022, which is regarded by most members as a breach of WA principles.⁶

1. Challenges for Multilateral Export Control Regimes: the state of play

ECRs are the result of decades of experience in export control, structures that reflect different paces of development; different areas of sectoral competence; and a diverse membership. In some cases, priority has been given to the inclusion of most relevant suppliers. In other ECRs, priority has been given to the effectiveness of the mechanisms for identifying and managing the technologies under control (as in the case of the AG). In between these two models, the MTCR and the WA came closer to a compromise between the two criteria (by admitting Russia as a member). At present, all of them face some major challenges:

⁵ The MTCR Point of Contact is at the French Ministry of Foreign Affairs in Paris.

⁶ The WA Secretariat is in Vienna. WA principles are included in the Initial Elements. <https://www.wassenaar.org/app/uploads/2021/12/Public-Docs-Vol-I-Founding-Documents.pdf>.

- The tensions between Russia, China and the Western states due to their divergent views on global and regional stability, and the implications of international transfers of weapons and military technology.⁷
- Russia is a member of the NSG, MTCR and WA agreements but its military aggression against Ukraine in 2022 has exacerbated these tensions. The use of force to change international borders and the transfers of weapons to armed militias in Donbas are a violation of International Law and WA principles.
- Moreover, the *rapprochement* between Russia, Iran and the DPRK since 2022 is based on cooperation and two-way transfers of weapons and sensitive technologies (nuclear, conventional, missile and UAV), raising concerns among other participating governments.
- The growing military relevance and global trade of dual-use technologies initially designed for civil commercial purposes, increasing the difficulty of controlling efficiently sensitive international transfers.
- The absence of global legally binding rules or multilateral treaties on weapons and missile transfers that could be used as a legal framework for the MTCR and the WA.⁸
- Over time, these ECRs show gaps in the face of the emergence of new technology suppliers, like China, which has experienced a significant industrial and technological boom in recent decades. As a result, we now see a growing mismatch between the need to control sensitive technology transfers and the operational tools available to like-minded Western suppliers, given the nature, membership and dysfunctions of the ECRs.
- The existence of suppliers and intermediaries out of the ECRs that not only do not abide by the common guidelines but rather challenge them, exploiting any possible gaps to get **illicit supplies to their destination**, or to take a position in the 'alternative' chain of supply. Technologies originating in Western industrialised countries and Russia have in the past spread through legitimate trade to other parts of the world. In some cases, this diffusion has led to the illicit manufacture of replicas, or to the indigenous development of sensitive technologies, often based on know-how and equipment obtained from more advanced suppliers.

⁷ There are different interpretations of what a 'destabilising transfer' is. These different interpretations depend on the role of a state in the world order and are a central issue in geopolitical controversies, and the existing legal tools to prevent exports of non-listed dual-use technologies are limited. Moreover, there is a 'grey zone' of states that formally adhere to UNSC resolutions yet fail to adhere to other sanctions regimes or export control guidelines. Finally, profit-oriented illicit trafficking networks exploit the gaps in export controls and restrictive measures. The last two issues –risk-related transactions in transnational illicit trafficking networks and technology transfers in the 'grey zone'– deserve more attention from ECR.

⁸ There are no globally accepted rules to prevent the proliferation or control transfers of missiles, UAVs or conventional weapons, beyond specific country-related UNSC Resolutions establishing restrictive measures. This applies to countries such as Iran or DPRK. The UN Programme of Action on Small Arms and Light Weapons (2001), which is not legally binding, provides the framework for activities to counter the illicit trade of these weapons, while the Arms Trade Treaty has a different scope and purpose, since it regulates international trade in conventional arms (the seven categories of the UNRCW and SALW) and seeks to prevent and eradicate illicit trade and diversion of conventional arms by establishing international standards governing arms transfers. The two major world arms exporters –the US and the Russian Federation– are not Parties to the Treaty.

- Finally, a group of countries –led by China– has proposed to develop international guidelines for a universal open-ended mechanism of export controls, challenging the current ECRs based on suppliers’ restricted membership.

In the last decades, the four ECRs described above have been the framework of multilateral cooperation for effective export controls. However, they are now the setting of a major geopolitical confrontation, distorting their original goals and functions, with a negative impact in decision-making mechanisms.⁹

The military transfers and cooperation between Russia, the DPRK and Iran are paramount to current dysfunctions in these forums. Consensus decision-making in these ECRs confer more legitimacy to their guidelines and, in some cases, a more efficient implementation of export control policies.

Still, more advanced and faster coordination mechanisms are needed, alongside a more ambitious outreach strategy to non-members. The existing ECRs will continue to play a major role in multilateral export controls, since negotiation and agreements amongst relevant suppliers, including China and Russia, will still be necessary in the future.

2. Membership and engagement in multilateral export controls

Membership criteria is an essential, but challenging, issue. In theory, ECRs should include all the relevant suppliers and transshipment hubs to be effective. They should also be open to admitting new ones when necessary, adapting to market evolution. In practice, geopolitical realities limit this choice. The four existing regimes are the product of a specific period of history (1975-96) and reflect a given stage in interstate relations. All decisions are taken by consensus, ECRs’ members can prevent the admission of certain states when they believe they could interfere in the decision-making process or use the group to achieve other competing political goals. Three main trends on this issue can be identified:

- a) Those in favour of maintaining a restricted membership of like-minded states to prioritise efficiency (at the cost of limited global results), leaving non-like-minded suppliers out of the group. The latter will not implement the same guidelines and control lists. This is the model of the AG. This approach could be less problematic in the case of treaty-based regimes, where international conventions establish the

⁹ Complex working mechanisms and consensus decision-making make internal processes complicated and slow against a backdrop of geopolitical disputes and differing perceptions of international security and stability. Having participated in more than 30 plenary meetings of ECRs, in my view, the most striking aspect of the working methods is the time and efforts devoted by delegations to plenary statements or press releases. Heads of delegation invest nearly half of their time negotiating a two pages document which becomes public and reflects the ‘common view’ on the issues addressed by the plenary, in fact, the lowest common denominator. Analysts acquainted with multilateral export control regimes have also identified other drawbacks, such as a slow and complex decision making, political dysfunctions amongst their membership, the sequence and frequency of meetings (working groups, intersessional meetings and plenary meetings), long speeches and little interaction in debates.

lowest common denominator.¹⁰ However, it is always a challenge in ECRs without a specific treaty-based international framework (such as MTCR and WA), due to different interpretations of their international commitments. In any case, the restricted membership formula may lead to the development of a parallel market fed by non-members and based on their own guidelines (for instance, in China and Russia). A restricted membership is also a consequence of the existing ECR goals, since universal membership is not the end game in any of them.

- b) A second trend supports membership open to all relevant suppliers and transshipment hubs. In this model, members are ready to admit new candidates considering their capacity as suppliers, irrespective of their geopolitical stand. The implementation of common guidelines and control lists would be achieved at the cost of internal political tensions and a more complex and difficult decision-making process. In practice, different interpretations of the guidelines and the absence of adequate verification mechanisms will limit the results for the goals of non-proliferation. Experience shows that the potential advantages of a more inclusive membership are often outweighed by the inconvenience of divergent political views, different interpretations of guidelines and competing commercial interests. In other multilateral forums, the presence of all relevant players makes decision-making more difficult, but more effective and sounder when achieved. This is not always the case in ECRs. The enlargement to all suppliers and transshipment-hub states would imply the certain risk of becoming the sound box of all the geopolitical controversies in the world, shifting the attention from the technical agenda and blocking interaction in the group. Universal membership, as suggested by China in 2022, would not be feasible under any circumstances.
- c) The Chinese initiative of a multilateral and universal agreement on export controls has set in motion the third trend: universal membership. Following a first debate and resolution on export controls in the UNGA in 2021, China introduced a second resolution in 2022 on promoting international cooperation for peaceful uses.¹¹ The latter recognises ‘the inalienable right of all States to participate in the fullest possible exchange of equipment, materials and scientific and technological information for peaceful purposes’ and ‘the importance of technology as a key driver of sustainable development’. The resolution also notes with concern ‘that undue restrictions on exports to developing countries of materials, equipment and technology for peaceful purposes persist’,¹² underlining that ‘proliferation concerns are best addressed through multilaterally negotiated, universal, comprehensive and non-discriminatory agreements’. The resolution was adopted with 88 votes in favour, including those of

¹⁰ The lowest common denominator is contained in NPT, IAEA and Safeguards Agreements for nuclear related exports; and in CWC and BTWC for chemical and biological related exports.

¹¹ Promoting International Cooperation on Peaceful Uses in the context of International Security’. A/77/393 General Assembly. Seventy-seventh session, Agenda item 107. New York: UNGA, 10 November 2022. The representative of China argued that ‘insufficient attention has been paid to the unreasonable restrictions on developing countries’ access to technology’. First Committee Considers Constraints on Dual-Use Technology Exports, Divergent Proposals for Countering Cyberspace Threats SEVENTY-SEVENTH SESSION, 29TH MEETING (AM) GA/DIS/3704. UN Press Office, 2 November 2022.

¹² This is a veiled criticism of the ECRs. In its explanation of vote against this resolution, the EU supported the role of ECRs, based on clear guidelines and control lists. EU Explanation of Vote – UN General Assembly 1st Committee: Promoting international cooperation on peaceful uses in the context of international security, 3/XI/22, New York, Press and information team of the Delegation to the UN in New York.

Russia and South Africa (both members of the NSG, MTCR and WA) and those of some countries directly involved in proliferation programmes and under UNSC sanctions.¹³ China is now a member of NSG, and in the past tried to join –without success– the other ECRs.

ECR models (a) and (b) (restricted membership and membership open to relevant suppliers and transshipment hubs, respectively) have drawn unjustified criticism from many countries in the Global South. Critics claim that ECRs ‘hinder global trade’, that they work like ‘a cartel’ defending industry interests, or they ‘are motivated by political and commercial interests’. This (unfair) rhetoric –which is contradicted by facts– is supported by many NAM countries, sometimes encouraged by certain members of such ECRs who keep a double standard: they participate as members in the ECRs, and then support or encourage criticism in other international forums. More frequently, they actively join the critics when they refer to a regime, they do not belong to but keep silent when criticism is addressed to the regime they do belong to.

The limitations of the first two models (restricted membership or membership open to relevant suppliers) are partially compensated with outreach policies. ECRs outreach to non-members takes place in the above-described environment, facing difficulties that sometimes can be avoided when addressing single counterparts one-on-one. Then, released from ‘group pressure’ in their respective geographical groups in UN agencies, a few countries can engage in a constructive dialogue. This includes diplomatic contacts, awareness-raising activities and capacity-building programmes for non-members. Outreach policies also intend to engage non-members in compliance with rules in which they have not been involved (basically, guidelines and control lists).

Conclusions

This paper describes the global context in which ECRs are operating:

- An expanding global trade.
- A changing world with new suppliers, new technologies, new applications of existing technologies and new methods of technology transfers.
- Non-state actors used as state tools and proxies.
- Increasing restrictive measures.
- An adverse geopolitical environment.

Other loopholes also affect the ECRs’ efficiency, partly due to two decades of technological change and a fast cognitive revolution.

Commercial interests versus security concerns in a multipolar system

Created on a sound basis between 1975 and 1996, the ECRs have been overtaken by reality, leading to a debate on efficiency versus legitimacy, where a difficult balance

¹³ Among the 88 supporters of A/77/393 were DPRK, Iran and Syria, while 54 States voted against the resolution and 31 abstained.

between technical and political issues must be kept when addressing criteria, guidelines strategic communication and their implications for sanctions regimes.

The West needs to keep spaces for communication with powers such as China and Russia. Still, the pace and scope of the evolution of ECRs to engage other relevant technology suppliers or transshipment hubs, and the need for upgrading relations with other non-member states deserve more attention from participating governments. Some additional steps could be taken to improve the efficiency of export controls: improving coordination among like-minded suppliers and further developing outreach strategies to promote awareness, capacity building and voluntary adherence to the guidelines.

Setting up a coordination mechanism among like-minded suppliers

After two decades of geopolitical change, the post-Cold War era is giving way to specific challenges as new driving forces emerge. While EU Member States have export controls and sanctions coordination mechanisms, this is not the case in their relations with other relevant like-minded suppliers –like the US, Japan, the Republic of Korea, the UK, Australia and Canada– beyond the activities of the four ECRs described above. They usually have consultations and informal exchanges, frequently meeting in the margins of export control plenary meetings and other international fora. However, they lack a formal coordination mechanism among like-minded industrial suppliers.

Most Western suppliers share common security interests, industrial capacity and technical expertise which deserve a setting for enhanced multilateral coordination and information exchange, as well as a framework for interaction amongst national or multilateral technological observatories. A coordination and information exchange mechanism for like-minded suppliers could improve the efficiency of export controls, setting more demanding criteria, updating the control lists to reach a higher degree of accuracy and addressing other issues out of the ECRs' scope, such as investments in sensitive technology sectors and preventing sensitive technologies from being manufactured under license in states not committed to these policies; Such a coordination mechanism can coexist with the four existing ECRs in a variable geometry model, as long as it avoids duplication of activities.

Developing specific outreach strategies in the like-minded suppliers' coordination mechanism: awareness, legitimacy and capacity building

Outreach strategies in ECRs are implemented following a mandate of the plenary, addressing awareness raising and underlining the importance of ECRs for global trade while preserving international stability. They also pave the way to cooperate multi-nationally to improve enforcement practices: to identify and close down covert procurement networks and front companies; to prevent the use of false end-user certificates and illicit procedures; and to discourage third countries from facilitating the re-export or transshipment of controlled goods to countries of concern.

The like-minded suppliers' coordination mechanism described in the paragraph above could address more ambitious outreach strategies, beyond the mandate of specific ECRs, to be implemented either by individual participants or in groups, in areas that non-

likeminded members in an ECR are unlikely to approve or support. In this regard, two particular issues could be taken into consideration:¹⁴

- a) Relations with relevant suppliers and transshipment-hub states that are not members of a given ECR, as long as they are willing to engage in a constructive dialogue and are not included in sanctions regimes.
- b) Outreach to strengthen the multilateral legitimacy of ECRs. This could be done through the voluntary and unilateral endorsement of a 'statement of principles' by interested states, an efficient way of engaging non-members, if it gives them some advantages in return (in technology transfers, investments in industry, integration in transnational supply chains, capacity-building, etc).

In summary, the time is ripe for considering a gradual upgrade of export control mechanisms through the international coordination of a hard core of like-minded industrial suppliers, and to develop specific outreach strategies to strengthen relations with non-members willing to engage in a constructive relation to support and strengthen the international legitimacy of export controls.

¹⁴ Relations with transshipment hubs and non-supplier states are already part of the regular ECRs' outreach activities, offering them support to create, update or strengthen export control legislation and enforcement mechanisms in their own countries. It also includes fostering voluntary adherence to the ECRs guidelines. However, this outreach is implemented by the chair of the regime within the limits of a mandate given by the Plenary. Obviously, this mandate –adopted by consensus– limits the scope of outreach activities. In the current geopolitical environment, where export controls are put into question by certain ECR members, likeminded states should be able to implement a more ambitious outreach diplomacy.