

BRIEF OVERVIEW OF UKRAINE'S EXPORT CONTROL SYSTEM

Definition of export control in Ukrainian legislation:

State export control is a set of measures performed by the specially authorized state export control body of executive branch and other state bodies aimed at exercising state control over international transfers of goods and their use by legal entities or individuals with the purpose of protection of national security interests and compliance of Ukraine with its international commitments.

State policy in the area of export controls is based on the following main principles:

- priority of national interests of the state — political, economic and military, whose protection is necessary for providing national security;
- full compliance with Ukraine's international commitments of non-proliferation of weapons of mass destruction and means of their delivery, state control over international transfers of military and dual-use goods, and prevention of the acquisition of the mentioned goods by terrorist groups as well as by individual terrorists or otherwise with illegal purposes;
- lawfulness;
- application of export controls only to the extent needed to ensure achievement of its goals;
- harmonization of procedures and rules of state export control with international legal norms and practice;
- interaction with international organizations and foreign countries in the area of export control for the purpose of strengthening international security and stability, in particular, by means of countering proliferation of weapons of mass destruction and means of their delivery.

1. Legal basis

The legal basis for state export control is formed by the Constitution of Ukraine, Law of Ukraine "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods" and other Laws of Ukraine, acts by the President of Ukraine and the Cabinet of Ministers of Ukraine, other regulatory acts, as well as, international treaties and agreements to which Ukraine is a party.

Ukraine's legal basis for state export control includes:

- Law of Ukraine "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods", February 20, 2003;
- Law of Ukraine "On foreign economic activity", 1991;
- Decree of the President of Ukraine "On Measures to Enhance the Effectiveness of Military and Technical Cooperation Between Ukraine and Foreign States", No. 868, July 8, 2000;
- Decree of the President of Ukraine "On the State Export Control Service of Ukraine", No. 1265, December 27, 2001
- Decree of the President of Ukraine "On the Competence of the State Export Control Service of Ukraine", No. 342, April 17, 2002;

- Decree of the Cabinet of Ministers of Ukraine No. 1807 of November 20, 2003 "On the Approval of the Regulations of the Procedures for the State Monitoring of International Transfers of Military Goods";
- Decree of the Cabinet of Ministers of Ukraine No. 86 of January 28, 2004 "On the Approval of the Regulations of the Procedures for the State Monitoring of International Transfers of Dual-Use Goods ";
- Decree of the Cabinet of Ministers of Ukraine No. 767 of July 15, 1997 "On the Approval of the Regulations of the Procedures for the Analysis in the Sphere of Export Control";
- Decree of the Cabinet of Ministers of Ukraine No. 125 of February 8, 1998 "On the Approval of the Regulations of the Procedures for State Monitoring of Negotiations Related to the Conclusion of Foreign Economic Agreements (contracts) on International Transfers of Military and Dual-Use Goods";
- Decree of the Cabinet of Ministers of Ukraine No. 838 of June 8, 1998 "On the Approval of the Regulations of the Procedures for Granting to Entities Engaged in Foreign Economic Activities Authorization for Export and Import of Military Goods and Goods Containing Information that Constitutes a State Secret";
- Decree of the Cabinet of Ministers of Ukraine No. 920 of May 27, 1999 "On the Procedures for State Monitoring of Obligations to Use Goods Subject to Export Control for Declared Purposes".

Ukraine is a party to:

- Treaty on the Non-Proliferation of Nuclear Weapons (ratified by Ukraine in 1994);
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (ratified by Ukraine in 1998);
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (ratified by Ukraine in 1994);
- Comprehensive Nuclear Test-Ban Treaty (ratified by Ukraine in 2000).

Ukraine is a participant of the following multilateral export control regimes:

- Wassenaar Arrangement;
- Nuclear Suppliers Group;
- Zangger Committee;
- Missile Technology Control Regime;
- Australia Group.

Ukraine has completed joining all the international export control regimes.

2. Structure of the system

The *Verkhovna Rada of Ukraine* (the parliament) establishes legislative basis of state policy in the area of export control.

The *President of Ukraine* pursuant to the Constitution of Ukraine provides for general guidance of the export control policy.

The *Cabinet of Ministers of Ukraine* provides for the implementation of the export control policy.

The *National Security and Defense Council of Ukraine* coordinates and controls the activities of state bodies in the area of export controls.

The *State Service of Export Control of Ukraine* directly implements export controls measures in contact with other state bodies legislatively empowered to act in the sphere of export control.

3. Basic procedures

Procedures for application of the state export control provide for:

- classification of goods by internal export control divisions;
- preliminary examination of goods and registration of entities engaged in foreign economic activities intending to carry out international transfers of military and dual-use goods;
- granting authorization for carrying out international transfers of goods specified by legislation;
- examination and identification whether goods subject to international transfers based on their title, code and description, are included in appropriate lists of goods that are subject to state export control;
- granting of permissions and issue of conclusions concerning carrying out international transfers of goods or conducting negotiations on carrying out such transfers;
- customs control and customs clearance of goods in accordance with the customs rules of Ukraine;
- obtaining (issuance of), where necessary, appropriate guarantees concerning end user, consignee and place of the goods' destination;
- monitoring of the end use of goods by customers and, where applicable, checking on the sites of the presence of such goods or whether such goods are used in declared purposes;
- submitting by agents of economic activity written reports concerning international transfers of goods and the use of these goods in declared purposes;
- responsibility for violation of the established procedure of international transfers of goods subject to control.

Depending on the complexity of the issue export control decisions are made by:

- State Export Control Service;
- Inter-Agency Council under the aegis of State Export Control Service, if inter-agency cooperation is necessary;
- Committee on the Policy of Military-Technical Cooperation and Export Control under the President of Ukraine, if high-level decision is necessary.

4. Lists of goods subject to export control

State export control over international transfers of certain categories of goods is exercised according to appropriate regulations approved by decrees of the Cabinet of Ministers of Ukraine:

- Decree of the Cabinet of Ministers of Ukraine No. 86 of January 28, 2004 "On the Approval of the Regulations of the Procedures for the State Monitoring of International Transfers of Dual-Use Goods ";
- Decree of the Cabinet of Ministers of Ukraine No. 1807 of November 20, 2003 "On the Approval of the Regulations of the Procedures for the State Monitoring of International Transfers of Military Goods".

Lists of goods international transfers of which are subject to control are included to the appendixes to the above mentioned regulations. Those lists consist of but not limited to all items included into the control list of the following export control regimes:

- Wassenaar Arrangement;
- Nuclear Suppliers Group;
- Missiles Technology Control Regime;
- Australia Group.

5. Types of licenses

Appropriate decisions by the State Service of Export Control are formalized through issuing the following documents (licenses):

- permits (infinite, general, one-time);
- conclusions (infinite, general, one-time);
- documents of guarantee.

Permit is a legal document that provides the entity with a right to export or import certain goods. A permit may be valid for a one-time, general or infinite use.

Conclusion is a legal document that provides the entity with a right for temporary export/import or transit of goods, or for conducting negotiations for signing contracts on international transfers of military goods, or for export of dual-use goods and goods subject to catch-all control to countries under partial embargoes. Conclusions may be valid for one case (one-time conclusions) or may be general or infinite.

Infinite permit or conclusion is a permit or conclusion issued to an entity involved in international transfers for multiple conducting of relevant negotiations or transfers of goods. An infinite permit or conclusion specifies description of the goods, special terms of delivery and the name of the country of destination or of the origin of the goods.

General permit or conclusion is a permit or conclusion issued to an entity involved in international transfers of goods for multiple conducting of relevant negotiations or implementing international transfers of goods to the identified end-user. A general permit or conclusion specifies the description of the goods, special terms of delivery, the name of the foreign contractor, the country of destination or of the origin of the goods and their end-user.

One-time permit or conclusion is a permit or conclusion issued to an entity involved in international transfers of goods for conducting of necessary negotiations or implementing a particular international transfer of goods to the identified end-user. A one-time permit or conclusion specifies the description of the goods, their quantity and value, special terms of delivery, the name of the foreign contractor, the country of destination or of origin of the goods and their end-user.

Document of guarantee is a document containing written commitment (confirmation) of the foreign state, the relevant authorized body of the foreign state or the end-user as to the use of the goods for declared purposes. The document of guarantee can be issued in the form of an international import certificate, certificate of delivery, end-user certificate or other document containing such commitment (confirmation).

Entities which obtained permits, conclusions or international import certificates issued by the State Service of Export Control shall submit to the State Service of Export Control written reports of actually implemented transfers of the goods mentioned in those documents and on the use of these goods for declared purposes.

6. Violations prevention and responsibility

To prevent violations of export control legislation the State Service of Export Control and other authorized state bodies within the limits of their powers are entitled to perform investigations of such violations, including checks of the delivery of goods to end-users and their actual use for declared purposes.

If a state body detects a violation of export control legislation, it shall inform the State Service of Export Control. If the detected violations are classified as a crime, the competent law enforcement authorities shall be informed whereof.

In order to ensure adherence to export control legislation on all stages of international transfers of goods entities involved in such transfers should establish internal systems of export control. The State Service of Export Control provides recommendations and information support for entities establishing their own internal export control systems.

Establishment of an internal export control system is obligatory for entities seeking authorization from the Cabinet of Ministers of Ukraine to export or import military goods or goods containing information pertaining to state secrets, as well as for those seeking to obtain general or infinite permits or conclusions.

For violating export control rules and procedures an entity may be put to the following penalties:

- 1) cancellation or temporary revocation of the permit, conclusion or international import certificate issued for the entity by the State Service of Export Control;
- 2) cancellation of registration of the entity in the State Service of Export Control;
- 3) cancellation of the Cabinet of Ministers' authorization for the entity to export or import military goods or goods containing information containing state secrets.

7. Responsibility of Entities for Violating Export Control Legislation

Entities or individuals violating export control legal requirements carry administrative, criminal and civil responsibility pursuant to the Ukrainian legislation.

THE LAW OF UKRAINE „ON STATE CONTROL OF INTERNATIONAL TRANSFERS OF GOODS DESIGNATED FOR MILITARY PURPOSES AND DUAL-USE GOODS”

Article 24. Violation of Legislation in the Sphere of State Export Control.

Article 25. Responsibility of Legal Entities for Violations of Legislation in the Export Control Sphere.

- Duly authorized executive state export control body will impose following fines on legal entities, empowered to carry out international transfers of goods:

- For violations provided for by the second, third and fourth paragraphs of the Article 24 of this Law - in the amount of up to 150% of price of goods that were subject of relevant international transfer;
- For violations provided for by the fifth, sixth and seventh paragraphs of the Article 24 of this Law - in the amount of up to 100% of price of goods that were subject of relevant international transfer;
- For violations provided for by the eighth and twelfth paragraphs of the Article 24 of this Law - in the amount of up to 1000 non-taxable minimum incomes of citizens;
- For violations provided for by the ninth paragraph of Article 24 of this Law - in the amount of up to 500 non-taxable minimum incomes of citizens;
- For violations provided for by tenth and eleventh paragraphs of the Article 24 of this Law - in the amount of up to 100 non-taxable minimum incomes of citizens.

Article 26. Imposition of Fines for Violation of Legislation in the State Export Control Sphere.

Article 27. Responsibility of Persons, Involved in International Transfers of Goods for Violations of Legislation in State Export Control Sphere.

Article 28. Responsibility of Executive Power Officials for Violation of Legislation in State Export Control Sphere.

THE ADMINISTRATIVE CODE OF UKRAINE

Article 164. Violation of the procedure of business and economic activity.

Article 188¹⁷. Non-fulfillment of legitimate requirements of officials of specially authorized executive power body on state export control.

Non-fulfillment of legitimate requirements of officials of specially authorized executive power body on state export control concerning violations of state export control legislation or hindering to fulfill their duties - subject of fine from 15 up to 20 untaxed minimal incomes for individuals and from 20 up to 50 untaxed minimal incomes for officials.

Article 212⁴. State export control legislation violations.

Following violations of state export control legislation:

- 1) conducting talks related to concluding contracts concerning export of military and dual-use goods on deliveries of which to appropriate foreign country partial embargo is imposed, without appropriate positive permission of specially authorized executive power body on state export control;
- 2) non-submitting or untimely submitting reports and appropriate documents concerning results of negotiations mentioned in the paragraph 1 of this article and concerning carried out in fact international transfers of military and dual-use goods on the basis of obtained permits or conclusions and for use in declared purposes to authorized executive power body on state export control;
- 3) intentional elimination before date required for their keeping in files of the documents related to concluding or carrying out contracts dealing with international transfers of military and dual-use goods on the basis of which permits, conclusions or international import certificates were obtained - subject of fine from 15 up to 20 untaxed minimal incomes for individuals and for officials - from 20 up to 50 untaxed minimal incomes.

THE CRIMINAL CODE OF UKRAINE

Article 333. Violation of the procedure of international transfers of goods subject to state export control

- 1) Violation of the established procedure of international transfers of goods subject to state export control –
subject of fine from 100 up to 200 untaxed minimal incomes or imprisonment for up to 3 years, or imprisonment for the same period together with privation of the right to occupy certain posts or to carry out certain activity up to 3 years.
- 2) The same action committed for the second time or by organized group -
subject of imprisonment for up to 5 years or imprisonment for the same period together with privation of the right to occupy certain posts or to carry out certain activity up to 3 years.

Article 440. Development, production, acquisition, stockpiling and transportation of weapons of mass destruction

subject of imprisonment for from 3 up to 10 years.

8. Contact information

State Service of Export Control of Ukraine

19/21 Frunze St.

04080 Kyiv, UKRAINE

phone (38-044) 417-1431

fax (38-044) 462-4970

e-mail: general@dsecu.gov.ua

[www. dsecu.gov.ua](http://www.dsecu.gov.ua)