

EURO-RUSSIAN COOPERATION IN SPACE AND EXPORT CONTROL: POLICIES AND PRACTICES

Macha Ejova

PhD Researcher at University Paris XI / IDEST
International Space University
ejova@isu.isunet.edu

ABSTRACT

After the launch of Sputnik I in 1957, space activities were characterized by competition between the United States and the USSR. When space activity began, Europe had essentially technical cooperation with the USSR, but certain European States, in particular France, developed their cooperation policies at a very early stage. Some examples of the result of such cooperation are: in 1972, a first French satellite (SRET 1) was launched by a Soviet rocket; in 1982, the French astronaut Jean Loup Chrétien was the first western astronaut to fly with a Soviet crew on board the space station Salyut 7. The end of the Cold War offered new opportunities to undertake new space activities in cooperation with former rivals.

The cooperation between Europe and Russia resulted in the conclusion of agreements that envisaged the possibility of technology transfer between the two space powers. Nevertheless, even if space cooperation is an intended objective of these countries, it is still a difficult exercise due to the official regulations concerning export control of technology. The regulations established by these countries in order to control technology transfer, constitute a barrier to free cooperation in the space field.

Even if the objectives of the cooperation are clearly defined when reading the international and multilateral legislation, technology transfer constitutes the most significant part of space legislation. These regulations make it possible for Europe and Russia to enforce export control

of sensitive technologies, which are banned from distribution to third world countries. In this way a certain control on the international cooperation between private companies is maintained. In this article, we will take a look at the policy and practices of Russia and Europe with regard to export control and the consequences it has on cooperation in the space field.

1. Introduction

It has to be noted that constant tension exists between industry which is trying to do business, and State which maintains an export control in order to protect its strategic and geopolitical interests.

The main objective of this article is to present a general view concerning the policies and practices of the export control regime in Russia and Europe and to examine the impact of this regime on cooperation between the two powers.

2. The existing international regimes on Export Control

First, we will discuss the different international regimes that concern the export control in which Russia and some European countries participate. It is important to discuss these particular regimes first because they provide some basic guidelines that were included in the national legislations of the respective countries.

We must take note that these regimes do not have any legal constraints, but only

the political will of the state that takes part in the agreement, to respect it.

Among the different regimes there are two of particular importance: the MTCR (Missile Technology Control Regime) and the Wassenaar Arrangement.

2.1 Missile Technology Control Regime (MTCR)

Canada, France, Germany, Japan, Italy, the United Kingdom and the USA established the MTCR in 1987. It was the first non-proliferation regime. Russia is a member of the MTCR since 1995.

The MTCR is based on a voluntary arrangement. It is a political document, under which members apply common export control policies to a list of controlled items. The MTCR does not provide the organizational structure for export control nor the setup of the institutionalized body. When the State decides to participate in the MTCR, it means that the State in question now accepts the common export list and integrates it into its national legislation.

The MTCR Annex of controlled items divides technology into two categories:

- **Category I** Annex items include complete rockets and unmanned air vehicle (i.e. "missile") systems, capable of delivering a payload of at least 500 kg and having a range of at least 300 km, and their major complete subsystems, production facilities, and related technologies.
- **Category II** Annex items include propulsion and propellant components, launch and ground

support equipment, various other missile-related components and related technologies, as well as certain other missile systems.

The MTCR covers most items related to space launch vehicle (SLV) systems because of their dual-use nature.

2.2 Wassenaar Arrangement

The Wassenaar Arrangement, which was created in 1996 by 33 countries including Russia and 15 countries of the European Union, establishes the first multinational institute that covers both conventional weapons and sensitive dual-use goods and technologies. This multilateral agreement aims to provide the transparency and the higher responsibility concerning conventional weapons and dual use technologies.

The main objective of this document is to complete and to reinforce the existing regimes, which contribute to regional and international stability. It can also act as an instrument for the exchange of information between the various members of the regime in order to reinforce and coordinate the national systems.

Like the MTCR, the Wassenaar Arrangement does not carry any legal obligation that can provide sanctions for the States which do not respect the document. The only provision applicable is that which figures in the national legislations of the participating States.

WA members impose export controls on goods and technologies listed in the WA Munitions and Dual-Use list, which is similar to that of the MTCR.

These agreements were a large political leap forward in the context of the Cold War. Today have little force due to the non constraint regime, since they are only gentlemen's agreements with no "real" legal value.

3. Russian Export Control regime

In the last few years, Russia has made an effort to establish an Export Control regime for the benefit of international cooperation and to fulfill its international commitments, including the MTCR regime and the Wassenaar Arrangement.

The main legal document regarding export control is the Russian Federation Federal Law on Export Control, which was approved by the State Duma on June 22, 1999 and afterwards was accepted by the Federation Council on July 2, 1999 (1). This Federal Law, which establishes the legal framework regarding the Russian export control regime, gives in Article 1 the definition of the export control (2) and the controlled goods and technologies (3).

Article 4 RF of Law on Export Control defines the principal purposes as the following:

- protection of the interests of the Russian Federation
- satisfaction of the requirements of international treaties of the Russian Federation pertaining to the non-proliferation of weapons of mass destruction and their delivery systems and to the control of the export of military and dual-use products
- creation of the necessary conditions for the integration of

the Russian Federation economy into the world economy.

Article 8 establishes the role of the President and Government of the Russian Federation in the sphere of export control.

Article 19 sets up the obligation to have a license for foreign economic operations envisaging the transfer of controlled goods and technologies to a foreign party.

We must also refer to the Decree "On the systems and structure of federal bodies representing executive power" of 9 March 2004. In 2004, the Russian President Vladimir Putin initiated the reform of federal bodies. In the preamble of the Presidential Decree it was stated that this reform was initiated in order to establish an effective system and structure of federal bodies representing executive power. This decree is not directly related to export control, but it changes completely the organization of the federal bodies representing executive power. Hence, the decree has significant consequences for the organizational structure of export control in Russia. The main change was the shift of the regulation of export control from the Ministry of Economic Development and Trade (MEDT) to the Ministry of Defense. As a result of the administrative reform was the signature of the decree on "Statute of the Federal Technical and Export Control Service" on 16 August 2004 by the President. This decree has created the new licensing agency, the Federal Technical and Export Control Service (FTECS). This Service is subordinate to the Ministry of Defense. The FTECS is

managed by the President of the Russian Federation.

This newly established Federal body replaces the Export Control Department which was under the jurisdiction of Ministry of Economic Development and Trade.

According to the statute, FTECS export control responsibilities, just to mention a few, are defined as follows:

- To ensure the implementation of export control in accordance with Russian legislation.
- To develop, with the participation of relevant federal executive agencies and organizations, as established by law, drafts of lists (registers) of goods (activities, services), information, and intellectual property subject to export control.
- To participate in the implementation of government policy on the non-proliferation of WMDs and other dangerous types of weapons.
- To organize, with the participation of interested federal executive agencies and organizations, the creation of an integrated federal export control information system and an information sharing procedure between the FTECS and other state agencies.
- To ensure, within its jurisdiction, the participation of the Russian Federation in international export control regimes.
- To carry out activities aimed at the prevention of the violation of Russia's export control

legislation and relevant international commitments.

- To organize activities that raise the awareness among Russian exporters and importers of the export control objectives, procedures, and regulations.
- To participate in the consideration of issues related to trade and scientific-technical cooperation of Russia with foreign states, when relevant for the implementation of export control.

To have a complete picture of the export control regime in Russia, we have to mention that on 29 January 2001, the Russian President Vladimir Putin signed the Presidential decree "On the Export Control Commission of the Russian Federation", establishing the Export Control Commission. The Commission was formed under Article 9 of the Russian law on Export Control, which stipulates the creation of such a commission to implement Russia's Export Control policies and to coordinate the efforts of federal executive institutions involved in Export Control (4). The Commission's main tasks include examination of international cooperation in the area of export control; overview of analytical studies of foreign export control systems, in part to prevent discriminatory restrictions on Russian trade in high-tech products; and preparation of proposals for the president and government. The edict also gives the commission the power to grant permission to enterprises for the temporary export of dual-use items without transferring ownership rights for these items (5, 6).

The Russian Minister of Defense during the meeting of the Export Control Commission held on 29 June 2005 announced that the State has the obligation to tightly control everything related to dual-use technology (7).

In addition, the Custom State Committee was replaced by a Federal Custom Service, which is subordinate to the Ministry of Economic Development and Trade.

We also have to mention that the Russian Space Agency, named Federal Space Agency (now FSA or Roscosmos) has changed its subordination and now has new responsibilities. Since the presidential decree of 9 March 2004, the agency is under the control of the Ministry of Industry and Energy and reports directly to the Government.

Article 8 of the Federal Law on Space Activity (8) and also the decree of 9 March 2004 gives the agency the right to hold direct negotiations and sign contracts with foreign space agencies, deliver licenses for space activities, finance the Space Federal Program (SFP), organize and coordinate space commercial projects.

Article 9.1 of the Federal Law on Space Activities provides the legal basis of the license's procedure in order to conduct space activities. The license procedure concerns tests, manufacture, storage, preparation for launching, launching of space objects.

In conclusion, we have to mention that in 2002 the Russian President Mr. Putin, signed the federal law amending punishment for smuggling and illegal exports. Today, the Russian

Administrative Code includes clauses that call for penalties for export control violations (9). The five relevant clauses are Article 14.20 (Violation of Export Control Legislation); Article 19.5 (Failure to Fulfill Orders of Oversight Agencies); Article 19.6 (Failure to Avoid Causes and Conditions Contributing to Administrative Violation); Article 19.7 (Failure to Provide Data or Information); and Article 23.9 (Export Control Bodies). However, it can be noted that the provisions are too general and vague to provide adequate guidance to the agencies for implementation of the code.

4. European Export Control regime

The Council Regulation (EC) N°1334/2000 of 22 June 2000 sets up a Community regime to control the export of dual-use items and technology (10). This regulation sets up some relevant principles on export control:

- dual-use items (including software and technology) should be subject to effective control when they are exported from the Community
- the responsibility for deciding on applications for export authorizations lies with national authorities
- particular attention needs to be paid to issues of re export and end-use.

The Council Regulation poses two important principles:

- prohibition of exports outside of the EU except when authorized
- freedom of circulation of the items within the EU, except certain sensitive specific goods appearing in article 20 of the regulation and requiring an authorization for circulation in the EU
- authorization shall be required for the export of dual-use items if the purchasing country is subject to an arms embargo decided by a common position
- authorization shall be required for the export of dual-use items when authorities are informed by the exporter that the goods in question can be used for the development and illegal export of military items
- the exporter must inform its authorities when it knows that its exported items may be intended for military use
- the State retains the right to adopt a national legislation forcing the national exporters to inform authorities if they have any suspicion that the goods in question may be used for military purposes.

4.1 Field of application and mechanism of authorization

The lists of items appear in the appendix of the Council Regulation (EC) N°1334/2000. The Export Control regime applies to all listed products and the states can adopt a “catch-all” clause. This is true for all export not subject to the general authorization of export control regime under the terms of article 6 of Council Regulation. This allows a certain flexibility for the Member States in their interpretation of safety but it generates major complications in practice.

Article 4 of the Council Regulation envisages five cases in which dual use items will have to be authorized, even if the items concerned do not belong to the list:

- authorization shall be required for the export of dual-use items if the exporter has been informed by the competent authorities that the items in question may be used for the development of weapons that fall under the non-proliferation agreement or the ballistic missiles agreement

Article 8 determines the conditions for granting the export authorizations by considering relevant elements, listed in a non-exhaustive system found in the same article.

Certain elements common to all the Member States are generally a result of the international regime of non-proliferation. Others are specific to each state due to the different policies of each state.

Article 5 makes it possible for the Member States to have national regulations that are more restrictive than those resulting from the Council Regulation.

Article 7 of the Council Regulation envisages a system of coordination and cooperation between the Member States:

- when a Member State grants an authorization, it must consult the states which can be opposed to such a delivery
- if an export might prejudice its essential security interests, a Member State may request another member state not to grant an export authorization.

Article 9 envisages an obligation for the Member States, which would have cancelled, suspended or modified an authorization to inform the other Member States.

5. Conclusion

Having looked at the export control regime in Russia and Europe, we can now ask the question if export control has any impact on the cooperation between these two powers.

As an example of a very successful cooperation, we can mention the project "Soyuz-launcher at the Guiana Space Center". The launch of the Soyuz from the Spaceport in French Guiana will consolidate Europe's access to space for medium-size missions.

The legal basis for this cooperation is the agreement between the Government of the French Republic and the Government of the Russian Federation on cooperation on the exploration and use of space for peaceful purposes, which was signed on November 26, 1996. The purpose of this 1996 Agreement between France and Russia was to develop cooperation in the industrial and commercial field. However, due to the difficulties with the inaccuracy of the customs and tax system applicable to the exchanges, the

Protocol to the agreement between the Government of the French Republic and the Government of the Russian Federation relating to cooperation in the field of the exploration and the use of space for peaceful purposes was signed on January 2, 1999 (11).

These two documents establish the legal framework for the cooperation. It is important to mention the agreement between France and Russia, because the Soyuz launcher will be launched from Europe's spaceport in French Guiana and France is playing a predominant role in this project.

The idea of such a project was born a few years ago. Finally in 2003 the Government of the French Republic and the Government of the Russian Federation signed the agreement on the establishment of the Soyuz-ST launcher at the Guiana Space Center. This agreement provides very general provisions concerning the export control regime applicable to this project. In conclusion, we can note that there is an existing political will from both partners to cooperate and in this case the export control regime is not a "real" barrier for cooperation.

1. The Russian Federation Federal Law on Export Control of 18 July 1999 on <http://www.nti.org/db/nisprofs/russia/fulltext/excon/exconlaw.htm> (in English last accessed on 10/10/2005)

2. Article 1 of RF Federal Law on Export Control defines export control as the group of measures securing the procedures established by this Federal Law and by other federal laws and regulatory legal instruments of the Russian

Federation for foreign economic activity with goods, information, work, services, and the results of intellectual activity that could be used in the development of weapons of mass destruction, their delivery systems, and other types of weapons and military equipment

The protocol establishes the principle of exemption from tax and customs (Article 1)

3. Article 1 of RF Federal Law on Export Control defines controlled goods and technologies as crude resources, materials, equipment, scientific and technical information, work, services, and the results of intellectual activity that could, by virtue of their distinctive features and properties contribute substantially to the development of weapons of mass destruction, their delivery systems, and other types of weapons and military equipment

4. Presidential Edict, *O komissii po eksportnomu kontrolyu Rossiiskoi Federatsii*, 29 January 2001, Legislation in Russia Database Web Site, <http://law.optima.ru>.

5. ITAR-TASS, 30 January 2001; in "Putin orders creation of commission on export control"

6. "RF President V.V. Putin Signed the Edict 'On the RF Export Control Commission,'" RF Presidential Press Service, 30 January 2001; in "Vladimir Putin signed the Edict 'On the RF Export Control Commission,'" *Yadernyy kontrol*, No. 2, March - April 2001

7. <http://www.mil.ru/print/articles/article10372.shtml> (in Russian, last accessed on 11/10/2005)

8. The Russian Federation Federal Law on Space Activity of 20 August 1993, revised on November 29, 1996

9. Federal Law No. 50-FZ, "O vnesenii izmeneniy v stati 188 i 189 Ugolovnogo kodeksa Rossiyskoy Federatsii," 7 May 2002, *Rossiyskaya gazeta* online edition, http://www.rg.ru/oficial/doc/federal_zak/50.shtml (in Russian, last accessed on 10/10/2005)

10. OJ L 159, 30.6.2000, p.1

11. Protocol to the cooperation agreement between the Government of the French Republic and the Government of the Russian Federation on cooperation on the exploration and use of space for peaceful purposes on January 12, 1999