

Looking for the correlation between EU international trade policy and its dual-use export controls outreach programme: the WMD clause coherence

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This contribution aims at identifying a correlation between the European Union (EU) international trade policy - limited in this contribution to mixed agreements between the EU and third countries - and the dual-use export controls outreach programme implemented by the EU, called *P2P (Partner to Partner) export control programme for dual-use goods* (P2P).¹

In a first place, preliminary definitions will be set out to clarify what it is meant by mixed agreements and to identify the geographical scope of both variables: EU mixed agreements signed/being negotiated worldwide and third countries part of the EU P2P programme.

It will follow and an analytical comparison which, by overlapping the geographical scope of the two variables, will look for countries part of the P2P which have also signed a trade agreement (TA) with the EU. At this stage of the analysis, the inclusion of a

1 P2P is the EU Outreach Export Control programme, started in 2004 and renamed P2P only in February 2016. The programme is divided into three pillars: Dual-Use Export Controls programme; Council Working Group on Conventional Arms Exports Outreach Programme; and the Arms Trade Treaty Outreach Project. For more information, please see the *EU P2P Export Control Programme* official website, available on: <https://export-control.jrc.ec.europa.eu>.

WMD non-proliferation clause in these agreements will be inquired as proof of coherency between EU international trade policy and export controls priorities. The inclusion or non-inclusion of the WMD non-proliferation clause, as well as the date of the agreements will be considered as tools seeking to identify the underlying logic driving the (co)relation between EU international trade and its dual-use export controls programme.

The last part of the paper will seek to test the correlation in practice, by comparing the outcomes of the P2P in two different countries, Kazakhstan and Jordan.

The final aim of the analysis is the identification of the independent variable, which means to answer the question: is EU international trade policy serving dual-use export controls' objectives or is it the opposite?

Finally, some concluding remarks will make some considerations on the nature of the relation between trade and export controls and will advance some advises for ways forward.

1. PRELIMINARY DEFINITIONS

The conclusion of trade agreements with third countries is one of the main and most important parts of the EU external trade policy.

According to the content of the agreement and, by consequence, the procedure for negotiation and approval, it is possible to distinguish between two categories of EU international trade agreement:

1. Union-only agreements;
2. Mixed agreements.

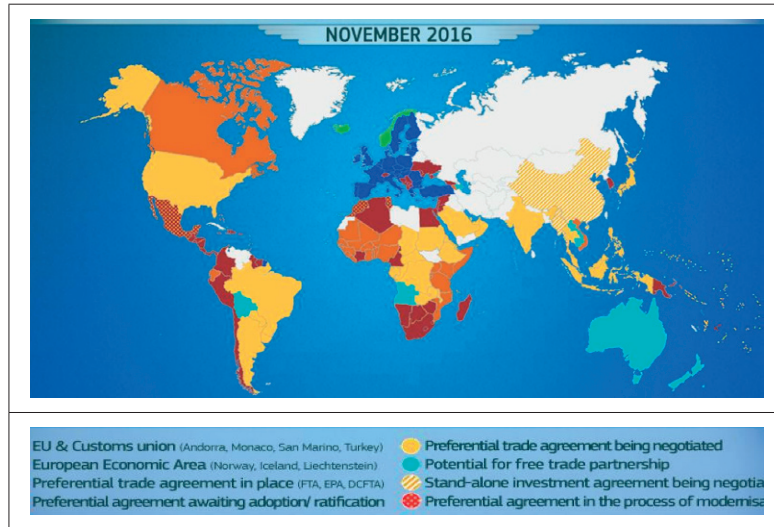
While Union-only agreements cover matters following under EU exclusive competences (e.g. competition policy, trade dispute settlement mechanisms, technical barriers to trade, etc.), mixed

agreements include also elements which are not of EU exclusive competence, notably political issues falling within Common Foreign and Security Policy (CFSP).

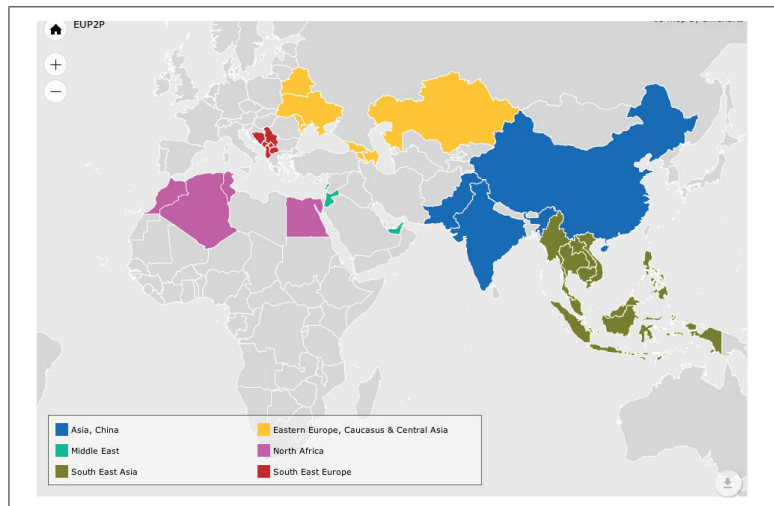
As for procedural rules, while Union-only agreements are adopted by the Council usually by qualified majority vote, mixed agreements, as established in Article 218 of the Treaty on the Functioning of the European Union, require the consensus in the Council, the approval by the European Parliament and the ratification by all Member States, following their constitutional procedures.

Every EU agreement including conditionality clauses, such as the human rights clause or the WMD non-proliferation clause is a mixed agreement. Given the necessity to inquire on the inclusion/exclusion of the WMD non-proliferation clause in agreements signed with countries part of the P2P programme, this paper will deal only with mixed agreements. It is not the objective of this contribution to make a complete overview on the number and nature of all the international agreements signed by the EU, being the focus of this brief analysis limited to agreements signed with countries part of the P2P programme. However, it could be useful to have a visual idea of EU trade agreements reach, which is worldwide, as shown in the map below.²

2 Source: European Commission, DG Trade. Available on http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149622.pdf.



As for the geographical scope of P2P export control programme for dual-use goods, it involves 32 countries, divided into six main regions:



| | |
|--|----------------------|
| Asia-China | China |
| | India |
| | Pakistan |
| Middle East | Jordan |
| | Lebanon |
| | United Arab Emirates |
| South East Asia | Brunei |
| | Cambodia |
| | Indonesia |
| | Laos |
| | Malaysia |
| | Myanmar |
| | Philippines |
| | Thailand |
| Vietnam | |
| Eastern Europe, Caucasus and Central Asia | Armenia |
| | Azerbaijan |
| | Belarus |
| | Georgia |
| | Kazakhstan |
| | Moldova |
| | Ukraine |
| North Africa Egypt | Algeria |
| | Morocco |
| | Tunisia |
| South East Europe | Albania |
| | Bosnia H. |
| | Kosovo |
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| | Montenegro |
| | Serbia |

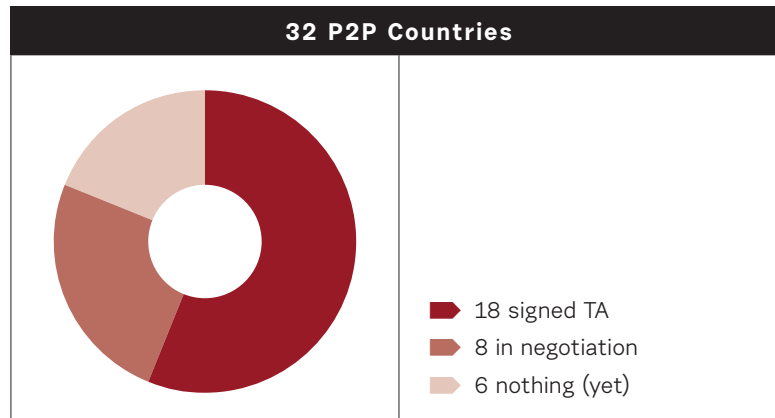
2. ANALYTICAL COMPARISON

Considering the 32 countries part of the P2P, the analysis aims at identifying how many of these countries signed a trade (mixed) agreement with the EU and among the considered agreements, how many contain the WMD non-proliferation clause.

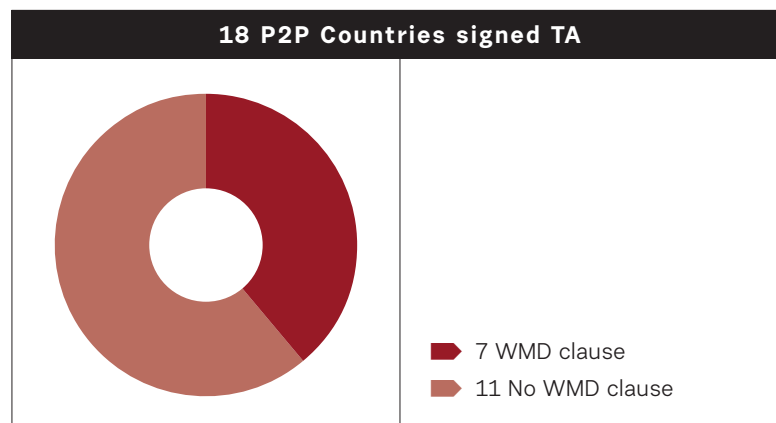
It comes out that 18 out of 32 P2P countries signed a trade agreement with the EU: Albania, Algeria, Armenia, Azerbaijan, Bosnia Herzegovina, Egypt, Georgia, Jordan, Kazakhstan, Kosovo, Lebanon, Macedonia, Moldova, Montenegro, Morocco, Serbia, Tunisia and Ukraine.

As for the remaining 14 countries, 8 out of 14 are in negotiation phase (China, India, Indonesia, Malaysia, Myanmar, Philippines and Thailand) and for the 6 remaining countries, discussions have not started yet, at least officially (Belarus, Brunei, Cambodia, Laos, Pakistan and United Arab Emirates).

The situation of the 32 P2P countries a regard to the signing of trade agreements (TA) with the EU is summed up the graph below.



Within the 18 trade agreements signed, only 7 contain a WMD non-proliferation clause: Albania (May 2006), Montenegro (April 2010), Bosnia Herzegovina (June 2015), Ukraine (January 2016), Kazakhstan (April 2016), Georgia (July 2016) and Moldova (July 2016).



Despite the fact that 11 agreements do not contain any WMD non-proliferation clause, it is worth to consider these agreements by paying attention to the date of their entry into force: Algeria (Euro-Med A. 2005), Armenia (Sept. 1999), Azerbaijan (September 1999), Egypt (June 2004), Jordan (May 2002), Kosovo (April 2016), Lebanon (March 2003), Macedonia (April 2004), Morocco (March 2000), Serbia (September 2013) and Tunisia (March 1998).

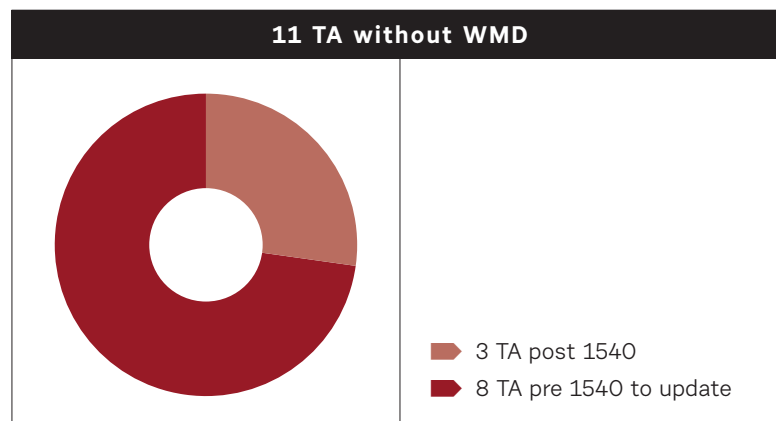
It is quite interesting to remark that 8 out of 11 agreements, which do not contain any WMD non-proliferation clause, entered into force before the entry into force of the United Nations Security Council Resolution 1540 of 28 April 2004 (UNSCR 1540).³

Indeed, Resolution 1540 acted as a watershed in the recent history of international relations, especially for dual-use items export

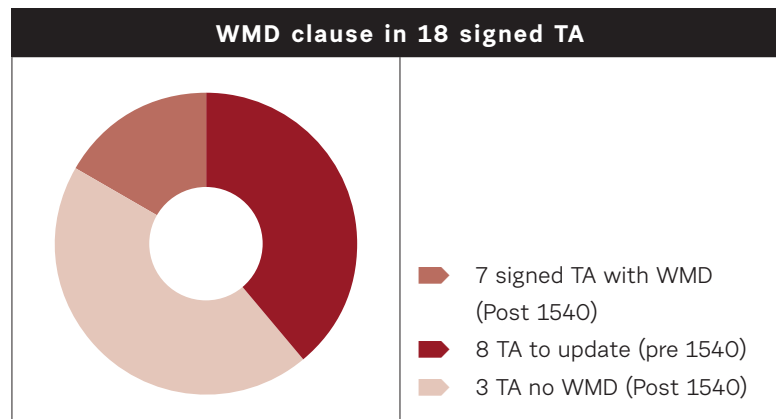
³ United Nations Security Council Resolution 1540, S/RES/1540 (2004), 28 April 2004. Available on: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004)).

controls. It can be argued that the implementation of export controls for security reasons became an issue after the entry into force of the resolution. Furthermore, given the legal force of the resolution, adopted under Chapter VII of the United Nations Charter, a sort of international duty/right to establish trade controls was born. UNSCR 1540, in fact, imposes binding obligations on all States to

Under this perspective, the non-inclusion of a WMD non-proliferation clause in trade agreements preceding the entry into force of Resolution 1540 is understandable. Following this logic, only 3 out of the 11 agreements represent an exception: Algeria (September 2005), Serbia (September 2013) and Kosovo (April 2016).



This WMD non-proliferation clause logic could be confirmed by the fact that the 8 trade agreements signed before the entry into force of Resolution 1540 are all in negotiation phase to be updated.



It is worth to notice that the wording, as well as the position of the WMD non-proliferation clause in the trade agreement is more or less the same, at least for the agreements analysed in this paper.

As for its position in trade agreements, the clause is always included under the political dialogue section, under a provision which varies from article 8 to article 11 (see below).

An example on the wording of the WMD non-proliferation clause is provided below. (From the Association Agreement between the EU and Georgia, entered into force on July 2016)⁴

⁴ ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, *Official Journal of the European Union*, OJ L 261/4 of 30/08/2014.

ARTICLE 10

Weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction (WMD) and their means of delivery, both to State and non-State actors, represents one of the most serious threats to international peace and stability. The Parties therefore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements, and other relevant international obligations. The Parties agree that this provision constitutes an essential element of this Agreement.
2. The Parties furthermore agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery by:
 - (a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement, all other relevant international instruments; and
 - (b) establishing an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual-use technologies, and containing effective sanctions for breaches of export controls.
 - The Parties agree to address these issues in their political dialogue.

Trade agreements pre-UNSCR 1540 without WMD non-proliferation clause:

1. **Armenia**, Partnership and Cooperation Agreement, 9 September 1999 (Negotiations started in 2015 to enhance the agreement)
2. **Azerbaijan**, Partnership and Cooperation Agreement, 17 September 1999 (Negotiations foreseen to enhance the current agreement, but not scheduled yet)
3. **Jordan**, Euro-Mediterranean Agreement, 1 May 2002 (Negotiations started in 2012 for a DCFTA⁵)
4. **Egypt**, Euro-Mediterranean Agreement, 1 June 2004 (in 2013 dialogues started to enhance the agreement into a DCFTA)
5. **Lebanon**, Interim Agreement, 1 March 2003
6. **Morocco**, Association Agreement, 1 March 2000 (in 2013 launch of negotiations for a DCFTA)
7. **Tunisia**, Euro-Mediterranean Agreement, 1 March 1998 (negotiations started in 2015 to launch a DCFTA)
8. **Macedonia**, Stabilisation and Association Agreement, 1 April 2004

5 DCFTA: Deep and Comprehensive Free Trade Agreement.

Trade agreements post-UNSCR 1540 (with WMD non-proliferation clause + 3 exceptions):

1. **Ukraine**, Deep and Comprehensive Free Trade Agreement, 1 January 2016 and - Association agreement - 29 May 2014: Art. 11.2(b) WMD non-proliferation clause and export controls
2. **Moldova**, Association agreement, 1 July 2016: Art. 9.2(b) WMD non-proliferation clause and export controls
3. **Georgia**, Association agreement, 1 July 2016: Art. 10.2(b) WMD non-proliferation clause and export controls
4. **Albania**, Stabilisation and Association Agreement, 27 May 2006: Art. 8.3 WMD non-proliferation clause and export controls
5. **Bosnia and Herzegovina**, Stabilisation and Association Agreement, 1 June 2015: Art. 10.3(b) WMD non-proliferation clause and export controls
6. **Kosovo**, Stabilisation and Association Agreement, 1 April 2016: No reference to WMD non-proliferation clause nor export controls
7. **Montenegro**, Stabilisation and Association Agreement, 29 April 2010: Art. 10.3(b) WMD non-proliferation clause and export controls
8. **Serbia**, Stabilisation and Association Agreement, 1 September 2013. No reference to WMD non-proliferation clause nor export controls
9. **Algeria**, Euro-Mediterranean Agreement, 1 September 2005: No reference to WMD non-proliferation clause nor export controls
10. **Kazakhstan**, Enhanced Partnership and Cooperation Agreement, 30 April 2016: Art. 11(a) WMD non-proliferation clause and export controls

3. CORRELATION IN PRACTICE: KAZAKHSTAN VERSUS JORDAN

Before entering in the core of the case-studies analysis, it is worth to keep in mind the selection criteria, applied by the EU, to propose countries to be part of the P2P programme.

The first criterion is the relevance of the “targeted” country for the EU security and foreign policy. On this basis, considering EU security and foreign policy priorities is possible to identify a list of potential candidate countries. As example, in the EU Global Strategy⁶, some strategic regions are identified as partners to *further develop human rights-compliant anti-terrorism cooperation* (North Africa, the Middle East, the Western Balkans and Turkey).⁷

The second criterion is the importance of the country as EU trading partner. The more there are trade exchanges between countries, the more these will be willing to cooperate on other policies.

Dealing with a very specific sector of trade that is dual-use goods export controls, the industrial structure of the country, with capacity in trade in dual-use items (as exporter, importer, trade facilitator, trading hub) is very relevant as well.

The above listed criteria are crosschecked with the complementarity to other EU funded projects. In other words, the EU is more willing to cooperate with countries which are already partners/beneficiaries of other EU instruments, such as Instrument for Nuclear Safety Cooperation, the Instrument for Pre-Accession Assistance or other foreign policy instruments.

Last but certainly not least, while looking for partner countries, the EU has to consider the third country’s willingness to cooperate in the area of dual-use export controls.

6 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, available on: <https://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>.

7 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, p. 21.

In order to test the correlation, on the basis of concrete results achieved during the implementation of dual-use outreach activities, two countries part of the P2P programme are considered: Kazakhstan and Jordan.

The choice of these two countries as case-studies for this paper is explained by their different status as regard the inclusion of the WMD non-proliferation clause in trade agreements with the EU. The trade agreement between the EU and Jordan was signed before the entry into force of Resolution 1540 and it does not include any provision on the WMD non-proliferation clause, while the agreement with Kazakhstan, being signed after the entry into force of the Resolution, does. The first objective of the correlation test is to inquire if the inclusion/exclusion of the clause in trade agreements makes any difference in terms of results achieved. The second objective of the test is to make an evaluation on the impact of EU's outreach activities in the area of dual-use trade controls.

Kazakhstan and Jordan have both a strategic relevance to the EU, although for different reasons. The cooperation between the EU and Kazakhstan started in 19991 and was recently renewed, in April 2016 with the signing of an Enhanced Partnership and Cooperation Agreement (EPCA). Kazakhstan is a EU's key energy supplier and world's leading uranium producer, two elements filling up the first selection criteria above-mentioned. It is also a key trading partner for China, Russia and Ukraine, all countries having a strategic importance for the EU for both economic and political reasons. Furthermore, Kazakhstan is member of the Russian-Kazakh-Bielorussian customs union, a fact which *per se* might appear as negligible, but indeed opens up the possibility to think about a dual-use trade control system between countries not part of an integration process (such as the EU). Finally, Kazakhstan is part of the Nuclear Suppliers Group (NSG) and of the Zangger Committee.

On the other side, Jordan signed a Euro-Mediterranean Agreement in May 2002, although the preparatory process for launching negotiations of a Deep and Comprehensive Free Trade

Area (DCFTA) has already started. Jordan has a strategic geo-political location for the Middle-East Region and its main trading partner is Saudi Arabia. Contrary to Kazakhstan it is not member of any international export control regime.

In terms of outcomes, EU outreach activities went a little bit further in Kazakhstan with the establishment of an identification centre (IC) but, for the rest, results achieved in both countries are very similar. In both countries, the main achievement has been the translation of EU dual-use Regulation and control list into Arabic in Jordan and into Russian in Kazakhstan. Despite the fact that it might appear as a minor achievement, the translation of EU dual-use Regulation and control list allowed not only for a knowledge of EU legislation in these countries but, more important, for the update of their national control lists introducing, indirectly through the EU, main updates introduced at the international level by export control regimes. Kazakhstan is also amending its export control regulation to harmonise it with international norms and practices, especially EU's and US' ones. Main amendments will concern: the enhancement of existing definitions, the inclusion of new definitions such as "intangible technology transfer" and "brokering activities", the establishment of identification centres, modifications in the control list and provisions aiming on the criminalisation of brokering.

Jordan, on its side, is proceeding with the elaboration of a correlation list. Finally, both countries are in process of introducing additional provisions on brokering activities for Kazakhstan and transit and transshipment for Jordan (which is also receiving legal support, by the EU and the US, in the drafting process).

4. FINAL CONSIDERATIONS AND WAYS FORWARD

The analytical comparison of trade agreements signed between the EU and P2P countries showed that, before the entry into force of the United Nations Security Council Resolution 1540, EU trade agreements did not include any WMD non-proliferation clause and preceded dual-use export control outreach programmes. In this sense, trade agreements were concluded with third countries regardless their strategic trade control system.

On the contrary, since the entry into force of Resolution 1540, EU trade agreements not only include (with few exceptions) a WMD non-proliferation clause but also do follow export controls outreach programmes. As proof of this *modus operandi*, all countries part of the P2P coming from the Asia and South-East Asia Regions did not sign any trade agreement with the EU, but negotiations have started in almost all countries (see *infra*).

In other words, it seems that the EU, before starting negotiations for trade agreements with a given country, will seek to include this “targeted” country in its trade controls outreach programme. In this sense,, trade controls outreach activities seem to serve more as a tool to prepare the playfield before the game than a final aim *per se*.

As for the inclusion of the WMD non-proliferation clause in trade agreements, this does not seem to make any difference in term of concrete outcomes, as shown by the case-studies on Kazakhstan and Jordan. Still, the inclusion of the clause in these agreements seems to be now the rule, considering the fact that all trade agreements not containing such a clause were signed before Resolution 1540 and are now in the review process to be enhanced/updated (see *infra*). Given the lack of concrete impact of the clause in term of outcomes, one might wonder why the EU “insists” on this clause. It could be argued that the clause would represent a sort of legal incentive authorising States to implement WMD non-proliferation policy and to cooperate in this field.

Finally, as regard to the impact of EU dual-use outreach activities, it seems that the spill over effect is the best result, at least for the two considered countries. In this context, by spill over effect is meant the introduction into third countries' trade control systems of international standards and "soft" legal and political harmonisation with EU export control system and legislation and, indirectly, with more general international standards (e.g. international export control regimes).

Considering the findings of the analysis presented in this paper, it seems that the independent pattern can be identified in the EU international trade rather than in its dual-use trade control outreach activities. It means that although it is true that dual-use trade control outreach activities shape international trade and contribute to create/spread international standards, they finally serve EU international trade priorities. This specific correlation between EU international trade and EU export controls policy in outreach activities is quite realistic and "expected", but it could undermine EU's credibility *vis-à-vis* its engagement to WMD non-proliferation policy. It remains to be seen next developments concerning trade agreements with P2P countries, currently in negotiation phase.

The inclusion of the WMD non-proliferation clause in all trade agreements, whatever the partner country, together with its effective implementation could demonstrate, at least from a formal perspective, EU's engagement to export controls outreach activities for WMD non-proliferation purposes instead that for "setting the table before negotiations".

The implementation/strengthening of trade controls through outreach activities as incentive, for both parts, to go ahead with trade agreements should never counteract the ultimate goal of dual-use trade controls, that is the prevention of WMD proliferation and other related security threats. Once the incentive becomes the ultimate goal for both parts and the ultimate goal is spotted with inconsistencies, dual-use trade controls, whatever outreach or inreach, are likely to become a dysfunctional superstructure,