

# Legislation as a factor of increasing transparency of export control system: Ukraine's experience

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The adoption of the Law of Ukraine "On State Control of International Transfers of Military and Dual-Use Goods" has become the principal event in the area of export control in Ukraine in 2003.

**The Law has considerably increased the transparency of Ukraine's export control system:** the law has made the system more comprehensible to business and clearly outlined the state's relevant functions.

The Law states:

- principles of the state export control policy;
- order according to which entities obtain licenses for international transfers of goods subject to export control;
- mechanism of counteracting violations in the area of export control;

It is important—from the standpoint of either transparency or efficiency—that the Law defines the duly authorized state export control body. Such body is the ***State Export Control Service of Ukraine***. It is granted an independent status and broad functions and powers in the area of export control.

The Law has provisions regulating the issues of brokerage with regard to trade in military and dual-use goods.

According to the Law intermediary (brokerage) activity is defined as "any actions by a business entity of Ukraine that assist implementation of international transfers of goods designated for military purpose, including actions related to financing, transporting or expediting shipments, irrespective of the origin of such goods and territory on which such activity is conducted."

The Law states that licenses for transfers of military and dual-use goods may be granted only to those entities which are registered with the State Service of Export Control.

The Law provides legal basis for the system of intrafirm export control, which implies measures taken by business entities for providing compliance with export control legislation.

The Law has increased responsibility of business entities for violations of export control regulations.

Companies are not allowed to conclude contracts for international transfers of goods if they have information that such goods may be used by a foreign state or foreign business for creation of weapons of mass destruction or means of their delivery.

A company must refuse to fulfil a contract for international transfer of goods if there comes information that the goods will be used (a) for other purposes than those declared in the contract or related documents or (b) by another end-user than the one stated in the contract or related documents.

The Law has provisions that promote effective counteraction of violations in the area of export control.

To prevent violations of export control legislation, the State Service of Export Control as well as other state bodies, within the limits of their authority, are enabled to perform investigations, including control of delivery of goods to end-users and check-ups of the actual use of goods with regard to the declared purposes.

From the standpoint of export control efficiency, it is critically important to have the appropriate inter-agency information exchange in force. The Law puts the State Service of Export Control in the center of the scheme of inter-agency exchange of information on issues related to export control.

In case of detecting violations of export control regulations the state bodies are to inform the State Service of Export Control whereof.

If there is sufficient information about any person's or company's intention to commit or about an actual fact of committing a crime relating to illegal actions with goods subject to export control, the State Service of Export Control will inform whereof the relevant enforcement authorities.

According to the Law violations of export control legislation include, *inter alia*, as follows:

- exercising international transfers of goods subject to export control without obtaining appropriate licenses;

- performing international transfers of controlled goods by licenses obtained as result of submitting counterfeit documents or documents containing false information;

- concluding contracts for international transfers of any goods whatsoever if there comes information that such goods may be used by a foreign country or foreign business for creation of weapons of mass destruction or means of their delivery;

- performing international transfers of controlled goods irrespective of having obtained information that the goods shipped will be used for purposes other than those declared in the contract or related documents;

- deliberate concealment of information that could influence the decision as to granting a license;

The State Service of Export Control is empowered to impose fines on entities for violations of export control legislation.

The amount of the fines is established in the way which makes it unprofitable to the entities to break the Law.

Apart from fines, the State Service of Export Control may cancel or revoke a license or cancel registration of a business that has violated the Law—depending on the type and scale of the committed violation. This method is even more effective than fines.

After the adoption of the Law, relevant changes were made in the Criminal Code and Code on Administrative Violations of Ukraine. These changes provide a higher level of responsibility for violating export control regulations.