

Export control in the Russian Federation

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CONCEPT AND ESSENCE OF EXPORT CONTROL IN THE RUSSIAN FEDERATION

It is common knowledge that there exists a definite group of commodities in the world commerce which are subject to certain restrictions imposed on export-import operations therewith pursuant to such international regulatory legal acts as Nuclear Weapons Non-Proliferation Treaty (NWNPT)¹, Agreements within Zangger Committee² and Nuclear Suppliers Group (NSG)³ regarding determination of materials and equipment falling under export control, Missile Technology Control Regime⁴, Wassenaar Arrangements concerning control of export of conventional

¹ The Russian Federation is legal successor of the Soviet Union which signed NWNPT in 1968. Source: TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT). - [Electronic resource] – Electronic data - URL: [http:// www.un.org/disarmament/WMD/Nuclear/NPT.shtml](http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml). Heading from monitor (date of resort 07.11.2013).

² The Russian Federation is a member of Zangger Committee as legal successor of the Soviet Union which was one of fifteen founder countries of the organization in 1971 – 1974. Source: Zangger Committee. History. - [Electronic resource]. – Electronic data - URL: <http://www.zanggercommittee.org/History/Seiten/default.aspx>. - Heading from monitor (date of resort 07.11.2013).

³ The Russian Federation is a member of Nuclear Suppliers Group as legal successor of the Soviet Union which joined the organization in 1975. Source: NUCLEAR SUPPLIERS GROUP (NSG). Home. - [Electronic resource]. – Electronic data - URL: http://www.nuclearsuppliersgroup.org/A_test/01-eng/index.php?%20button=1. - Heading from monitor (date of resort 07.11.2013).

⁴ The Russian Federation joined Missile Technology Control Regime in 1995. Source: Missile Technology Control Regime. MTCR Partners. - [Electronic resource] - Electronic data - URL: <http://www.mtcr.info/english/partners.html>. - Heading from monitor (date of resort 07.11.2013).

weapons and “dual-use” technologies⁵, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction⁶, Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction⁷.

Chemical Weapons and on Their Destruction⁶, Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

The following commodities are subject to control in the form of restrictions of export and/or import set forth by the abovementioned international regulatory acts and regimes: raw products, materials, equipment, scientific and engineering information, works, services, intellectual property that may be used during development of weapons of mass destruction and means of their delivery or other types of weaponry and military equipment or during preparation and (or) commitment of acts of terrorism.

It is understandable and evident that in view of the restrictions in force, share of the above listed commodities in the world commerce is negligible. Herewith, it turns to be impossible to evaluate precisely the world export and import turnover of that commodities wherefore source information disclosing present aspect of foreign commerce of any country is confidential.

Thus, as far as the Russian Federation is concerned, it may be noted that there is no information concerning the turnovers, commodity and country composition of the controlled export in Reference materials to the session of Board of the Russian Federation Federal Customs Service (The Russian Federation FCS) published in the form of official records presented in annual digests “The Russian Federation Customs Service”. Only brief reports regarding the Russian Federation FCS activity in terms of export control are published and most frequently such information is of general nature.

⁵ The Russian Federation being one of co-founders joined the Arrangement in 1995. Source: Wassenaar Arrangement. - [Electronic resource]. – Electronic data - URL: <http://www.wassenaar.org/faq/index.html>. - Heading from monitor (date of resort 07.11.2013).

⁶ The Russian Federation signed the Convention on January 13, 1993. Source: Organization for the Prohibition of Chemical Weapons. OPCW Member States. - [Electronic resource]. – Electronic data - URL: <http://www.opcw.org/about-opcw/member-states/>. - Heading from monitor (date of resort 07.11.2013).

⁷ The Russian Federation is legal successor of the Soviet Union which signed the Convention on April 10, 1972. Source: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. - [Electronic resource]. – Electronic data - URL: <http://www.opbw.org/>. Heading from monitor (date of resort 07.11.2013).



For example, the following is specified in the report “The Russian Federation Customs Service” for 2011 in the section “Monitoring of compliance of embargos and restrictions set forth pursuant to customs legislation of the Customs Union and legislation of the Russian Federation”: “In 2011 one of branches of activity conducted by the customs authorities consisted in provision of export control arrangements aimed at protection of national interests and fulfillment of international commitments in terms of nonproliferation of weapons of mass destruction by the Russian Federation.

Structure of national export of high-technology and science-intensive products was mainly determined by supplies of military goods carried out by Russian enterprises of military-industrial complex. Herewith, India, China and United Arab Emirates continued to be our principal commercial partners⁸”.

At the same time, some information regarding the export of commodities subject to control in the Russian Federation may be found in the reports of regional customs bureau and offices. In particular, it is specified in the document “Results of foreign economic activity at the Novosibirsk customs office for 2012”⁹ that machinery and technical products traditionally dominate in the export turnover of the Novosibirsk region. Herewith, commodities of the 84th group (“Nuclear reactors, boilers, equipment and mechanical appliances”) pursuant to Unified Foreign Economic Activity Commodities Classification of the Customs Union (UFEACC of CU) falling under export control in compliance with “Generic list of export controlled nuclear materials, equipment, special non-nuclear materials and appropriate technologies” approved by the Resolution of the Interstate Council of the Eurasian Economic Community No 190 dated September 21, 2004, remain major goods in the structure of the Novosibirsk region export. Export of commodities of the 84th group at the Novosibirsk customs office in 2012 amounted to 579.8 mln. USD, from which 558.1 mln. USD (44.4% of total export turnover) is accounted for by fuel elements (FE) (commodity item 8401 pursuant to UFEACC of CU). Major part of FE was exported to the Ukraine (80.7% of FE export turnover or 450.9 mln. USD) and to Bulgaria (18.9% or 105.5 mln. USD accordingly). As compared to 2011, FE export showed slight decrease by 3.6%. “Novosibirsk Chemical Concentrates Plant” JSC (“NCCP” JSC) is principal exporter of FE.

“NCCP” JSC is one of the leading enterprises of the Russian Federation nuclear industry being part of the corporation “Fuel Company “TVEL” founded by State Corporation (SC) “ROSATOM”. “NCCP” JSC specializes in production of nuclear fuel for power-producing and research reactors. Besides, “NCCP” JSC is manufacturer of lithium and its compounds, chemicals intended for household and industrial application,

⁸ Federal Customs Service. Information on the Russian Federation FCS activity. Annual digest “Customs Service of the Russian Federation”. - [Electronic resource]. – Electronic data - URL: http://www.customs.ru/index.php?option=com_content&view=article&id=79_95&Itemid=1845. - Heading from monitor (date of resort 05.12.2013).

⁹ The document has been submitted by Siberian Customs Office. Authors’ note.

water jet cutting and laser-beam cutting of sheet materials, high-accuracy machines, spring-forming machines and electric erosion equipment, i.e. materials and appliances which may be used during production of dual-use items¹⁰.

Therefore, it may be noted that export control is applicable with regard to narrow group of commodities as well as to relatively small group of manufacturers of such commodities but without prejudice to export control itself since its purpose consists in provision of observance of international conventions and regimes on nonproliferation of weapons of mass destruction. At the same time, usage of the controlled commodities and technologies for peaceful purposes is not prohibited.

State policy of the Russian Federation in the field of export control is an integral part of domestic and foreign policy pursued by the Russian Federation inter alia as member-country of the Customs Union (CU) of the Eurasian Economic Community (EEC).

Pursuant to Article 4 of Federal Law dated 18.07.1999 No 183-FZ “On export control”, the following are the purposes of export control in the Russian Federation:

- ☑ Protection of national interests of the Russian Federation;
- ☑ Fulfillment of the requirements stipulated in international treaties signed by the Russian Federation regarding nonproliferation of weapons of mass destruction and means of their delivery as well as in the field of supervision over the export of military goods and dual-use items;
- ☑ Arrangement of conditions for integration of the Russian Federation economy into the world economy;
- ☑ Suppression of international terrorism.

Export control in the Russian Federation is carried out in compliance with authorization-based procedure of the controlled commodities and technologies export which is materialized through licensing of foreign economic operations. Decision on issue or denial of the license is taken on inter-agency level by means of comprehensive assessment of risks related to an export transaction. Herewith, opinion of independent identification examination of the commodity (technology) is taken as a basis.

Depending on the commodity (technology) type, the examination may be conducted by such entities, enterprises and organizations as¹¹: the Russian Academy of Sciences (RAS), Siberian department of the RAS, Far East department of the RAS, SEI HPE “SUSU”, EEC “Southern Federal University”, FSUE “I.P. Bardin CRDI of Iron and Steel Industry”, “Biopreparat” OJSC, FSE NRC “Kurchatov Institute”, FSUE CRDI of Chemistry and Mechanics etc.

¹⁰ NCCP. Responsibility, security, quality. - [Electronic resource]. – Electronic data - URL: <http://www.nccp.ru/about.html>. - Heading from monitor (date of resort 05.12.2013).

¹¹ Information regarding the persons entitled to sign the documentation permitting export/import of commodities falling under export control and regarding the authorized bodies in the field of export control of the Customs Union member-countries. - [Electronic resource]. – Electronic data - URL: <http://www.tsouz.ru/db/exportcontrol/Documents/uporEK.pdf>. - Heading from monitor (date of resort 07.11.2013).



Generally speaking, pursuant to Article 1 of Federal Law “On export control”, export control may be characterized as a range of measures aimed at provision of legally established procedure of foreign economic activity (FEA) running with regard to a specific group of controlled commodities and technologies (raw products, materials, equipment, scientific and engineering information, works, services, intellectual property) that may be used during development of weapons of mass destruction and means of their delivery or other types of weaponry and military equipment or during preparation and (or) commitment of acts of terrorism.

Within the framework of the Eurasian Economic Community generic lists of commodities subject to export control in the CU member-countries have been drawn up by the EEC Integration Committee and have been approved by the Resolution of the EEC Interstate Council taken at the highest level dated 21.09.2004 No 190. In total, there are six of such lists¹²:

Generic list of export controlled pathogens impacting people, animals and plants as well as genetically modified microorganisms, toxic agents, equipment and technologies.

Generic list of export controlled chemicals, equipment and technologies that may be used during development of chemical weapons.

Generic list of export controlled nuclear materials, equipment, special non-nuclear materials and appropriate technologies.

Generic list of export controlled equipment and dual-use materials and appropriate technologies used for nuclear purposes.

Generic list of export controlled equipment, materials and technologies that may be used during development of missile weapons.

Generic list of export controlled commodities and dual-use technologies that may be used during development of weaponry and military machines.

However, it is determined by the Resolution of the EEC Interstate Council No 52 dated 05.07.2010 that national legislation regulating export control will remain in force in each of the CU member-country until Agreement on unified export control procedure entered into by the CU member-countries is brought into effect, and, accordingly effective national lists of controlled commodities and technologies of each of the CU member-country will remain in force as well¹³.

¹² Eurasian Economic Commission. Generic lists of commodities and technologies falling under export control. - [Electronic resource]. – Electronic data - URL: [http:// www.tsouz.ru/db/exportcontrol/tpek/Pages/spisokexp.aspx](http://www.tsouz.ru/db/exportcontrol/tpek/Pages/spisokexp.aspx). - Heading from monitor (date of resort 07.11.2013).

¹³ The Russian Federation Export Control Commission (ECC) provides conducting of uniform state policy and carries out organizational and methodological guidance and coordination of activity of federal executive bodies taking part in export control.

The Eurasian Economic Commission. List of resolutions passed in the field of export control. - [Electronic resource]. – Electronic data - URL: http://www.tsouz.ru/db/exportcontrol/Pages/resheniya_ek.aspx. - Heading from monitor (date of resort 07.11.2013).

In the Russian Federation the abovementioned lists of export controlled commodities and technologies are developed pursuant to Article 6 of Federal Law “On export control” by federal executive bodies upon involvement of representatives of the Russian Federation Federal Assembly, industrial and scientific-research entities, their associations and unions and are approved by the Russian Federation President Decree as advised by the Russian Federation Government. With the purpose of customs supervision facilitation, commodity code pursuant to UFEACC of the CU is specified in each line of the lists (in each commodity item / sub-item).

Export control in the Russian Federation is arranged in such a way as to delimit areas of responsibility and competence on export control implementation between the specific governmental institutions. System of the Russian governmental institutions involved in execution of export control may be represented in the diagram shown in the Figure 1.

Functions of governmental institutions being parts of the system are specified below¹⁴:

☑ The Russian Federation Presidential Administration and Federal Assembly define major branches of state policy in the field of export control and approve the lists of the controlled commodities and services.

☑ The Russian Federation Government approves the policy orientation of the Russian Federation with regard to international regimes of export control and establishes the procedure of export of the controlled commodities and services.

☑ The following ministries of the Russian Federation Government participate in functioning of the export control system: Ministry of Foreign Affairs (MFA), Ministry of Defense (MD), Ministry of Justice (MJ), Ministry of Energy (ME), Ministry of Education and Science (MES), Ministry of Economic Development (MED), Ministry of Industry and Trade (MIT) and such federal agencies and state corporations as the Russian Academy of Sciences (the RAS), Federal Space Agency (“Roskosmos”), Federal Security Service of the Russian Federation (FSS), Foreign Intelligence Service of the Russian Federation (FIS), Federal Service of Military and Technical Cooperation (FSMTC), Federal Drug Control Service (FDCS), Federal Customs Service of the Russian Federation (FCS), Federal Service for Environmental, Technological and Nuclear Supervision (“Rostekhnadzor”), State Nuclear Energy Corporation (SC “Rosatom”), State Corporation “Rostekhnologii” (SC Rostec).

Herewith, the Russian Federation ECC is an inter-agency coordinating body with the following membership: Deputy Chairman of the Russian Federation Government (chairman of the Commission), Director of the Russian Federation FSTEC (deputy chairman of the Commission), Deputy Director of the Russian Federation FSTEC (secretary-general of the Commission), Deputy Minister of Justice, Head of the Russian Federation FCS, Head of Executive Office of Industrial and Military Commission under the Aegis of the Russian Federation Government, Deputy Chief of the Government Staff of the

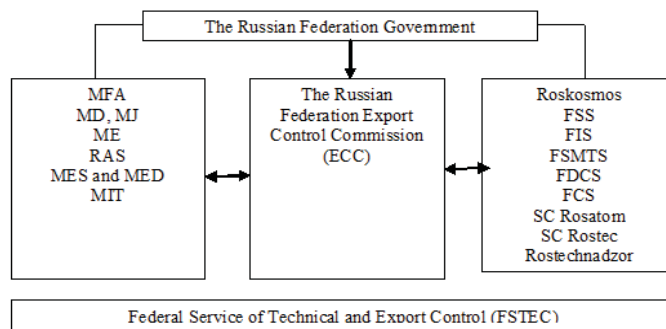
¹⁴ Federal Law dated 18.07.1999 No 183-FZ (as amended 06.12.2011) “On export control”.



Russian Federation, Deputy Chief of General Directorate of Central Command of the Russian Federation Armed Forces, Vice-President of the RAS, Deputy Minister of Education and Science, Deputy Minister of Foreign Affairs, Deputy Director General of SC “Rosatom”, Deputy Head of Federal Financial Monitoring Service, Principal Deputy Director of FSMTC, Head of Economic Security Service of the Russian Federation FSS, Deputy Director General of SC “Rostec”, Principal Deputy Director of FDSC, Head of “Roskosmos”, Deputy Minister of Economic Development, Deputy Director of the Russian Federation FIS, Deputy Minister of Defense, Deputy Head of “Rostechnadzor”, Head of General Directorate of Ministry of Defense, Assistant Secretary of the Russian Federation Security Council, Deputy Minister of Industry and Trade, Vice-President of the Russian Federation Chamber of Commerce and Industry¹⁵.

Figure 1

System of the Russian Federation governmental institutions involved into export control



The Russian Federation FSTEC performs the functions of a specially authorized federal executive body in the field of export control as well as provides organizational, technical and data support of activity of the Russian Federation ECC. Upon application of foreign trade operators, FSTEC arranges state examination of foreign trade transactions with regard to the commodities (works, services), information and intellectual property which may be used during development of weapons of mass destruction and means of their delivery or other types of weaponry and military equipment. Therefore, FSTEC, within the bounds of its competence, performs non-tariff administrative regulation

¹⁵ Decree of the Russian Federation President “On approval of membership of the Russian Federation Export Control Commission” (as amended by the Decrees of the Russian Federation President dated 17.09.2009 No 1050, dated 26.03.2010 No 375, dated 17.12.2010 No 1578, dated 31.08.2011 No 1129, dated 17.01.2012 No 79).

of FEA¹⁶ by issuing the licenses for execution of export or import transactions concerning the controlled commodities in necessary cases.

However, practical activity on monitoring of the controlled commodities crossing the state border of the Russian Federation is carried out by the Russian Federation customs authorities.

Customs authorities are not explicitly specified in the Federal Law “On export control” as governmental bodies assisting the Russian Federation FSTEC in performance of export control.

At the same time, on the one hand, pursuant to Article 7 of the Law, customs inspection carried out during execution of customs formalities with regard to controlled commodities and technologies imported to the Russian Federation and exported from the Russian Federation pursuant to customs legislation of the CU within the framework of the EEC and (or) the Russian Federation customs legislation is one of methods of FEA legal regulation by means of which export control is executed in Russia. On the other hand, pursuant to customs legislation of the CU, export control itself is considered to be one of the types of customs inspection. Thus, pursuant to Clause 5, Article 94 of the Customs Union Customs Code (the CU CC), customs authorities may, within the bounds of their competence, carry out other types of customs inspections including customs control in compliance with the legislation of the CU member-countries. Judging from the CU CC provision above, Trade Restrictions, Foreign Exchange and Export Control Directorate of the Russian Federation FCS (HQ) is entitled to exercise general supervision over the activity of the Russian Federation customs authorities in the field of export control.

Pursuant to Sub-clause 1, Clause 15 of Regulations on the Directorate approved by the Russian Federation FCS Order dated 06.12.2007 No 1499, present structural division of FCS *inter alia* performs the following functions in terms of export control¹⁷:

¹⁶ It is known that all instruments of FEA regulation are subdivided into economic and administrative. Economic instruments, in particular, include customs tariff regulation, i.e. regulation of FEA through customs duties. Unified customs tariff (UCT of the CU) determining the *import* duty is currently in force in the CU of the EEC. At the same time, such customs charges as export duties, customs fees, special-purpose antidumping and countervailing duties as well as indirect taxes (VAT and excise taxes) are established by national legislation of the CU member-countries. Since such charges *are not* regulated by the CU UCT, such payments may be reasonably related to non-tariff instruments of FEA regulation (so-called para-tariff instruments) being intrinsically economic instruments. Non-tariff administrative instruments comprise embargos and restrictions, technical regulation (certification), quantitative restrictions, quota allocation and licensing. Authors' note.

¹⁷ Section II. “Management functions” of Regulations on Trade Restrictions, Foreign Exchange and Export Control Directorate approved by the Russian Federation FCS Order dated 06.12.2007 No 1499.



- ▶ takes part in support of established system of export control, coordination and supervision in the field of military-technical cooperation of the Russian Federation;
- ▶ determines particularities of customs inspection with respect to military goods and commodities subject to export control;
- ▶ within the bounds of its competence, develops and performs the arrangements aimed at observance of the Russian Federation legislation on government regulation of foreign trade activity and international treaties in case of nuclear and special non-nuclear materials, toxic agents and other commodities crossing the state boundary;
- ▶ takes part in development of proposals concerning the peculiarities of declaring and transfer of certain types of commodities according to the lists established by the President or Government of the Russian Federation.

During execution of export control, the Russian Federation customs authorities, namely, its lower echelon represented by customs stations, perform certain administrative arrangements. Till 09.09.2010 such arrangements have been regulated by the Order of the Russian Federation State Customs Committee dated 26.12.2003 No 1545 (as amended 11.01.2010) “On enhancement of efficiency of customs authorities activity in the field of export control” (jointly with the Instruction on order of checking of the declared information by the customs officers and decision-making with regard to the commodities having distinctive features of the products falling under the Russian Federation legislation in the field of export control”). The order was cancelled due to entering in force of the CU CC which took place 01.07.2010.

The above mentioned instruction regulated the documentary control being one of the forms of customs inspection and consisting in checking of information by the authorized customs officers during customs declaration of the commodities in order to reveal distinctive features of the commodities subject to export control.

In the first half of 2013 one of authors of this article studied the peculiarities of export control performance by customs authorities. As a result of analysis of the activity of customs station “Airport Tolmachevo”, Novosibirsk customs office, it was determined that actions being currently carried out by the customs officers during fulfillment of export control are mainly similar to the actions regulated by the Russian Federation SCC Order dated 26.12.2003 No 1545 even though there are no sublegislative legal acts (special instructions) and the order of the actions execution is essentially as follows:

- ▶ affiliation of the commodities to the controlled products on the basis of comparison of its functional characteristics specified in the technical specifications attached to the bills of entry (BOE) with explications to codes of UFEACC of the CU for the commodities included into the generic lists of export control;
- ▶ in order to identify the export controlled commodities, availability of the Russian Federation FSTEC licenses permitting execution of foreign economic operations with the commodities included into the reference lists or availability of permissions for

license-free export of the commodities from the Russian Federation in the package of documentation submitted during declaration shall be mandatorily checked;

- ▶ in case license-free export of the commodities is permissible, availability of an opinion issued by authorized federal executive body in the field of export control confirming the lawfulness of license-free export of the controlled commodities shall be checked;

- ▶ in case of absence of the authorization document, the customs authority may request additional inspection of the commodity in order to exercise the export control functions;

- ▶ performance of additional inspection includes several stages, and one of the following resolutions may be taken on the basis of generalization of the results obtained during all stages of the inspection:

- ▶ resolution on necessity of confirmation of the declared information concerning the commodity by means of submission of an authorization document;

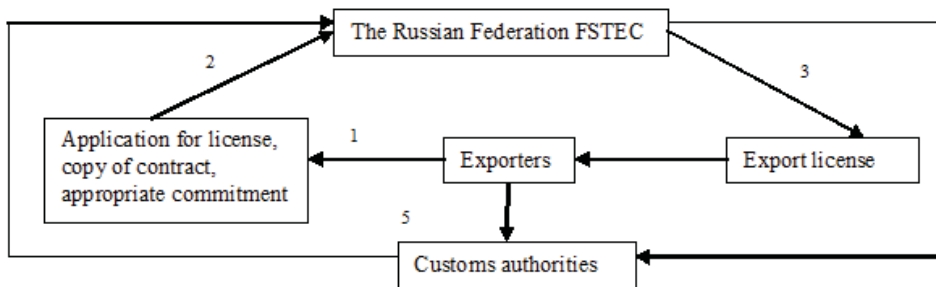
- ▶ resolution on possibility of export of the commodity;

- ▶ resolution on necessity of submission of an opinion on possibility of foreign trade operation execution provided by specially authorized executive body in the field of export control.

Interaction of the Russian Federation FSTEC and FCS during fulfillment of their appropriate export control functions may be represented by the following diagram (Figure 2):

Figure 2

Interaction of the Russian Federation FSTEC and FCS during fulfillment of export control functions



Let's give a definition to the links shown in the diagram:

- drawing up of an application for license for execution of export transaction concerning a particular type of commodity included into the list of export controlled products by the foreign trade operator;



- submission of the license application and the commitment on the commodity (service) usage pursuant to declared purposes being in line with the Federal Law “On export control” by the foreign trade operator;
- execution of export license after completion of appropriate examinations;
- issue of the license entitling the foreign trade operator to execute the foreign trade operation upon observance of certain conditions and acceptance of appropriate guarantees on prevention of the commodity or service delivery to an undesirable user and its subsequent usage for weaponry manufacturing;
- submission of the license to customs authority by the foreign trade operator during declaration of the commodity crossing the customs border of the CU;
- provision of the Russian Federation FSTEC with relevant information pursuant to Agreement dated 21.12.2005 No 6 “On interaction of Federal Service of Technical and Export Control and Federal Customs Service during submission and receipt of information for export control purposes”. Namely: pursuant to Article 3 of the Agreement, the Russian Federation FCS shall submit to FSTEC the following information: (1) information on customs clearance of the controlled commodities export (import) through licenses and permissions; (2) summarized data on cases when foreign trade operators were recommended by the customs authorities to obtain license or permission for the commodities export or import from the Russian Federation FSTEC; (3) information on customs clearance of the commodities export (import) and the persons crossing the Russian Federation border in order to conduct the inspection in cases when it is reasonable to presume that export control legislation has been violated;
- transfer of information to the Russian Federation FCS pursuant to Article 2 of the abovementioned Agreement. Namely: the Russian Federation FSTEC shall submit to FCS the following information: (1) information on licenses issued by FSTEC and permissions issued by the ECC; (2) information regarding taken decisions on denials of licenses and permissions issue with specification of the commodities nomenclature and applicant’s details; (3) information concerning opinions on application of legal export control restrictions issued by FSTEC and independent expert organizations;
- Information on foreign trade operations requiring prompt measures in order to prevent breaches of legislation and international commitments of the Russian Federation in the field of export control.

When speaking of the Russian Federation FSTEC the following shall be noted:

- ▶ first, the service is subordinate to the Russian Federation Ministry of Defense¹⁸;
- ▶ second, it is established by Regulations on the Russian Federation FSTEC that the Service is assigned with 19 enforcement powers (total number of powers – 66) regarding

¹⁸ Regulations on Federal Service of Technical and Export control approved by the Decree of the Russian Federation President dated 16.08.2004 No 1085 (as amended by the Decrees of the Russian Federation President dated 30.11.2006 No 1321, dated 23.10.2008 No 1517, dated 17.11.2008 No 1625, dated 08.02.2012 No 146).

execution of export control. The enforcement powers comprise the following¹⁹: a) due arrangement and performance of state examination of foreign trade operations with respect to commodities (works, services), information and intellectual property that may be used during development of weapons of mass destruction and means of their delivery or other types of weaponry and military equipment; b) issue of licenses for execution of export and (or) import transactions regarding the controlled commodities as required by the Law as well as issue of opinions on application of non-tariff regulatory measures during FEA running; c) maintaining of federal database of issued export and import approval documents concerning the commodities falling under export control. d) implementation of measures aimed at prevention of breaches of the Russian Federation export control legislation and international commitments in this field; e) participation in development and implementation of arrangements on harmonization and unifications of national export control legislations of the CIS and the EEC countries on basis of generally recognized principles and rules of international law; e) participation in activity on prevention of illegal re-export from the Russian Federation of dual-use commodities imported into the Russian Federation with provision of state guarantees of its usage in compliance with the declared purposes, issue of Russian import certificates according to the established procedure and other functions.

Proceeding from the position that the Russian Federation FSTEC entitled to act as federal executive body in the field of export control is a structural division of Ministry of Defense and judging from the enforcement powers of FSTEC, one third of which are aimed at provision of observance by the Russian Federation of its commitments on such international legal acts as Nuclear Weapons Non-Proliferation Treaty, Agreements within Zangger Committee and Nuclear Suppliers Group, Missile Technology Control Regime, Wassenaar Arrangements concerning control of export of conventional weapons and “dual-use” technologies⁵, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction⁶, Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, it may be deduced that export control in the Russian Federation is carried out only in military sphere and is one of instruments of prevention of weapons of mass destruction proliferation as stipulated by Article 2 of Federal Law “On export control”.

However, reverting to Article 4 of the Law establishing the purposes of export control, it may be noted that: first, the Law does not presume protection of military interests of the Russian Federation only; second, achievement of such objective, as arrangement of conditions for integration of national economy into the world economy presupposes protection of other interests of the Russian Federation as well, in particular, economic, political, ecological interests, etc.

¹⁹ Other 47 enforcement powers concern the fulfillment of function of official secrets protection. Authors' note.



In this behalf, in our opinion, concept of export control shall be interpreted more widely, including at legislative level as suggested by authors of “Economics glossary”²⁰. According to their opinion, export control is a system of legal, economic and organizational measures restricting (or prohibiting) export of strategic goods and services, cultural valuables, eco-dangerous products and production wastes providing for licensing of export transactions with regard to specific commodities. Accordingly, designation of export control consists in protection of national interests of the country including ensuring of national security (military, economic, environmental); protection of non-reproducible natural resources, protection of people’s life and health, protection of cultural valuables against illegal export, provision of public tranquility.

LEGAL FRAMEWORK OF EXPORT CONTROL IN THE RUSSIAN FEDERATION BEING MEMBER-COUNTRY OF THE CUSTOMS UNION

Reverting to legal framework of export control in Russia, it may be noted that on basis of the abovementioned international agreements in the field of nonproliferation of weapons of mass destruction and means of their delivery and in the field of control of dual-use and military products export signed by the Russian Federation, national legislation currently encompasses about, to say the least, eighty regulatory legal acts²¹ which may be subdivided into the following groups:

□ Federal Laws (including the Russian Federation Codes): Federal Law dated 18.07.1999 No 183-FZ “On export control”, Federal Law dated 08.12.2003 No 164-FZ “On principles of state regulation of foreign trade activity”, Federal Law dated 29.11.2007 No 277-FZ “On ratification of Agreement on uniform order of export control by member-countries of the Eurasian Economic Community”, Federal Law dated 19.07.1998 No 114-FZ “On military and technical collaboration of the Russian Federation with foreign countries”, Federal Law dated 27.11.2010 No 311-FZ “On customs regulation in the Russian Federation” Administrative Offences Code of the Russian Federation dated 30.12.2001 No 195-FZ, Criminal Code of the Russian Federation dated 13.06.1996 No 63-FZ;

²⁰ Economics glossary. - [Electronic resource]. – Electronic data - URL: http://abc.in-form-bureau.com/html/yeniidoiue_eiiodieu.html. – Heading from monitor (date of resort 08.11.2013).

²¹ FSTEC of the Russian Federation. Export control. - [Electronic resource]. – Electronic data - URL: <http://fstec.ru/eksportnyj-kontrol/zakonodatelstvo/96-eksportnyj-kontrol/zakonodatelstvo>. Heading from monitor (date of resort 08.11.2013); Federal Service of Military and Technical Cooperation. Legal regulatory acts. - [Electronic resource]. – Electronic data. URL: <http://www.fsvts.gov.ru/map/4C1DFEE2E00D0AF543257B0F0060862F.html>. - Heading from monitor (date of resort 08.11.2013) ; Federal Customs service. Customs legislation. - [Electronic resource]. – Electronic data. - URL: http://www.customs.ru/index.php?option=com_wrapper&view=wrapper&Itemid=2361. - Heading from monitor (date of resort 08.11.2013).

□ Decrees of the Russian Federation President (for example, decrees on approval of lists of commodities falling under export control, decrees on ECC, on FSTEC and FSMTC of the Russian Federation etc.);

□ The Russian Federation Government Decrees (for example, No 1079 dated 30.12.2008 “On enhancement of government regulation of foreign economic activity with regard to certain types of commodities and technologies with the purpose of national security provision”, No 691 dated 15.09.2008 “On approval of Regulations on licensing of foreign economic operations with commodities, information, works, services, intellectual property (rights for intellectual property) to which export control is applicable”, No 477 dated 21.06.2001 “On system of independent identification examination of commodities and technologies conducted with export control purposes”, No 863 dated 29.10.2009 “ On approval of Rules of end user statements receipt during import of military goods manufactured abroad to the Russian Federation” etc.).

Orders of the Russian Federation FSTEC, FSMTC, FCS and other federal services and agencies (for example on approval of administrative procedure on fulfillment of public function by Federal Service of Technical and Export Control concerning issue of opinions on application of non-tariff regulation measures during foreign economic activity running, on approval of administrative procedure on fulfillment of public function by Federal Service of Military and Technical Collaboration concerning the decision-making in terms of issue of licenses for export and import of military products from and to the Russian Federation to the subjects of military and technical collaboration in accordance with the established order, guidelines on assignment of examinations by customs officers and conducting of the examinations by Central Forensic Customs Administration (CFCA) and forensic services – regional branches of CFCA etc.

Inter-agency Agreements (for example, Agreement dated 21.12.2005 No 6 “On interaction of Federal Service of Technical and Export Control and Federal Customs Service during submission and receipt of information for export control purposes”).

When we speak about legal framework of export control within the CU of the EEC, it may be noted that its development is currently in progress.

Basis of the legal framework is formed by such regulatory acts as Agreement on unified non-tariff regulation measures during establishing of the Customs Union dated 22.10.1997, Agreement on the Customs Union and Single Economic Area dated 26.02.1999, Eurasian Economic Community Treaty dated 10.10.2000, Agreement on uniform export control procedure of Eurasian Economic Community member-countries dated 28.10.2003, Treaty on establishment of uniform customs territory and customs union dated 06.10.2007, Agreement on the Customs Union Commission dated 06.10.2007 (as amended 09.12.2010), Customs Code of the Customs Union (as amended 16.04.2010), Agreement on Eurasian Economic Commission dated 17.11.2011.



Proceeding from the content of the abovementioned documents, purposes of development of uniform legal framework of the CU member-countries in the field of export control are as follows:

- Protection of national interests and provision of security of the CU member-countries;
- Implementation of uniform procedure of export control without prejudice to commitments of the CU member-countries on international treaties on nonproliferation of weapons of mass destruction;
- Development of favorable environment for efficient functioning of single economic and customs area;
- Development of mutually beneficial commercial, scientific and technical relations of the member-countries with one another and with third states.

In the beginning of 2010 the Governments of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation expressed an intention to develop a document which would regulate the uniform procedure of export control within the CU of the EEC that was recorded in the Resolution of the Customs Union Commission (CUC) dated 28.02.2010 No 181.

In order to turn the Resolution into reality, agreement on arrangement of an expert group “On export control issues” was achieved. Group membership and Regulation on its operation were approved by the CUC Resolution dated 16.04.2010 No 220. The group included 5 representatives of the Republic of Belarus Government, 8 representatives of the Republic of Kazakhstan Government, 10 representatives of the Russian Federation Government and 3 representatives of the CUC Secretariat.

It was determined in the Regulations on expert group “On export control issues” that principal task of the group consisted in realization of purposes of the CU establishment with regard to the products subject to export control. In this behalf, the expert group was conferred with obligations to develop and introduce for consideration of the CUC the proposals on the following export control issues²²:

- Legal registration of obligations of the CU member-countries in terms of full observance of regulations stipulated by the Agreement on uniform export control procedure in the EEC member-countries dated 28.10.2003;
- Establishment of informational interaction procedure between authorized governmental bodies in the field of export control in compliance with the Agreement;
- Development of recommendations on definition of products nomenclature on national level with regard to which exceptions from general rule of free movement within

²² Resolution of the Customs Union Commission dated 16.04.2010 No 220 “On approval of membership of expert group “On export control issues”. - [Electronic resource]. – Electronic data. - URL: http://www.tsouz.ru/db/exportcontrol/Pages/resheniya_ek.aspx. - Heading from monitor (date of resort 09.11.2013).

the CU territory shall be applied on the ground of national security and with the purpose of international commitments observance;

Establishment of order of transportation of the products with respect to which exceptions from general rule of free movement within the CU territory shall be applied;

Introduction of amendments into the Generic lists of commodities and technologies falling under export control.

It was determined by the next Resolution of the CUC dated 20.05.2010 No 269, that the CUC and the subordinate expert group should develop and introduce for consideration of the EEC Interstate Council at the highest level the following draft documents:

Agreements on unified export control procedure in the Customs Union member-countries;

Uniform rules of supervision over the foreign economic operations execution with respect to dual-use commodities and technologies falling under export control in member-countries of the Customs Union;

Uniform lists of commodities and technologies falling under export control in member-countries of the Customs Union;

Agreement on order of movement of military products between the Customs Union member-countries as well as across the border of the Customs Union;

Uniform list of military commodities of the Customs Union member-countries.

Plan of arrangements on development of the abovementioned documents was approved by the CUC Resolution dated 17.08.2010 No 356. By virtue of the same Resolution, governments of the CU member-countries were charged with the obligations to take measures on implementation of the plan. Due to the fact that frictions arose between the Agreement Parties during development of the draft Agreement on uniform export control procedure in the Customs Union member-countries, it was decided by the CU Commission to work out conceptual approaches to the draft Agreement by efforts of the Parties experts with subsequent introduction of the approaches for consideration of session of the EEC Interstate Council at the highest level. Worked out conceptual approaches to the draft Agreement on uniform export control procedure in the Customs Union member-countries were approved by the CUC Resolution dated 19.05.2011 No 84. Content of the approaches may be generally interpreted as follows²³:

Control of all categories of commodities and technologies included into the Uniform lists shall be carried out during export to the territory of the country not being member of the CU.

²³ Resolution of the EEC Interstate Council (Supreme body of the Customs Union) at the highest level dated 19.05.2011 No 84 "On conceptual approaches to draft Agreement on uniform export control procedure in the Customs Union member-countries. - [Electronic resource]. - Electronic data. - URL: http://www.tsouz.ru/db/exportcontrol/Pages/resheniya_ek.aspx. - Heading from monitor (date of resort 09.11.2013).



□ During import from the country not being member of the CU each Party may define the commodities and technologies included into the Uniform lists falling under control following its national interests and international commitments.

□ During transfer from the territory of one member-country of the CU to the territory of another member-country of the CU each member-country of the CU may define the commodities and technologies included into the Uniform lists falling under control following its national interests and international commitments.

By the end of November 2011, the worked out draft Agreement on uniform export control procedure in the Customs Union member-countries passed domestic approval in the Republic of Belarus and in the Russian Federation. In view of this fact, it was determined by virtue of the CUC Resolution dated 09.12.2011 No 869 to take the considered draft as basis, and the Republic of Kazakhstan was asked to expedite the procedures of domestic approval of the document.

In our opinion, fundamental provisions of the worked out Agreement may be laid down as follows²⁴:

□ Establishment of unified export control procedure in the CU member-countries including the range of harmonized rules and standards regulating execution of foreign trade operations or transfer of commodities and technologies falling under export control across the state border of the CU member-countries.

□ Acceptance of the requirements stipulated by international treaties in the field of nonproliferation of weapons of mass destruction as basis of unified export control procedure in the CU member-countries.

□ Vesting of each of the Agreement Party with the right of independent determination of public authorities entitled for implementation of the Agreement as well as with the obligation concerning exchange of information regarding such duly entitled authorities with other parties of the Agreement.

□ Issue of permissions for import or export of the controlled commodities to foreign trade operators by duly entitled authorities of the Agreement Party, territory of which is place of residence for such operators, pursuant to the order established by the Agreement and legal regulatory acts of the CU and the Party adopted in compliance therewith.

□ Acceptance of validity of export or import permission issued by duly entitled authority of a Party within the territory of each CU member-country.

Establishment of uniform authorization-based procedure of export of all commodities and technologies categories falling under export control included into the Uniform lists. Herewith, following its national interests and international commitments each country may:

²⁴ Resolution of the Customs Union Commission dated 09.12.2011 No 869 “On export control of the Customs Union member-countries” - [Electronic resource]. – Electronic data - URL: http://www.tsouz.ru/db/exportcontrol/Pages/resheniya_ek.aspx. - Heading from monitor (date of resort 09.11.2013).

- establish the authorization-based procedure of import of commodities and technologies list of which may be determined by the Party among the commodities and technologies subject to export control included into the Generic lists inter alia in case of import for the benefit of other member-countries of the CU;

- establish the authorization-based procedure of internal transportation within the CU territory of commodities and goods, list of which may be determined by the Party among the commodities and technologies subject to export control included into the Generic lists inter alia in case of internal transportation for the benefit of other member-country of the CU.

□ Conducting of identification and drawing up of identification opinions by duly entitled public authorities and entities of each Party of the Agreement. Herewith, each of three Parties of the Agreement shall mutually recognize the identification opinions issued by duly entitled public authorities and entities of the Agreement Parties.

□ Judging from the abovementioned, it may be stated that draft Agreement on uniform export control procedure in the Customs Union member-countries approved by the Republic of Belarus and the Russian Federation caused no adverse effect on national interests and, in particular, on security issues of the CU member-countries and did not contradict to the objective of creation of favorable environment for functioning of single economic and customs area of the EEC.

However, the document was not signed and 07.07.2012 the Collegium of the Eurasian Economic Commission being new executive body of the Customs Union and Single Economic Area (pursuant to Article 14 of Treaty on Eurasian Economic Commission dated 17.11.2011) resolved to approve reshaped membership of expert group “On export control issues”²⁵.

Nevertheless, the refreshed group did not manage to work out new draft Agreement on uniform export control procedure in the Customs Union and Single Economic Area member-countries that would fully satisfy not only Russian and Belarusian Parties, but also Kazakh Party within one-year period. In view of this fact, Council of the Eurasian Economic Commission forwarded to Ministries of Foreign Affairs of the Parties the Recommendation dated 16.08.2013 proposing holding of additional mutual consultations on arrangement of further work on export control issue; following the results of the consultations, proposals and information on the issue should be prepared and submitted for further consideration during the session of Supreme Eurasian Economic Council at the highest level²⁶.

²⁵ Resolution following the results of session of the Collegium dated 07.06.2012 No 66. - [Electronic resource]. – Electronic data - URL: http://www.tsouz.ru/db/exportcontrol/Pages/resheniya_ek.aspx. Heading from monitor (date of resort 09.11.2013).

²⁶ EEC. The Eurasian Economic Committee. Documents. Recommendation No2. - [Electronic resource]. – Electronic data. - URL: <http://www.eurasiancommission.org/ru/docs/Pages/default.aspx>. - Heading from monitor (date of resort 09.11.2013).



CONSEQUENCES OF ABSENCE OF UNIFIED EXPORT CONTROL PROCEDURE IN THE CUSTOMS UNION MEMBER-COUNTRIES

Negative consequences of absence of unified export control procedures in the CU member-countries are easily understandable inter alia on basis of the following example.

In September 2013 Central District Court of Novosibirsk considered an administrative case initiated on basis of the protocol on administrative offence executed by Deputy Head of the Russian Federation FSTEC Directorate in Siberian Federal District. The case was commenced on foreign trade operations executed by a Russian company “N” with the commodity “sodium sulphide” (UFEACC of the CU code – 2830 10 000 0) without special permission (license) issued by the Russian Federation FSTEC²⁷.

This commodity is mentioned in the Section “Chemicals of peaceful purposes which may be used during development of chemical weapon” of List of chemicals, equipment and technologies which may be used during development of chemical weapon with regard to which export control was established approved by the Decree of the Russian Federation President dated 28.08.2001 No 1082.

The Russian company “N” executed 14 transactions on supplies of sodium sulphide within the period from 24.05.2012 till 30.11.2012 in the amount of 280 tons to three purchasers – legal persons of the Republic of Kazakhstan. All export supplies to the Kazakh companies were performed without appropriate licenses. Therefore, the Russian company was found guilty in commitment of administrative offence and was imposed a penalty exceeding 1.1 mln. rubles.

Herewith, the court ruling included reference to Resolution No 52 of the EEC Interstate Council dated 05.07.2010 stating that before development and adoption of the Agreement on uniform export control procedure in the Customs Union member-countries, Uniform rules of export control of foreign economic operations regarding commodities and technologies falling under export control in the Customs Union member-countries and Generic lists of commodities and technologies subject to export control in the Customs Union member-countries, national legislation in the field of monitoring of export controlled commodities and technologies transportation should be applied in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

As emphasized in the court ruling, pursuant to Clause 5, Article 195 of Federal Law No 311-FZ dated 27.11.2010 “On customs regulation in the Russian Federation”, export of the Customs Union commodities from the Russian Federation to the CU member-countries may be carried out without restrictions stipulated by the CU and the Russian Federation customs legislation unless otherwise provided for by international treaty of the Russian Federation and the Russian Federation legislation, however, the abovementioned shall not exempt any party exporting the commodities from the Russian Federation from observance of the Russian export control legislation. Thus, pursuant to

²⁷ Source: data submitted by Central District Court of Novosibirsk. Authors’ note.

paragraph 2, Article 30 of Federal Law “On export control”, execution of foreign trade transactions with regard to the controlled commodities without licenses or permissions represents breach of the Russian Federation export control legislation.

Following the results of court proceedings, the Russian commercial entity, first, suffered a loss in the amount specified above and, second, evidently lost one of its business lines related with export supplies to the Republic of Kazakhstan and the Kazakh enterprises lost an advantageous supplier of raw materials used for manufacturing of products for peaceful purposes.

At the same time, if the Agreement on uniform export control procedure in the Customs Union member-countries taken as a basis had been finally agreed and approved by the Customs Union Commission, Kazakhstan would probably have the right to establish specific procedure of import of sodium sulphide as a peaceful-purpose product for the CU member-countries despite the fact that the product is related to the commodities and technologies falling under export control in case of its export outside the EEC territory (pursuant to generic list approved by the Resolution of the EEC Interstate Council at the highest level dated 21.09.2004 No 190). In its turn, the Russian Federation could have established an appropriate permissive procedure of internal transportation of sodium sulphide within the CU customs territory, in particular, to the Republic of Kazakhstan on license-free and mutually beneficial economic basis.

CONCLUSION

In view of the fact that national security of the country presupposes both military and economic security, concept of export control should, evidently, be interpreted not only from the perspective of the international conventions requirements in the field of nonproliferation of weapons of mass destruction signed by the Russian Federation, but should be construed more widely, especially taking into account the provisions of Article 4 of Federal Law dated 18.07.1999 No 183-FZ (as amended 06.12.2011) “On export control” presupposing both protection of the Russian Federation interests and development of environment for integration of its national economy into the world economy.

Taking into consideration the abovementioned, it seems reasonable to establish under legislation that export control in the Russian Federation should be carried out not only in the military sphere, but also in the field of supervision over the export from the CU customs territory of the commodities, services, intellectual property being strategically crucial both for Russian economy and economy of the Single Economic Area (SEA) as a whole.

Pursuant to the “Uniform list of commodities with respect to which restrictions or embargos on export or import by the Customs Union member-countries within the EEC may be imposed during trade with third countries” approved by the Resolution of Collegium of the Eurasian Economic Commission (EEC) dated 16.08.2012 No 134, the fol-



lowing commodities are related to the controlled products: a) timber, regenerable paper, paperboard, wastepaper forbidden for export from the CU customs territory; b) precious metals and stones, raw precious metals, wastes and scrap of precious metals of restricted transportation across the CU customs border during export; c) information on mineral resources transfer of which across the CU border during export is restricted; d) scrap of ferrous metals, copper, nickel and aluminum with regard to which quantitative restrictions are imposed during export; e) crude oil, petroleum refinery products, mineral or chemical fertilizers export of which is carried out in compliance with authorization-based procedure; e) natural gas transported in gaseous or liquefied state export of which from the CU customs territory is subject to prerogative right of the Russian Federation.

Lists of commodities approved by the EEC Collegium with respect to which embargos and restrictions *for export* from the CU territory are applicable and which are included into the unified list consisting of 34 lists of controlled commodities bear evidence of the fact that export control of the commodities being strategically important for the SEA takes place in the CU. The control is carried out in compliance with the CUC Resolution dated 27.11.2009 No 132 (as amended by the Resolution of the EEC Collegium dated 16.08.2012 No 134) “On uniform non-tariff regulation within the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation” as well as with “Regulations on uniform procedure of control by customs authorities of export and import of licensed products to and from the customs territory of the Customs Union within the framework of the EEC” approved by the Resolution of the CUC dated 22.06.2011 No 687.

In pursuance of the CUC Resolutions No 132 and No 687, Order of the Russian Federation FCS dated 29.12.2011 No 2652 “On approval of Instruction on actions of the Russian Federation customs officers aimed at implementation of the Regulations on uniform procedure of control by customs authorities of export and import of licensed products to and from the customs territory of the Customs Union within the framework of the EEC” was brought in force in the Russian Federation.

Therefore, when speaking about the Uniform lists of commodities and technologies falling under export control in the CU member-countries, it may be evidently stated that products nomenclature represented with six generic lists of commodities mentioned in the first part of the article shall be supplemented with lists of commodities approved by the EEC Collegium subject to restrictions or embargos imposed on the CU customs border crossings upon execution of export transactions during trade with third countries. In consequence, single database of all commodities, export of which from the CU customs territory is controlled both in terms of nonproliferation of weapons of mass destruction and following the national interests of the CU member-countries focused on SEA formation could be developed in order to enhance the uniform export control efficiency.

In order to provide the unobstructed movement of peaceful-purpose commodities falling under export control pursuant to appropriate international conventions and regimes within the CU, the CU member-countries being parties of such agreements should employ the concept of guarantees and international inspections stipulated by the agreements.

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