
EXPORT
CONTROL
REGIMES

- We will study about
- DGFT
- Export Control Regime (Four)
- Missile Export Control Regime
- NSG (Nuclear Supply Group)
- Nuclear Export Committee

Multilateral Export Control Regime: An Introduction

A Multilateral Export Control Regime is an international body that states use to organize their national export control systems. Their regulations apply only to members and it is not obligatory that a country join.

There are currently four such regimes:

- The Australia Group (AG) for control of chemical and biological technology that could be weaponized
- The Missile Technology Control Regime (MTCR) for the control of rockets and other aerial vehicles capable of delivering weapons of mass destruction

Contd….

- The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
- The Nuclear Suppliers Group (NSG), for the control of nuclear related technology

Australia Group

- The Australia Group (AG) is an informal forum of countries whose objective is to ensure that the industries of the participating states do not assist, either purposefully or inadvertently, states or terrorists seeking to acquire a chemical and/or biological weapons (CBW) capability.
- All AG participants exercise national export control over items listed on the AG control list, and it is said that coordination of national export control measures assists participants in complying with the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BWC).

Missile Technology Control Regime

- The Missile Technology Control Regime (MTCR) is an informal association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation.
- MTCR partners have committed to apply a common export policy (MTCR Guidelines) on a common list of controlled items, including all key equipment and technology needed for missile development, production, and operation. MTCR Guidelines restrict transfers of missiles—and technology related to missiles—for the delivery of WMD.

Nuclear Suppliers Group

- The Nuclear Suppliers Group (NSG), with 45 member states, is a widely accepted, mature, and effective export-control arrangement, which contributes to the non-proliferation of nuclear weapons through implementation of guidelines for control of nuclear and nuclear-related exports.
- The NSG Guidelines are implemented by each member in accordance with its national laws and practices, and decisions on export applications are taken at the national level in accordance with national export licensing requirements.

Wassenaar Arrangement

- The Arrangement's purpose is to contribute to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use (i.e. those having civil and military uses) goods and technologies to prevent destabilizing accumulations of those items.
- The Wassenaar Arrangement establishes lists of items for which member countries are to apply export controls.
- Member governments implement these controls to ensure that transfers of the controlled items do not contribute to the development or enhancement of military capabilities that undermine the goals of the Arrangement, and are not diverted to support such capabilities

Information on Other Organizations & Treaties

World Customs Organization:

- The WCO is internationally acknowledged as the global centre of customs expertise and plays a leading role in the discussion, development, promotion and implementation of modern customs systems and procedures.
- It is responsive to the needs of its members and its strategic environment, and its instruments and best-practice approaches are recognized as the basis for sound customs administration throughout the world.

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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International Atomic Energy Agency :

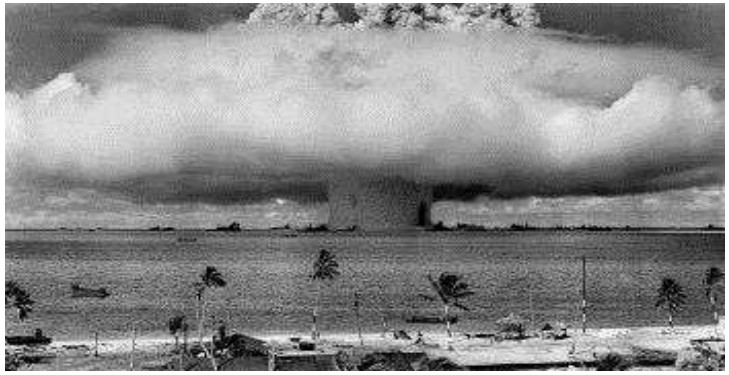
- The International Atomic Energy Agency (IAEA) is an international organization that seeks to promote the peaceful use of nuclear energy, and to inhibit its use for any military purpose, including nuclear weapons.
- The IAEA was established as an autonomous organisation on 29 July 1957.

IAEA

Contd….

Nonproliferation and Arms Control Treaties and Agreements :

- Arms control and non-proliferation efforts are two of the tools that have occasionally been used to implement U.S. national security strategy.
- Arms control and non-proliferation efforts have produced formal treaties and agreements, informal arrangements, and cooperative threat reduction and monitoring mechanisms.



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- Introduce a dispute-resolution mechanism that allows collective discussion about possible violations by a member, gives that member an opportunity to explain its behaviour, and requires all members to abide by the collective decision at the end of the process.
- Create a team of international experts to provide export control training to prospective members and countries interested in adhering to the standards upheld by the regime.
- Strengthen information-sharing requirements to include not only denial notifications, but approvals

ZANGGER COMMITTEE 1971

- The **Zangger Committee (ZAC)**, also known as the **Nuclear Exporters Committee**, sprang from Article III.2 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) which entered into force on March 5, 1970.
- Under the terms of Article III.2 International Atomic Energy Agency (IAEA) safeguards must be applied to nuclear exports.
- Each State Party to the Treaty undertakes not to provide:
  a. source or special fissionable material, or
  b. Equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

History of the ZAC

Between 1971 and 1974, a group of 15 nuclear supplier states held a series of informal meetings in Vienna chaired by Professor Claude Zangger of Switzerland.



ZANGGER COMMITTEE

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The group's objective was to reach a common understanding on:

a) the definition of "equipment or material especially designed or prepared for the processing, use or production of special fissionable material;" and

b) the conditions and procedures that would govern exports of such equipment or material in order to meet the obligations of Article III.2 on the basis of fair commercial competition. The group, which became known as the Zangger Committee, decided that it would be informal and that its decisions would not be legally binding upon its members.



ZANGGER COMMITTEE

Contd….

The Committee

a) Maintains and updates a list of equipment that may only be exported if safeguards are applied to the recipient facility (called the "Trigger List" because such exports trigger the requirement for safeguards); and

b) Allows members to coordinate on nuclear export issues. The relative informality of the Zangger Committee has enabled it to take the lead on certain nonproliferation issues that would be more difficult to resolve in the Nuclear Suppliers Group.

Moreover, the People's Republic of China is a member of the Zangger Committee.



ZANGGER COMMITTEE

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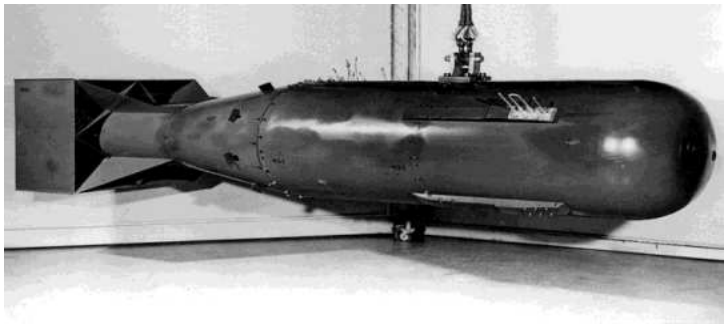
- At the October 2000 meeting, the Committee discussed the results of the 2000 NPT Review Conference (REVCON).
- The Committee agreed to form two informal "Friends of the Chair" groups to:
  a) Consider preparations for the 2005 NPT REVCON; and
  b) Continue consideration of possible future adoption of a policy of requiring full-scope safeguards as a condition of supply to non-nuclear weapon states.



ZANGGER COMMITTEE

Early Shock to the NPT's Systems

- India's detonation of a nuclear device in May 1974 not only caused a tremor in the earth but also in the foundations of the nonproliferation regime.
- India was not an NPT party, and the Treaty was still too young to be blamed for being unable to prevent technology transfer from a NPT party.
- But the explosion led to increased concern about the conditions for permitting nuclear exports.



The Trigger list

- The term “Trigger List” was chosen because the export of items listed on it “trigger” IAEA safeguards on the source or special fissionable material produced, processed, or used in the equipment or material in question.
- In line with technological developments, the Trigger List has undergone several changes since 1974.

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Since 1974 there have been seven phases of development:

- In November 1977, following the initiative of the London Suppliers Group, the Trigger List was amended to include heavy water production plants. While a few members of the Committee believed that these plants did not fall within the scope of Article III.2, most of the members were positive. They argued that if the export of heavy water were included, it was only logical that production plants for this material should also be subject to controls. This first amendment to the list was published as INFCIRC/209/Mod.1, issued on December 1, 1978 (and later further clarified in May 1992; see point 5 below).

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- In 1984, Trigger List clarifications were made to the entries covering isotope separation by the gas centrifuge process (INFCIRC/209/ Mod. 2, February 1984).
- In 1985, amendments were made in the annex to clarify the coverage of fuel reprocessing plants (INFCIRC/209/Mod. 3, August 1985).
- In 1990, clarifying amendments were adopted for isotope separation plant equipment at gaseous diffusion enrichment plants (INFCIRC/209/Mod. 4, February 1990).
- In 1992, an amendment was introduced to further clarify plants for the production of heavy water, deuterium and deuterium compounds, and associated equipment (INFCIRC 209/Rev.1/Mod.1, May 1992).

Contd….

- The latest amendment, in 1994, adopts further clarifications to the enrichment section and a modification of the entry on “Primary Coolant Pumps” (to include “Water Pumps”) (INFCIRC/209/Rev.1/ Mod. 2, April 1994).
- Finally, agreement has been reached recently to amend paragraph 6 of Memorandum A attached to INFCIRC 209/Rev.1, to prevent the unsafeguarded export of bulk quantities of source material for nonnuclear use. Member state letters to the IAEA have been sent, but the IAEA has not yet published the formal notification document.

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Conclusion:

It is fair to say that the Zangger Committee has devoted extensive efforts to adding structure and detail to the original Trigger List.

One Area of Dispute

- There has only been one major element of the nuclear fuel cycle where diverging views existed within the Committee.
- This was the area of conversion facilities.
- It is also worthwhile to consider whether these components are only to be used in the front end or also in the back end of the conversion process, where gaseous-enriched uranium is being reconverted. Insofar as these latter components are specially designed or prepared, they would undoubtedly be covered by Article III.2 and should therefore become a part of the ZAC's Trigger List.

Parallel Activities by the NSG

- One of the early priorities of the newly created NSG in 1991 was to formally harmonize the old London Group trigger list with the ZAC Trigger List.
- The NSG also focused on a second area of interest to the nonproliferation regime, namely dual-use items.
- While ZAC and the London Group only dealt with nuclear items “with a major nuclear use,” the NSG elaborated a list of “dual-use” commodities characterized by their legitimate conventional end-uses, but also with a special utility for use in nuclear applications.

ZAC Business Practices and Procedure

- Contrary to rumors (or allegations) spread in the 1970s, Zangger Committee members never attempted to deprive less developed countries of the peaceful benefits of nuclear energy. Quite the opposite is true.
- It cannot, in my opinion, be said too often that membership in the Zangger Committee imposes no obligations that have not already been undertaken by parties to the NPT.
- In fact, it is correct to say that the Zangger commitments, as they are directly derived from Article III.2 of the NPT, are shared by all members of the Treaty.

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- At present, membership in the Committee is identical to that of the NSG, except for Argentina—which is only in the NSG— and South Korea— which is an observer in the ZAC.
- There are currently 29 members in the ZAC. Since 1992, France, Spain, Bulgaria, Portugal, and South Africa have all become members. Others are under consideration.

Further Work of the ZAC

The ZAC and the NSG :

- The reemergence of the NSG has given rise to questions about the need to retain the ZAC. The usual argument for merging the two groups was that the ZAC's mandate is firmly circumscribed by the NPT (and therefore narrow), while the NSG has no such self-imposed limitations on its activities.
- But there were sound counter arguments for continuing the Committee, which have been well-rehearsed over the last year or so the fact that ZAC derives its existence directly from the NPT that it is accepted by all members of the NPT, and that there is still flexibility for further elaborations within Article III.2 itself .

Nuclear Suppliers Group 1974



- The NSG was founded in response to the Indian nuclear test in May 1974 and first met in November 1975. The test demonstrated that certain non-weapons specific nuclear technology could be readily turned to weapons development.
- Nations already signatories of the Nuclear Non-Proliferation Treaty (NPT) saw the need to further limit the export of nuclear equipment, materials or technology. Another benefit was that non-NPT and non-Zangger Committee nations, then specifically France, could be brought in.

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- A series of meetings in London from 1975 to 1978 resulted in agreements on the guidelines for export; these were published as INFCIRC/254 (essentially the Zangger "Trigger List") by the International Atomic Energy Agency.
- Listed items could only be exported to non-nuclear states if certain International Atomic Energy Agency safeguards were agreed to or if exceptional circumstances relating to safety existed.
- The NSG did not meet again until 1991. The "Trigger List" remained unchanged until 1991, although the Zangger list was regularly updated.

NSG

Contd….

- The revelations about the Iraqi weapons program following the first Gulf War led to a tightening of the export of so-called dual-use equipment.
- At the first meeting since 1978, held at the Hague in March 1991, the twenty-six participating governments agreed to the changes, which were published as the "Dual-use List" in 1992, and also to the extension of the original list to more closely match the up-to-date Zangger list.

NSG

History

- Negotiated in 1968, the nuclear Nonproliferation Treaty (NPT) granted non-nuclear-weapon states access to nuclear materials and technology for strictly peaceful purposes.
- Recognizing peaceful nuclear programs could turn into weapons programs, several NPT nuclear supplier states sought to determine the conditions for sharing specific equipment and materials with non-nuclear-weapon states.
- In 1971, these supplier states formed the Zangger Committee in order to require states outside the NPT to institute International Atomic Energy Agency (IAEA) safeguards before importing certain items that could be used to pursue nuclear weapons referred to as the "Trigger List."

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- India's explosion of a nuclear device in 1974 reaffirmed the fact that nuclear materials and technologies acquired under the guise of peaceful purposes could be diverted to build weapons.
- In response to India's action, several Zangger Committee members, along with France—who was not a member of the NPT at that time—established the NSG to further regulate nuclear-related exports.
- The NSG also added supplemental technologies to the original Zangger Committee's "Trigger List," becoming Part I of the NSG Guidelines. In addition, NSG members agreed to apply their trade restrictions to all states, not just those outside the NPT.

Guidelines and Operation

- The NSG Guidelines require that importing states provide assurances to NSG members that proposed deals will not contribute to the creation of nuclear weapons.
- Potential recipients are also expected to have physical security measures in place to prevent theft or unauthorized use of their imports and to promise that nuclear materials and information will not be transferred to a third party without the explicit permission of the original exporter.
- In addition, final destinations for any transfer must have IAEA safeguards in place.

Contd….

- The IAEA is charged with verifying that non-nuclear-weapon states are not illicitly pursuing nuclear weapons.
- To prevent nuclear material or technology from being stolen or misappropriated for weapons, IAEA safeguards include inspections, remote monitoring, seals, and other measures.

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The Guidelines are comprised of two parts, each created in response to significant proliferation events that highlighted shortcomings in the export control systems.

- Part I lists materials and technology designed specifically for nuclear use.
- Part II identifies dual-use goods; non-nuclear items with legitimate civilian applications that can also be used to develop weapons.

Membership

- Any state that conducts exports appearing on the Guidelines may apply for NSG membership.
- A potential member is evaluated on its proliferation record for national export controls and adherence to international nonproliferation treaties and agreements.
- All existing members must approve an applicant for admittance to the regime.
- There are several countries with nuclear programs outside the NSG, most notably India, Israel, Pakistan, and North Korea. In recent years, India has advanced its bid to join the NSG.

Membership criteria

Factors taken into account for membership include the following:

- The ability to supply items (including items in transit) covered by the annexes to Parts 1 and 2 of the NSG Guidelines
- Adherence to the Guidelines and action in accordance with them
- Enforcement of a legally based domestic export control system which gives effect to the commitment to act in accordance with the Guidelines

Contd….

- Full compliance with the obligations of one or more of the following: the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Treaties of Pelindaba, Rarotonga, Tlatelolco, Bangkok, or an equivalent international nuclear nonproliferation agreement
- Support of international efforts towards nonproliferation of weapons of mass destruction and of their delivery vehicles.
- Although President Barack Obama expressed support for India's membership to the NSG in 2010, the group remains divided, in part because, as a non-state-party to the NPT, India doesn't meet a core criterion for membership.

Goals

NSG members pursue the aims of the NSG through adherence to NSG Guidelines that are adopted by consensus, and through an exchange of information, notably on developments of nuclear proliferation concern. The first set of NSG Guidelines governs the export of items that are especially designed or prepared for nuclear use. These include:

i. Nuclear material;
ii. Nuclear reactors and equipment therefore;
iii. Non-nuclear material for reactors;

Contd….

iv. Plant and equipment for the reprocessing, enrichment, and conversion of nuclear material and for fuel fabrication and heavy water production; and

v. Technology associated with each of the above items.

The second set of NSG Guidelines governs the export of nuclear-related dual-use items and technologies (items that have both nuclear and non-nuclear applications), which could make a significant contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity.

Safeguards

- The NSG aims to ensure that nuclear exports are carried out with appropriate safeguards, physical protection, and nonproliferation conditions, and other appropriate restraints.
- The NSG also seeks to restrict the export of sensitive items that can contribute to the proliferation of nuclear weapons.
- The final document of the 2000 NPT Review Conference reaffirmed Paragraph 12 of the decision on "Principles and Objectives for Nuclear Non-proliferation and Disarmament" and recognized the value of export restrictions to prevent the further proliferation of nuclear weapons.

Dual Use Controls

- At the beginning of the 1990's it became apparent that export control provisions then in force had not prevented Iraq, a party to the NPT, from pursuing a clandestine nuclear weapons program, which later prompted UN Security Council action.
- A large part of Iraq's effort had been to acquire dual-use items not covered by the Guidelines and then to build materials within Iraq needed for a nuclear weapons program.
- Iraq's program gave substantial impetus to the NSG's development of its dual-use Guidelines.

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- In doing so, the NSG demonstrated its commitment to nuclear nonproliferation by ensuring that items like those used by Iraq would only be used for peaceful purposes.
- These items would remain available for peaceful nuclear activities subject to IAEA safeguards, as well as for other industrial activities that would not contribute to nuclear proliferation.

Regime Procedures & Early Developments

- The NSG requires IAEA safeguards as a condition of supply, with full-scope safeguards as the norm; national control laws and procedures; physical protection against theft for sensitive parts of the nuclear fuel cycle; restraint of enrichment and reprocessing plant assistance to countries of proliferation concern; a common control list; export restraint to regions of conflict and instability; and information-sharing among members.
- The Guidelines for Nuclear Transfers, initially agreed upon by supplier States in 1977 and transmitted to the IAEA Director-General in January 1978, envisage additional export control restraints beyond those provided for in the NPT.

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- These restraints prohibit the use of exports from being used in any nuclear explosive device; mandate restraint in the transfer of facilities and technologies used for reprocessing, uranium enrichment, and heavy water production; require physical protection of nuclear materials and facilities; and mandate control of re-transfer of items and acceptance of the Zangger Committee Trigger List.

The NSG, the Zangger Committee & the NPT

- The Zangger Committee's provisions are closely tied to Article III.2 of the NPT.
- In contrast to Zangger Committee members, NSG members are not required to be parties to the NPT, but they all must adhere to instruments that contain equally binding commitments.
- The NSG Guidelines are designed to strengthen implementation of the nonproliferation undertakings contained in those legal instruments.
- The NSG and the Zangger Committee differ in the scope of their trigger lists of especially designed or prepared items (EDP) and in the export conditions for items on those lists.

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- The NSG arrangement covering exports of dual-use items is a major difference between the NSG and the Zangger Committee. The NSG Guidelines apply to transfers to all NNWS. The Zangger Committee memoranda only apply to transfers to NNWS not party to the NPT, as compliance with NPT obligations fulfills the criteria of the Zangger Committee understandings.

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Conclusion:

Despite these differences between the two regimes, they serve the same objective and are equally valid instruments of nuclear nonproliferation efforts. There is close cooperation between the NSG and the Zangger Committee on the review and amendment of the trigger lists.

Verification and Compliance

- The NSG regime is a voluntary association, not bound by a treaty, and therefore has no formal mechanism to enforce compliance.
- The NSG guidelines are applied both to members and non-members of the NSG.
- As practiced by NSG members, export controls operate on the basic principle of cooperation with restrictions as the exception. Few NPT parties have been refused controlled items, this has occurred when a supplier State had good reason to believe that the item in question could contribute to nuclear proliferation.
- Almost all rejections by NSG members of applications for export licenses have concerned States with unsafeguarded nuclear programs.

Recent Developments

2017:

On June 23 and 24, The Nuclear Suppliers Group held its twenty seventh Plenary Meeting in Bern, Switzerland. In a released public statement, the NSG strongly condemned the Democratic People's Republic of Korea's (DPRK) nuclear test and welcomed the continued implementation of the Joint Comprehensive Plan of Action. During the Plenary Meeting, India was unsuccessful in its attempt to join the Nuclear Suppliers Group. . On 6 December, Russia reaffirmed its support for India's entry into the NSG and assured it would raise the issue with China at the 15th RIC foreign ministerial meeting.

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2018:

From 14 to 15 June, the Nuclear Suppliers Group held its twenty-eighth Plenary Meeting in Jurmala, Latvia. The NSG reaffirmed support for the full implementation of the NPT and for the continued implementation of the JCPOA. The NSG also released updated control lists.

2019:

On 31 January, China stated that India must sign the Non-Proliferation Treaty before China will allow India to join the Nuclear Suppliers Group, halting further progress for India's admittance to the group.

Australia Group 1985

- The **Australia Group** is a multilateral export control regime (MECR) and an informal group of countries established in 1985 (after the use of chemical weapons by Iraq in 1984) to help member countries to identify those exports which need to be controlled so as not to contribute to the spread of chemical and biological weapons.
- The group, initially consisting of 15 members, held its first meeting in Brussels, Belgium, in September 1989.
- With the incorporation of India on January 19, 2018, it now has 43 members, including Australia, the European Commission, all 28 member states of the European Union, the United States, India, Ukraine, and Argentina.

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- The name comes from Australia's initiative to create the group. Australia manages the secretariat.
- The initial members of the group had different assessments of which chemical precursors should be subject to export control. Later adherents initially had no such controls.
- Today, members of the group maintain export controls on a uniform list of 54 compounds, including several that are not prohibited for export under the Chemical Weapons Convention, but can be used in the manufacture of chemical weapons.

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- In 2002, the group took two important steps to strengthen export control.
- The first was the "no-undercut" requirement, which stated that any member of the group considering making an export to another state that had already been denied an export by any other member of the group must first consult with that member state before approving the export.
- The second was the "catch-all" provision, which requires member states to halt all exports that could be used by importers in chemical or biological weapons programs, regardless of whether the export is on the group's control lists.

Regime Goal

The AG aims to limit the spread of CBW through the control of chemical precursors, CBW equipment, and BW agents and organisms.

All participating countries have licensing measures covering over 60 CW precursors. Participating countries also require licenses for the export of

i. Dual-use chemical manufacturing facilities and equipment and related technology;
ii. Plant pathogens;
iii. Animal pathogens;
iv. Biological agents; and
v. Dual-use biological equipment.

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These items form the basis for the Group's "Common Control Lists," which have been developed during AG consultations and are adjusted from time to time to ensure their continued effectiveness.

The six Common Control Lists cover:

i. CW precursors;
ii. Dual-use chemical manufacturing facilities and equipment and related technology;
iii. Dual-use biological equipment;
iv. Biological agents;
v. Plant pathogens; and
vi. Animal pathogens.

Regime Procedures

- The AG mechanisms include national control laws and procedures; Common Control Lists (precursors, equipment, agents, and organisms); guidelines for the industry to assist in identifying potential CW equipment transactions; and information-sharing among members when suspicious inquiries are received, cases are denied, or information suggests possible international procurement for untoward purposes.
- The conclusion of the CWC in 1992, meetings of the Group have focused closely on the interaction between Group controls and the nonproliferation and trade encouragement measures, which came into operation when the CWC entered into force.

Verification and Compliance

- Participants in the AG do not undertake any legally binding obligations.
- The effectiveness of the cooperation between participants depends solely on their commitment to CBW nonproliferation goals and the effectiveness of the measures they each implement on a national basis.

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Key considerations governing these national measures by AG participants are that:

i. the measures should be effective in impeding the production of chemical and biological weapons;
ii. they should be reasonably easy to implement, and should be practical; and
iii. they should not impede the normal trade of materials and equipment used for legitimate purposes.

Compliance with this regime is reinforced by membership of all AG States to the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BTWC).

Recent Developments

2017:

On 30 June, the Australia Group and the European Union met for its 32nd plenary meeting in Paris. Group members reiterated their support for the Chemical Weapons Convention (CWC) on the 20th anniversary of its entry into force, and agreed to continue efforts to encourage non-member States to adopt Australia Group export controls as the international standard. Australia Group members agreed to France's offer to host the next plenary meeting in Paris on 4-8 June 2018. In May, the Australia Group updated its control lists for chemical manufacturing facilities and equipment and biological equipment.

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2018:

On 19 January, India became the 43rd member of the Australia Group. From June 4-8, the Australia Group and the European Union met for its 33rd Plenary Meeting in Paris, France. The Group published a consensus statement that expressed grave concern over the recent use of chemical weapons in Malaysia, the United Kingdom, Syria, and Iraq. The Group also discussed increasing focus on preventing proliferation of dual-use goods to non-state actors, working collaboratively with non-AG members such as China, and a technical discussion around Novichok agents and their precursors.

Missile Technology Control Regime 1987



- The **Missile Technology Control Regime** (**MTCR**) is a multilateral export control regime.
- It is an informal political understanding among 35 member states that seek to limit the proliferation of missiles and missile technology.
- The regime was formed in 1987 by the G-7 industrialized countries. The MTCR seeks to limit the risks of proliferation of weapons of mass destruction (WMD) by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.



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- In this context, the MTCR places particular focus on rockets and unmanned aerial vehicles capable of delivering a payload of at least 500 kg (1,100 lb) to a range of at least 300 km (190 miles) and on equipment, software, and technology for such systems.
- The MTCR is not a treaty and does not impose any legally binding obligations on Partners (members). Rather, it is an informal political understanding among states that seek to limit the proliferation of missiles and missile technology.

How the MTCR Works

The MTCR identifies five factors that members should take into account when evaluating a possible export of controlled items:

i. Whether the intended recipient is pursuing or has ambitions for acquiring weapons of mass destruction;

ii. The purposes and capabilities of the intended recipient's missile and space programs;

iii. The potential contribution the proposed transfer could make to the intended recipient's development of delivery systems for weapons of mass destruction;

iv. The credibility of the intended recipient's stated purpose for the purchase; and

v. Whether the potential transfer conflicts with any multilateral treaty.

Hague Code of Conduct Against Ballistic Missile Proliferation

- MTCR members spearheaded a voluntary November 2002 initiative, the Hague Code of Conduct Against Ballistic Missile Proliferation (formerly known as the International Code of Conduct Against Ballistic Missile Proliferation), calling on all countries to show greater restraint in their own development of ballistic missiles capable of delivering weapons of mass destruction and to reduce their existing missile arsenals if possible.
- The aim of the initiative is to establish a norm against missiles that could be armed with chemical, biological, or nuclear warheads.

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- As part of the initiative, participating countries are to annually exchange information on their ballistic missile and space launch vehicle programs, as well as provide advance notice of any launches of ballistic missiles or space launch vehicles.
- The Hague Code of Conduct has 138 member states, including all MTCR members except Brazil.
- Brazil has expressed concerns about how the initiative might affect its space program.

Regime Goal

The regime goal is to limit the risks of proliferation of weapons of mass destruction (i.e. nuclear, chemical and biological weapons) by controlling the transfers that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

Regime Guidelines

The regime guidelines consist of national control laws and procedures; a two-category common control list; information-sharing on any denied cases to ensure no commercial advantage; no impediment to national space programs; no retransfers without authorization of the supplying country; the presumption of denial of transfers of unmanned delivery systems that can carry a payload of 500 kilograms to a distance of 300 kilometers or more; and the presumption of denial of transfers of unmanned delivery systems of any capability if there is reason to believe that they will be used for the delivery of weapons of mass destruction

Equipment and Technology Annex

- **Category I** items of the Equipment and Technology Annex include complete rocket and unmanned-air-vehicle delivery systems and subsystems. The transfer of Category I items is subject to a strong presumption of denial. The transfer of production technology for Category I items is prohibited.
- **Category II** items include propulsion and propellant components, launch and ground support equipment, as well as the materials for the construction of missiles. The transfer of Category II items is less restricted, but still requires case-by-case review and end-use certification or verification where appropriate.

Verification and Compliance

- The MTCR is an informal non-treaty association of governments sharing common interests, and therefore has no formal mechanism to enforce compliance.
- The implementation of the MTCR is dependent on the resolve of its Member States.
- The Member States usually deal with the implementation of the MTCR somewhat differently.
- The United States, being the most ardent MTCR participant, backs the implementation of the MTCR by a sanctions law, whereas other States have used a more low-profile approach.

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- All nine states known or believed to possess nuclear weapons- China, France, India, Israel, North Korea, Pakistan, Russia, the United Kingdom, and the United States -possess missiles of considerable range to deliver them. Iran, Japan, North Korea, Saudi Arabia, South Korea, Taiwan, and Ukraine also possess missiles or satellite launch rockets of substantial range, but do not possess nuclear weapons or other weapons of mass destruction.

Recent Developments

2017:

- On January 11-12, the MTCR outreach mission made its first trip under Korean Chairmanship to the Islamic Republic of Pakistan.
- The MTCR delegation updated Pakistan on trends in the Regime and briefed Pakistan's export control system.
- The MTCR delegation also visited the Pakistan Center of Excellence for Nuclear Security. On 23 February, the MTCR outreach mission to Singapore was held.
- The MTCR delegation updated Singapore on recent trends in the Regime and was briefed on Singapore's export control system.

Contd….

- On 16-20 October, the MTCR held its 31st Plenary week in Dublin, Ireland.
- The main purpose of the Plenary Meeting was to review and evaluate the MTCR's activities over the past year.
- Partners devoted increased attention to Intangible Technology Transfer (ITT), Unmanned Aerial Vehicles (UAVs), Catch All Controls, Regional Proliferation and strategic outreach to non-MTCR countries.
- Kazakhstan became the third formal adherent of the MTCR during the Plenary.

Contd….

- On 19 October, as part of the 31st MTCR Plenary Week, the MTCR Technical Experts Meeting conducted a regular version of the MTCR Equipment, Software, and Technology Annex.
- This revision led to several changes such as adding gel propellant rocket motors and modifications to receiving equipment for navigation satellite systems.
- On 28 March, the MTCR outreach mission to the Republic of Kazakhstan was held.
- The MTCR delegation updated Kazakhstan on Regime trends and was briefed on Kazakhstan's export control system and space activities.

Contd….

- On 18 May, the MTCR conducted a regular revision of the MTCR Equipment, Software, and Technology Annex. This revision led to several changes in control text such turbofan and turbojet engines, Global Navigation Satellite Systems, and gravity meters.

2018:

- On 29 March, an MTCR delegation made an outreach mission to Pakistan.
- The delegation updated representatives from Pakistan's defense and export control sectors on the outcomes of the 2017 Dublin Plenary and heard from the Pakistani representatives about new export control legislation.

Contd….

- On 9 May, the MTCR published a revised version of its Equipment, Software, and Technology Annex.
- The revision added and updated several technical details, including new controls on the propellant substance hydroxyl ammonium nitrate (HAN).
- On 8 July, an MTCR delegation made an outreach mission to Jordan.
- The delegation met with Jordanian export control and defense representatives in the MTCR's first visit to Jordan since 2007.
- On 9 and 10 July, an MTCR delegation made an outreach visit to Israel.

Contd….

- The delegation met with Israeli representatives from the defense, foreign affairs, and private aerospace sectors and discussions included proliferation challenges and autonomous drones.
- In November, the MTCR Technical Experts Meeting revised the MTCR Equipment, Software, and Technology Annex, which included technical control additions as well as editorial changes.

Wassenaar Arrangement 1996

- The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral export control regime (MECR) with 42 participating states including many former Comecon (Warsaw Pact) countries.
- The Wassenaar Arrangement was established to contribute to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations.
- Participating states seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities.

Contd….

- It is the successor to the Cold War-era Coordinating Committee for Multilateral Export Controls (COCOM), and was established on 12 July 1996, in Wassenaar, the Netherlands, which is near the Hague.
- The Wassenaar Arrangement is considerably less strict than COCOM, focusing primarily on the transparency of national export control regimes and not granting veto power to individual members over organizational decisions.
- A Secretariat for administering the agreement is located in Vienna, Austria. Like COCOM, however, it is not a treaty, and therefore is not legally binding.

Contd….

- Every six months member countries exchange information on deliveries of conventional arms to non-Wassenaar members that fall under eight broad weapons categories: battle tanks, armoured fighting vehicles (AFVs), large-caliber artillery, military aircraft, military helicopters, warships, missiles or missile systems, and small arms and light weapons.

For the Munitions List (Conventional Weapons)

Every six months, members exchange information on deliveries of conventional arms to non-Wassenaar members that fall under eight broad weapon categories:

i. Battle tanks,
ii. Armored combat vehicles (ACVs),
iii. Large-caliber artillery,
iv. Military aircraft/unmanned aerial vehicles,
v. Military and attack helicopters,
vi. Warships,
vii. Missiles or missile systems, and
viii. Small arms and light weapons.

Contd….

- Members added the final category in December 2003 after years of debate.
- The ACV, aircraft, and helicopter categories include models designed to perform reconnaissance or conduct command of troops missions.

For the Dual-Use Goods & Technologies List

Tier-1: Basic items

Twice per year, members exchange information on all export licenses denied on proposed transfers to non-Wassenaar members.

Tier 2: Sensitive Items and its subset of Very Sensitive Items

- Within 60 days, members are requested to notify the Wassenaar Secretariat of any export licenses denied on proposed transfers to non-Wassenaar members.
- Twice per year, members exchange information on all export licenses issued or transfers made to non-Wassenaar members.

Contd….

- For the subset of Very Sensitive items, such as stealth technology materials and advanced radar, members are called on to "exert extreme vigilance" in exports.
- Within 60 days, members are requested to notify the Wassenaar Secretariat of any export license approvals of transactions that are "essentially identical" to transactions that another Wassenaar member denied within the past three years. Wassenaar members are not obligated to deny transfers previously denied by others.

Membership

Membership is universal and nondiscriminatory for countries meeting the established criteria:

- Produce/export arms or associated dual-use goods and technologies
- Implement national policies that do not permit the sale of arms or sensitive dual-use items to countries whose behavior is a cause for concern
- Adhere to international nonproliferation norms and guidelines
- Implement fully effective export controls

Contd….

Members of the WA are obligated to maintain rigorous national export control systems analogous to those of the former Coordinating Committee for Multilateral Export Controls (COCOM) countries.

In turn, participating States have to be members of or be acting in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Missile Technology Control Regime (MTCR), Chemical Weapons Convention (CWC), and the UN Register of Conventional Arms. The Wassenaar States meet regularly in Vienna, Austria, and make their decisions based on consensus.

Structure

- The WA Plenary is the decision-making and governing body of the Arrangement.
- The Plenary establishes subsidiary bodies for the preparation of recommendations for plenary decisions and calls ad hoc meetings for consultations on issues related to the functioning of the WA.
- At present, the WA main subsidiary bodies are: the General Working Group (GWG) dealing with policy-related matters and the Experts Group (EG) addressing issues related to the lists of controlled items.

The Purpose of the Arrangement

As reflected in the Initial Elements, the purpose of the WA is to contribute to regional and international security by:

- promoting transparency and greater responsibility with regard to transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations;
- seeking through national policies to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities that undermine these goals, and are not diverted to support such capabilities;

Contd….

- complementing and reinforcing, without duplication, the existing control regimes for weapons of mass destruction and their delivery systems, as well as other internationally recognized measures designed to promote transparency and greater responsibility, by focusing on the threats to international and regional peace and security that may arise from transfers of armaments and sensitive dual-use goods and technologies where risks are judged greatest; and
- enhancing cooperation to prevent the acquisition of armaments and sensitive dual-use items for military end-uses, if the situation in a region or the behavior of a State is, or becomes, a cause for serious concern to the participating States.

Verification and Compliance

- This regime is a voluntary association, not bound by a treaty, and therefore has no formal mechanism to enforce compliance.
- In a step towards developing confidence-building measures, the Member States agreed in December 2000 at the sixth Plenary Meeting in Bratislava, on “non-binding best practices” regarding the effective enforcement of national export controls; the disposal of surplus military equipment; and the control of exports of items designated as very sensitive.

COCOM

- The Coordinating Committee for Multilateral Export Controls (COCOM) was established by the Western Bloc in the first five years after the end of World War II, during the Cold War, to put an embargo on Comecon countries.
- CoCom ceased to function on March 31, 1994, and the then-current control list of embargoed goods was retained by the member nations until the successor, the Wassenaar Arrangement, was established.
- In the United States, CoCom compliance was implemented in the 1960s via the Arms Export Control Act (AECA) and the State Department's regulatory supervision on AECA via International Traffic in Arms Regulations (ITAR), which are still in effect.



India's Export Control– The SCOMET List



- The Indian Government has liberalized import and export restrictions to a large extent in the last decade.
- Yet, some restrictions continue to exist like those intended to cover goods and technologies which can potentially have dual-use.
- This article aims to discuss India's export control regime with a special emphasis on the Special Chemicals, Organisms, Materials, Equipment and Technologies (**'SCOMET'**) list which governs the export of dual-use items from India with a view to ensure that such sensitive items do not fall into the hands of proliferators, non-state actors and terrorists.

Contd….

- The Foreign Trade Policy of India (**'FTP'**) which governs the export and import of goods and services provides that exports and imports are free (i.e. without any licensing requirement or governmental approval) unless specifically prohibited or regulated or subject to exclusive trading through the State Trading Enterprises.
- Over the years, trade in majority of the cases has been free, in some cases regulated, and in very few cases prohibited.
- Prohibition can be basis a country (Iran / Democratic People's Republic of Korea), product (charcoal from Somalia), organization or individual (individuals or entities associates with Al Qaida).

Contd….

- In such environment of unrestricted international trade, there exists the regulated export of SCOMET items that are listed in Appendix 3 of Schedule 2 of Indian Trade Classification (Harmonized System) ['**ITC(HS)**'] Classification of Export and Import Items.

Regulatory framework of India's Foreign Trade

Legal Frame work for foreign Trade of India

- Foreign Trade (Development and Regulation) Act, 1992
- Foreign Trade (Regulation) Rules 1993
- Foreign Trade (Exemption) Order 1993
- Garments Export Entitlement Policy 2000-2004
- Export (Quality Control and Inspection) Act 1963
- Customs and Central Excise Duties Drawback Rules 1995
- Foreign Exchange Management Act,1999

The SCOMET List

- SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies.
- This list contains goods which are considered as dual-use items, i.e., goods, technology, chemicals, organisms etc. which potentially have both, civil as well as military applications and are capable of being deployed as weapons of mass destruction.
- The export of the items under the SCOMET list is restricted and subject to an authorization/license.

Contd….

The SCOMET items are classified under 9 distinct categories:

- Category 0: Nuclear materials, nuclear related other materials, equipment and technology
- Category 1: Toxic chemical agents and other chemicals
- Category 2: Micro-organisms, toxins
- Category 3: Materials, Materials Processing Equipment and related technologies
- Category 4: Nuclear-related other equipment and technology, not controlled under category 0
- Category 5: Aerospace systems, equipment including production and test equipment, related technology and specially designed components and accessories thereof

Contd….

- Category 6: Munitions list
- Category 7: Reserved
- Category 8: Special Materials and Related Equipment, Material Processing, Electronics, Computers, Tele-communications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion.

Multilateral Export Control Regimes and India

The Multilateral Export Control Regimes are informal groups of like-minded supplier nations which seek to protect their interests and regulate the export of sensitive dual-use items so that such items do not fall into the hands of non-state actors and terrorists.

Contd….

Today, there exists four such Multilateral Export Control Regimes, which are:

- Missile Technology Control Regime for the control of rockets and other aerial vehicles capable of delivering weapons of mass destruction;
- Wassenaar Arrangement on export controls for conventional arms and dual-use goods and technologies;
- Australia Group for control of chemical and biological technology that could be weaponized; and
- The Nuclear Suppliers Group, for the control of nuclear related technology.

Consequences of Exporting SCOMET Items without Authorization

In a case where any of the items falling under the SCOMET list are exported without the proper authorization or license, penal provisions under the FTDR Act and the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 may be attracted.

Contd….

The penalties, inter-alia, include:

- Suspension or cancellation of the Importer- Exporter Code (IEC)
- Imprisonment for a period of not less than 5 years, which may extend to imprisonment for life along with a fine.
- Fine of not less than INR 3 lakhs which may extend up to INR 20 lakhs or five times the value of the items exported.

Recent Developments

The DGFT, on its part, has been open to listening to the concerns of the industry, take into consideration the best practices from existing export control frameworks of other countries and make suitable amendments/ revisions to India's SCOMET policy to reflect such international best practices.

The following summarizes few recent developments in this regard:

- The DGFT has introduced Global Authorization for Intra-Company Transfers (**GAICT**) for granting an advance bulk license for re-export of SCOMET items to overseas group companies availing license exception for original exports of such items to India.

Contd….

- The DGFT has permitted export of certain chemicals (Chloropicrin: Trichloronitro- Methane and Methyldieth-anolamine) to State Parties to the Chemical Weapons Convention without an export authorization but subject to the condition that the exporter must notify such export in the prescribed format along with the End-Use Certificate to the National Authority, Chemical Weapons Convention, Cabinet Secretariat; the Ministry of External Affairs (D&ISA); the Department of Chemicals and Petro-chemicals and the DGFT within 30 days of such export. The exporter is also required to submit a copy of the bill of entry into the destination State Party to the DGFT within 30 days of delivery.

Contd….

- The DGFT has amended certain provisions in the HBP pertaining to the export of SCOMET items for
  i. Repair/ replacement abroad and subsequent return;
  ii. Repair/ replacement of indigenously produced SCOMET items in India and subsequent re-export; and
  iii. Export of imported SCOMET items to the same entity, or any authorized entity abroad after repair in India.

Challenges

Notwithstanding the aforementioned developments, some challenges continue to exist for Indian exporters/ industries with regard to export of SCOMET items.

A few of them are highlighted as under:

- An application for authorization of export of any item under the SCOMET list pertains to a specific export and does not provide any blanket authorization for export of such items by an exporter, if the item is not covered under GAICT. This makes the to and fro exchange of information not possible for development of software/technology at beta stages. This is likely to affect the software and IT industry.

Contd….

- Export of specified chemicals (included in the SCOMET list) to certain countries is allowed without authorization subject to fulfilment of prescribed procedural conditions. However, such exemption has not been extended to software and technology pertaining to such chemicals.

Conclusion:

In light of the above, it is imperative that the DGFT and industry continue to work together to iron out such remaining challenges so as to enable India to simplify its export framework, facilitate international trade and continue to be a significant player in the region.

THANK YOU

