Russia's participation in multilateral export control regimes as a tool to protect the interests of Russian exporters

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Export control, which is understood as a complex of statutorily prescribed measures providing implementation of the procedure of foreign economic activity concerning goods, information, works, services and results of intellectual activity, which can be used in production of mass destruction weapons, means of their delivery, other types of arms and military equipment, is one of the instruments of non-tariff regulation.

Opinions concerning reasonability of export control existence are opposite.

Representatives of government institutions consider that export control is relevant, first of all, for counteraction to distribution of mass destruction weapons and missile systems of their delivery, as well as international stability maintenance, secondly, for protection of political, economic and military interests of the state, because it puts a barrier to acquisition of "sensitive" goods and technologies by producers of such weapons. Besides, today export control is an integral part of regulation of foreign economic activity of all developed countries.

Certain representatives of business community, in their turn, believe that export control impedes performance of foreign economic activity, because it is necessary to perform certain procedures for obtaining permission to export, and it demands expenses of time and financial resources.

In order to answer this question it is necessary to consider the essence of multilateral modes of export control and the way Russia's participation in them influences the Russian exporters. There are five such modes: the Zangger Committee, the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement.

The **Zangger Committee (ZC)** establishment is connected with article III.2 of the Non-Proliferation Treaty (NPT) dated 1968, which provides that "each member state of the Treaty shall not provide:

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a) initial or special fissile material or b) equipment or material, specially intended or prepared for processing, use or production of special fissile material, to any state, which has no nuclear weapon, for peace purposes, if guarantees, required by the present article, do not cover this source or special fissile material".

The group of experts from 15 countries, that worked in Vienna from 1971 to 1974 under the chairmanship of professor Claude Zangger from Switzerland, revealed and detailed this article. As a result, in 1972 agreements on the content of two memorandums concerning export of source¹ and fissile material² (Memorandum A), as well as equipment and nonnuclear material² (Memorandum B) were reached. Subsequently these memorandums were called "The Trigger List"³. In 1974, these arrangements were issued in the form of the document INFCIRC/2094 of IAEA⁴.

In the course of the work on memorandums, 3 conditions of export of goods, included into the Trigger List, to the countries, which have no nuclear weapon and which are not member states of the NPT, were formulated: fissile materials delivered should not "switch over" to the purposes of production of nuclear weapon or other nuclear explosive devices; such materials, as well as equipment and non-nuclear materials should be covered by IAEA guarantees; and fissile materials, equipment and non-nuclear materials should not be re-exported to the non-nuclear state without covering of these goods by IAEA⁵ guarantees by such state.

Since then the content of the memorandums has been repeatedly revised – first of all, in the light of appearing information on use of goods, technologies and equipment, which are not included into the Trigger List, by certain countries for production of nuclear weapon.

² Fissile material – plutonium-239, uranium-233 enriched by isotopes 235 or 233; any material containing one or several substances listed below; and such other fissile material which will be determined from time to time by Board of governors; however the term "fissile material" does not include source material. (Article XX.3 of IAEA Charter).

³ The list of the equipment and non-nuclear material included nuclear reactors and non-nuclear materials for them, equipment for fuel elements production, processing of the irradiated fuel elements, etc.

⁴ Zangger Committee. History. // http://www.zanggercommittee.org/History/Seiten/default. aspx

⁵ Zangger Committee. History. // http://www.zanggercommittee.org/History/Seiten/default. aspx

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¹ Source material – uranium with the content of isotopes in such relation, in which they exist in natural uranium; uranium depleted by isotope 235; thorium; any of the abovementioned substances in the form of metal, alloy, chemical compound or concentrate; any other material containing one or several of the specified substances in such concentration, which will be determined from time to time by the IAEA Board of governors; and such other material that will be determined from time to time by the Board of governors (the Article XX.1 of the IAEA Charter).

At the same time, fundamental principles of activity of international modes of export control were established, namely: the status of the Committee is informal, decisions made are not legally binding for its members, and all decisions are made by consensus.

The idea of establishment of the **Nuclear Suppliers Group** (NSG)⁶ arose after India carried out nuclear test in May 1974. It revealed that conditions of the nuclear supply implementation, developed by the Zangger Committee, are insufficient. Besides, as France was not a member state of the Zannger Committee, it was required to find a format of its participation in the joint activities on prevention of nuclear weapon distribution.

In 1977 the main documents – the Check List and the Guidelines of nuclear export - were approved, The Check List was based on the Trigger List of the Zannger Committee, but it was expanded, and statements of separate articles were specified. The Guidelines, published in 1978, became an official document INFCIRC/2546 of IAEA.

In order to prevent "switching over" to the production of nuclear explosive devices of materials and equipment delivered to the non-nuclear states, the Guidelines provide obtaining of official assurance from the government of the importing state. Its point is that such goods will not be used within the frameworks of the nuclear fuel cycle, not covered by the IAEA guarantees, or for production of such explosive devices.

Besides, importers are obliged to perform measures of physical protection of nuclear material in order to prevent fraud and their illegal transfer. Requirements concerning the fact, that it is necessary to be careful at transfer of sensitive installations, technologies and materials fit for production of weapon, are formulated. Requirements to possibility of the subsequent transfers of such goods are toughened.

However, as the war in the Persian Gulf showed, Iraq, which was the member state of the NPT, carried out the program of development of nuclear weapon by acquisition of goods of double use not covered by the Guidelines. Further, it produced from these goods the items, included in the Trigger List. In this regard, the member states of the Nuclear Suppliers Group developed and in 1992 approved the Guidelines of export of goods and technologies of double application, as well as a check list of such goods, which were published in the form of the document INFCIRC/254, part 2, of IAEA. The Guidelines of nuclear export of 1978 were called INFCIRC/254, part 1⁷.

The document provides placement of all nuclear activity in the importing state under control of the International Atomic Energy Agency, which was called the full-scale guarantees of IAEA, as a mandatory condition of nuclear export to the non-nuclear states. Besides, transparency measures, i.e. establishment of advisory mechanism on goods of double use for exchange of information and mechanism of refusal notice exchange



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 $^{^6}$ Nuclear Suppliers Group (NSG). // http://www.nuclear
suppliers
group.org/A_test/01-eng/ index.php

⁷ Nuclear Suppliers Group (NSG). http://www.nuclearsuppliersgroup.org/A_test/01-eng/04-histo.php?%20button=4

concerning the issue of export licenses, were developed. Besides, "No Undercut Policy", according to which the members should not agree, without preliminary consultations, to transfer controlled goods, if such transfer was rejected by another member of the mode, was coordinated.

The **Missile Technology Control Regime** (MTCR), established in 1987, became the third multilateral mechanism of export control. Restriction of risk of nuclear, chemical and biological weapon distribution by the establishment of control of deliveries, which could promote creation of delivery systems of such weapon (others, than piloted aircraft), was its stated purpose.

Guidelines and Appendix are the main documents of MTCR. These documents provide subdivision of all controlled goods and technologies into 2 categories. The issues referred to Category I, are the most sensitive from the point of view of non-proliferation. Such issues include: finished missile systems, capable to deliver any load over 500 kg and more to the distance of 300 km and more, their most important subsystems (engines, steps of missiles, warheads), and specially designed capacities for such systems. Guidelines provide that transfer of such issues to the non-members states of MTCR, as a rule, is not allowed, and transfer of capacities is forbidden⁸.

Other means, which can be used for creation of systems of weapons of mass destruction delivery in accordance with technical indicators, are referred to Category II. Their transfers are allowed, provided they are excluded from use for development and production of missiles of Category I⁹.

In the course of consideration of export orders, state agencies of the member states of MTCR are obliged to consider a number of criteria, including the level of development and the purposes of missile and space programs of the receiving state, the value of transfer from the point of view of development of system capacity potential of weapons of mass destruction supply and an assessment of end use of the transferred goods, including existence of the corresponding guarantees of the importing state.

Prevention of use of exported goods and technologies for production of chemical and biological weapon was declared as an objective of the **Australia Group** (AG), that, according to the opinion of the member states, should promote their fulfillment of obligations within the frameworks of Chemical Weapons Convention (CWC) and Biological and Toxic Weapons Convention (BTWC)¹⁰.

Establishment of such forum in 1985 was proposed by Australia, when conclusions of the visit of the special mission of the UN Secretary General to Iran, which evidenced the application of chemical weapon during war between Iran and Iraq – in violation of

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⁸ MTCR Guidelines and the Equipment, Software and Technology Annex // http://www.mtcr. info/english/guidelines.html

⁹ Ibid // http://www.mtcr. info/english/guidelines.html

¹⁰ The Australia Group // http://www.australiagroup.net/en/introduction.html

the Geneva protocol dated 1925 – were published, at this Iraq quite legally procured some chemicals and materials for their chemical weapon production program¹¹.

The main documents of the Australia Group are: Guidelines on transfers of sensitive chemical and biological goods and check lists.

Factors, which exporters have to consider at consideration of the supply order of controlled goods (including availability of information on opportunities, purposes and importing state activity in chemical and biological areas); value of delivery from the point of view of suitability for the declared end use (including availability of appropriate guarantees of the importing state or the end user); assessment of end use of transfer (including whether transfer rejects to this end user occurred before and whether cases of "switching over" of earlier resolved transfers to unsolved targets by the end user took place)¹².

Unlike other multilateral modes of export control the following 5 check lists are coordinated in the Australia Group:

1) precursors of chemical weapon;

2) production means and equipment for production of chemical compounds of double application and technologies and software related to them;

3) equipment of double application used in biological area, and related technologies and software;

4) causative agents of diseases of people and animals and toxins;

5) causative agents of plant diseases¹³.

Finally, the last, fifth multilateral mechanism of export control is **Wassenaar Arrangement** on export control of conventional arms, goods and technologies of double application (WA). Its purpose is to promote regional and international security and stability by transparency and responsibility increase in the field of transfers of conventional arms and goods and technologies of double application in order to impede undermining accumulations in such a way¹⁴.

The issue of necessity of WA establishment occurred after liquidation of the Coordinating Committee for Multilateral Export Controls in 1994, which was known as COCOM. Prevention of deliveries to the USSR and other socialist countries of high technologies, including export control of conventional arms and modern technologies used for their production, was in the scope of its competence.

Work on forum establishment was carried out in 1994-1995, and, officially, WA was founded in December 1995 in the Dutch city of Wassenaar.



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¹¹ The Australia Group // http://www.australiagroup.net/en/origins.html

¹² The Australia Group // http://www.australiagroup.net/en/guidelines.html

¹³ The Australia Group // http://www.australiagroup.net/en/controllists.html

¹⁴WassenaarArrangement. Introduction. // http://www.wassenaar.org/guidelinesdocs/5%2-%20 Initial%20Elements.pdf

The Guidelines and procedures, including Source elements, the list of arms and the list of goods and technologies of double application are the main documents of the forum, thus, Russia, France and Ukraine declared that they consider the list of arms only as a reference, i.e. for description of goods and technologies of double application used during the development, production and testing of conventional arms. Cooperation in the WA is performed within two "baskets" – conventional arms and goods and technologies of double application¹⁵.

In relation to the first "basket" it is reduced to situation discussion in certain countries and regions, exchange of opinions concerning possibility of weapons deliveries and notification of countries, which are not participants of WA, about deliveries of arms under 8 categories twice a year. The Register of conventional arms of the UN, which received additional specification and was supplemented with a category of light and small arms, was taken as a basis of these categories.

Thus, regulation of transfers of conventional arms is not within the competence of the Wassenaar Arrangement, and such deliveries are still a part of the national policy of each state.

The check list of goods and technologies of double use included issues, which can be used for production of conventional arms. The special place is taken by appendices of "sensitive issues" and "the most sensitive issues", containing goods and technologies, which are important from the point of development and production of usual wepon.¹⁶

Cooperation under the second "basket" is performed by exchange of information about refusals in issue of licenses of controlled goods for delivery to non-member states, if such refusal is related to WA objectives (2 times a year on a cumulative basis); about the granted licenses for delivery of the goods included into "sensitive" and "especially sensitive" lists (2 times a year on a cumulative basis); and about refusals in issue of licenses for delivery to non-member states of the goods, which have been included into "sensitive" and "especially sensitive" lists (on an individual basis).

Moreover, participants agreed that they would show special vigilance at consideration of requests for delivery of goods from "especially sensitive" list 17.¹⁷

Considering the activity of multilateral mechanisms of export control, it is possible to find the following uniting general moments:

1. All 5 forums represent voluntary associations of the countries sharing the same principles of non-proliferation.

¹⁷ WassenaarArrangement. Introduction.http://www.wassenaar.org/guidelines/index.html

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¹⁵ Wassenaar Arrangement. Introduction. // http://www.wassenaar.org/guidelines/docs/5%20 -%20Initial%20Elements.pdf

¹⁶ WassenaarArrangement. Introduction.http://www.wassenaar.org/controllists/index.html

2. Forums do not perform supranational functions. Decisions, which are taken within their frameworks, are not legally binding, but the member states implement them in the regulatory base and obey them. Competent authorities of each member state of the mode independently consider demands for export on the basis of criteria and lists agreed in a multilateral format. Thus, any participant has the right to ask explanations concerning any delivery, which causes its concern.

3. Control over transfer of most goods is not aimed at prohibition of supplies, but at prevention of use of supplied goods for production of mass destruction weapons, missile systems of their delivery means and modern arms.

4. Decisions within forums are considered to be accepted, if they were not opposed by any participant, i.e. the principle of consensus is used.

5. Participants exchange information on a voluntary basis, that allows them to take it into account at assessment of requirements for export implementation.

6. In the Nuclear Suppliers Group, the Missile Technology Control Regime and the Australia Group a so-called "No Undercut Policy", allowing prevention of deliveries of goods, which can be used for not stated purposes, is applied.

7 . Only the Wassenaar Arrangement has small secretariat and budget. Thus, membership in multilateral forums of export control does not entail material expenses from the member states.

All national systems of export control based on recommendations and documents developed in the frameworks of multilateral mechanisms, contain four elements: legislation, lists, licenses and law enforcement.

The legislation, which is understood as laws and bylaws, is a legal basis, in accordance with which all activity in this sphere is performed. At this, it is necessary to consider that both classical goods supplies, i.e. their physical transfer across the border, and so-called intangible transfers of technologies, representing transfer of information and knowledge by phone, Internet, e-mail and other electronic means of communication, as well as in the process training and scientific exchanges, are affected by export control.

The lists include only goods and technologies of highest importance for production of weapons of mass destruction, missile systems of its delivery and modern conventional arms. They are regularly updated taking into account the last achievements of science and technology, and information received on application of uncontrollable goods and technologies for not stated purposes.

At the same time, check lists contain only the most sensitive goods and technologies. Comprehensive control (catch all) is used in relation to other issues, which proposes that supplier is obliged to inform regulatory authorities and apply to them for the export license, if it knows or if there are suspicions that the goods delivered, not being on a check

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list, will be used for production of weapons of mass destruction, missile systems of their delivery or conventional arms. If state authorities have information that the goods will be used for production of such types of weapon, they have the right to forbid delivery.

Control with broader coverage (catch more), known as control of deliveries of any goods to the end user, which activity causes concern, is a kind of comprehensive control.

Issue of export licenses is an important instrument of state control of supplies of goods, included into the check lists. Absolute majority of deliveries is performed on the basis of one-shot licenses. General licenses are issued in certain cases.

Law enforcement, which includes a set of measures aimed at prevention of transfers of goods and technologies for their use for non-stated purposes, as well as at increase of responsibility of suppliers at implementation of such deliveries, is an important element of any system of export control.

Inspection of reliability of the exporter and importing firm, obtaining of guarantees of importer's use of goods only for the stated purposes, inquiry of the certificate of delivery confirmation and the import certificate, conduction of on-sight inspections relate to the first measures. Moreover, criminal and administrative responsibility, including imprisonment, of persons guilty of violation of the law is provided in all countries, which established the national systems of export control.

In order to increase responsibility of supplier, state agencies conduct work with exporters on explanation of purposes of export control and on their acquaintance with the last changes in the national legal system.

The Russian system of export control, which was established by the decree of the President of the Russian Federation in 1992, has all mentioned 4 elements.

The Russian legislation is represented by the Law on export control dated July 18, 1999, decrees of the President of the Russian Federation and the Government of the Russian Federation. Qualification of policy of export control as a component of internal and foreign policy of Russia, which is carried out only for safety of the state, its political, economic and military interests, is an important provision of the Law¹⁸.

The Russian check lists, which are put into force by decree of the President of the Russian Federation, are completely based on the lists coordinated at multilateral forums of export control. Supplies of goods included into them are performed according to the Regulations on the procedure of control of appropriate goods approved by resolutions of the Government of the Russian Federation. Rules of consideration of orders for export contain a number of requirements, which are also based on recommendations of multilateral modes. They include obligation of the foreign person, that the goods, equipment and technologies received by it, will not be re-exported without a written permission of the Russian participant of foreign economic activity, agreed by the Federal

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¹⁸ Federal Law dated July 18, 1999 No 183-FZ "On export control" http://fstec.ru/ normotvorcheskaya/eksportnyj-kontrol/96-eksportnyj-kontrol/zakonodatelstvo/ zakony/309federalnyj-zakon-rossijskoj-federatsii-ot-18-iyulya-1999-g-n-183-fz

Service on Engineering and Export Control; obligation of the importer to provide Russian exporter with the import certificate, the right of inspection of use of the received goods and the certificate of confirmation of delivery.

Export of controlled goods from Russia may be performed on a basis of both one-shot and general licenses, granted by the Federal Service on Engineering and Export Control. General licenses are issued on the basis of decisions of the Government of Russia to the legal entities that created the intra-firm program of export control and received the certificate of state accreditation in accordance with the established procedure.

At the same time, appropriate state authorities perform work with exporters for the purpose of their understanding of purposes of export control and mastering of skills of identification and response to suspicious circumstances at implementation of export operations. Moreover, they provide assistance to the Russian exporters in development of intra-firm programs of export control.

When making a conclusion, it should be noted that participation of Russia in multilateral mechanisms of export control (and it is the member of four of five forums – except the Australia Group), is undoubtedly in compliance with its interests. The following may be related to the advantages of such participation:

1. As a permanent member of the UN Security Council, Russia bears special responsibility for peacekeeping and the international security, and in this relation is obliged to take active part in international efforts on prevention of proliferation of weapons of mass destruction and on maintenance of international and regional stability.

2. Activity of multilateral mechanisms is focused on the countries, which are not their members. Taking part in such forums, Russia guarantees that they will never be used against it.

3. The national system of export control of Russia is based on recommendations of multilateral forums of export control. Participating in them and using the principle of consensus at decision-making gives it an opportunity to protect its national interests, including exceptions from the check lists or non-inclusion in them of goods and technologies, which are widely delivered for export by Russian organizations.

4. Russian delegations in multilateral forums of export control actively use information exchange performed in their framework in order to draw attention to the situation and programs of production of weapon in the countries, being traditional clients of other participants of forums, as well as informing of its point of view about the situation and programs of production of weapon in the importing states of the Russian goods.

The Russian system of export control is completely harmonized with the systems of export control operating in other countries, therefore, its existence does not provide any advantages to foreign competitors (like Russian exporters, they have to file an application for export and obtain export licenses). At last, the purpose of export control is not delivery prohibition, but placement of exported goods under control to exclude their use for not stated purposes.

In this regard, creation of more favorable conditions for Russian exporters is possible, first of all, by reduction of the period of consideration of applications for delivery of controlled goods.

As it is known, Russian Export Control Commission (ECC) is the main authority of the Russian system of export control, and performance of functions of specially authorized federal executive authority in the field of export control and organizational and technical and information support of work of the ECC are imposed on the Federal Service for Technical and Export Control (FSTEC). This service accepts applications for export implementation, considers them together with others departments, prepares solutions of the ECC and grants licenses.

As practice shows, coordination of the conclusions concerning possibility of export takes most of the time, as it is performed by means of physical transfer of documents by turn to the departments participating in consideration of applications. For this reason, thirty-day term is provided for the issue of conclusion on possibility of export now. Its reduction is allowed only by granting access to documents in electronic form to all departments at the same time and issue of the conclusion by them by means of electronic means of communication too. For this purpose establishment of the protected communication channel among departments and providing the right of a digital signature to them is required.

Such work is being conducted, and if nothing occurs, this system will be implemented in summer of 2014, that will result in reduction of the period of consideration of applications to 15 days.

In summary, the following should be noted. As measures of export control are coordinated within the mentioned multilateral mechanisms, they are directed, first of all, against non-partners, i.e. states, which are not participants of these forums. At the same time, any country has the right to introduce additional export control measures in relation to "sensitive" products by its own at the national level. They can be expressed both in expansion of check lists, and in distribution of action of restrictions to certain participating states of multilateral mechanisms. For example, the USA for the reasons of national security limits deliveries of certain goods and technologies, used in nuclear area, to Russia.

The scope of restriction arrangements can be expanded during the period of aggravation of bilateral relations. For example, due to the Ukrainian events, the USA suspended issue of licenses for delivery of many controlled goods to Russia that can cause countermeasures from the Russian state authorities. It causes certain damage to business. The sphere of coverage of such measures and term of their action will depend in many respects on economic damage they may cause to the country: the more the losses, resulting from prohibition of export of separate goods, the less the chance of introduction of restricting arrangements and the more the chance of their fast cancellation, once they were implemented.

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