

# ON SPECIAL FEATURES OF IMPLEMENTATION OF STATE EXPORT CONTROL OVER INTERNATIONAL TRANSFER OF GOODS

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## ABSTRACT

*The article investigates the special features of state control over international transfer of special-purpose and dual-use goods. It was established what international organizations was created in the international community to determine the principles of control over international transfer of special-purpose and dual-use goods, as well as the question of Ukraine's joining the circle of member-states of such organizations. The structure of the system of export control bodies in Ukraine was defined, as well as the main powers of the State Service of Export Control of Ukraine in the sphere of control over international transfer of goods. The essence and the concept of goods over which international transfer state export control is carried out in accordance with the Ukrainian legislation were revealed, as well as special aspects of the procedure of state control over their international transfer.*

**Keywords:** Export Control, State Service of Export Control of Ukraine, Dual-Use goods, Procedures of State Export Control.

## INTRODUCTION

In the formation of the level of economic growth of any country, a rather important role is given to the sector of high-tech goods and services, which is developing at a fast pace today. Export control of state bodies is an integral component of the economic security of a country, which has a significant impact on the competitiveness of the national economy. A considerable part of the structure of domestic exports is allocated to special-purpose and dual-use goods, the transfer of which between different countries is subject to control of both national and international export control systems.

Exports of goods help to increase the economic well-being of the country, which is supported by the production of certain economic goods and income from foreign buyers. However, in practice, there are cases where it is necessary to restrict exports in order to protect the national interests of the state (Nebotov, 2017). Multilateral regulation of world trade between states requires appropriate effective tools. At the same time, poor performance of the export control system may result in risks and threats to the economic security of the country (Reznik &

Shevchenko, 2015). Given this, it is important to conduct a comprehensive study of the nature and special features of state export control over the international transfer of goods.

## LITERATURE REVIEW

The study of special features of state control over international transfer of goods in Ukraine, first of all, calls for some aspects of the settlement of this issue at the international level to be elucidated. In order to formulate principles for the control of international transfer of goods, as well as for the non-proliferation of goods that can lead to the creation of weapons of mass destruction (including nuclear, chemical, biological, etc.), and missile weapons, international organizations have been established in the international community. These include the international control regimes of the Wassenaar Arrangement (WA), the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), and the Australia Group (AG) (Vlasenko, 2018).

In the sphere of international cooperation, Ukraine is a state-party to the Wassenaar Arrangement on export control over conventional arms and dual-use goods and technologies established in 1996. The official web-site of the Wassenaar Arrangement (WA) contains information according to which it was created to promote regional and international security and stability, contributing to transparency and greater accountability in the transfer of conventional arms and dual-use goods and technologies (Drobyazko et al., 2019). The primary purpose of such an organization is to prevent terrorists from purchasing such goods. Through their national policy, the task of states-parties in the context of the arrangement is to ensure that the transfer of conventional arms and dual-use goods and technologies does not facilitate the development, expansion and support of opportunities capable of undermining the objectives of the arrangement. The official website of the Wassenaar Arrangement contains checklists of dual-use goods and technologies and ammunition, which are modified and supplemented every year.

The creation of NSG took place in 1978 and is considered to be an informal association of nuclear material suppliers (the UK, Canada, USSR, USA, Federal Republic of Germany, France, Japan) that have agreed on common principles for the exports of "nuclear sensitive" items and seek to prevent countries from acquiring nuclear arms. Such principles are published in IAEA document INFCIRC/254. The NSG guidelines and the technical list for them cover industrial products that can be used to create nuclear arms. These guidelines and annexes were first approved in 1992, making a significant contribution to the international export control system.

In 1987, seven states including Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States became founders of MTCR. MTCR is considered an informal regime by bilateral exchange of diplomatic notes between partners. The creation of this regime was intended to limit the proliferation of ballistic missiles capable of carrying nuclear warheads and unmanned delivery systems for weapons of mass destruction. MTCR uses a mutually agreed list of dual-use materials, equipment and technologies that can be used to create missiles.

The purpose of the establishment of AG in 1985 was to introduce uniform rules for member-states to control exports of goods that could be used to create chemical or biological weapons. Ukraine was included in the list of AG member-states in 2005. The cooperation of the states-parties to the informal group concerns the support and development of national export

control systems and aims to prevent the further spread of chemical exports that may be used or diverted for use in chemical or biological weapons programs.

## METHODOLOGY

The methodological basis for the study of special features of state control over international transfer of goods are historical, systemic-structural and formal-legal. The historical method was used to study what international organizations were formed in the international community to formulate principles for the control over international transfer of special-purpose and dual-use goods, for non-proliferation of goods, which can be used for creation of weapons of mass destruction, as well as the issue of Ukraine's joining the circle of states-parties of such organizations. The systemic-structural method was used to define the structure of the system of export control bodies in Ukraine. The interpretation of the provisions of the regulations of the Ukrainian legislation on the state control over international transfer of special-purpose and dual-use goods was carried out using the formal-legal method.

## FINDINGS AND DISCUSSIONS

As a full member of the international export control regimes, Ukraine must strictly adhere to its obligations by properly controlling the international transfer of special-purpose and dual-use goods. The existing Ukrainian legislation contains a special normative legal act regulating special features of export control of state bodies over international transfer of special-purpose and dual-use goods—Law of Ukraine “*On the State Control of International Transfers of Military*” and Dual-Use Items, 2003 (hereinafter—the Law) containing provisions on activities related to the state control over international transfer of goods. The provisions of the Law are aimed at ensuring the protection of the national interests of Ukraine, its compliance with international obligations on the non-proliferation of weapons of mass destruction, their means of delivery, limitation of transfer of conventional weapons, as well as taking measures to prevent the use of these goods for terrorist and other illegal purposes (Law of Ukraine, 2003).

In Ukraine, the state control over international transfer of goods is carried out by a whole system of authorized bodies. The structure of the system of export control bodies is as follows:

1. The Verkhovna Rada of Ukraine, which defines the legal framework of the state policy in the field of the state export control (the Committee on National Security and Defense);
2. The President of Ukraine, who is in charge of the general management of the state policy in the field of the state export control;
3. The National Security and Defense Council, which coordinates and controls the activities of executive authorities in the field of the state export control;
4. The Cabinet of Ministers of Ukraine, which is intended to ensure the implementation of the state policy in the field of the state export control;
5. The Ministry of Economic Development and Trade;
6. The State Service of Export Control of Ukraine (Interagency Council and Working Council; Technical Councils on International Export Control Regimes);
7. Executive authorities, including the Ministry of Foreign Affairs, the Security Service, the Foreign Intelligence Service, the State Fiscal Service, the Ministry of Defense.

The central body of executive power, whose activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Economic Development and Trade, and

which implements the state policy in the field of the state export control is the State Service of Export Control of Ukraine (Derzheksportkontrol). The activity of this body is carried out in accordance with the requirements of the Constitution of Ukraine, the Law, as well as the special Regulation on the State Service of Export Control of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 31, 2015 No. 159 (hereinafter-the Resolution of CMU No. 159). Para. 4 of the Resolution of CMU No. 159 defines the powers of Derzheksportkontrol, such as:

1. Registration of subjects of international transfer of goods and issuance of corresponding certificates of registration;
2. Issuing permits (conclusions) for the right to carry out international transfer of goods (export/import, temporary import/export, transit) and control over the submission by the subjects of international transfer of goods of reports on actually exported and imported goods;
3. Issuing international import certificates or other documents containing state guarantees for the use of goods for the stated purposes;
4. Providing legal entities with the authority to carry out activities on the preliminary identification of goods in the field of the state export control and issuance of relevant certificates;
5. Expertise in the field of the state export control in order to resolve the issue of the possibility of granting appropriate permits, conclusions or international import certificates;
6. Conducting the verification of compliance of the documents on the basis of which there were made international transfer of goods, delivery of goods to end consumers, as well as end use of goods for the stated purposes;
7. International cooperation with the relevant authorities of foreign countries on export control issues, non-proliferation of weapons of mass destruction and their means of delivery, and restriction of transfer of conventional arms;
8. Taking measures on implementation of decisions of the UN Security Council on establishing (lifting) the embargo on export of goods, etc. (The Legislation of Ukraine, 2015).

Art. 1 of the Law contains the definition of the concept of international transfers of goods, under which the legislator means export, import, re-export of goods, their temporary export outside Ukraine or temporary import into its territory, transit of goods through the territory of Ukraine, as well as any other transfers of goods carried out outside Ukraine (Law of Ukraine, 2003).

It is important to note that the state control is carried out over international transfers of military and dual-use items. In accordance with the Law, military items individually or collectively include the following:

1. Military products;
2. Military services;
3. Military technologies.

Procedures for exercising state control over international transfers of military items are determined by the Procedure for exercising state control over international transfers of military goods approved by the Resolution of the Cabinet of Ministers of Ukraine dated November 20, 2003 No. 1807 (hereinafter-the Resolution of CMU No. 1807). In para. 5 of the Resolution of CMU No. 1807 it is established that the goods, which international transfers control is carried out in accordance with the Procedure, are included in the list of goods, the international transfers of which are subject to the state control, contained in the Resolution of CMU No. 1807 as Annex. The transfer of military goods across the customs border of Ukraine involves their

customs control and customs clearance. The procedure for customs clearance of such goods involves providing, at the request of the customs authority, the original permit or conclusion of the Derzheksportkontrol by a subject of international transfers of goods or a foreign business entity. Customs clearance of goods is subject to receipt by the State Customs Service of permits and conclusions in electronic form with the use of electronic digital signature from the Derzheksportkontrol (The Legislation of Ukraine, 2015).

The definitions of dual-use items are given separately:

1. Certain types of products, equipment, materials, software and technology not specifically designed for military use;
2. Services, which, along with its civilian usage, may be used for military or terrorist purposes or for the development, production, use of military goods, weapons of mass destruction, the means of delivery for specified weapons or nuclear explosive devices;
3. Certain types of nuclear materials, chemicals, bacteriological, biological and toxic agents, the list of which is determined by the Cabinet of Ministers of Ukraine (Law of Ukraine, 2003).

Procedures for exercising state export control over international transfers of dual-use items are determined by the Procedure for exercising state control over international transfers of dual-use items, approved by the Resolution of the Cabinet of Ministers of Ukraine dated January 28, 2004 No. 86 (hereinafter-the Resolution of CMU No. 86). The Annex to Resolution No. 86 contains a single list of dual-use items. Based on the analysis of para. 6 of the Resolution of CMU No. 86, it can be stated that the procedure for control over international transfers of dual-use items and their customs clearance is similar to that provided for military goods. This is explained by the fact that subjects of international transfers of goods or a foreign business entity are required to obtain the original permit or conclusion of Derzheksportkontrol. Customs clearance of goods is subject to receipt by the State Customs Service of permits and conclusions in electronic form from Derzheksportkontrol (The Legislation of Ukraine, 2004).

## **RECOMMENDATIONS**

As an instrument of foreign economic policy of the state, export control provides protection of national economic interests. State export control over international transfers of goods is aimed at defining the procedures of control over the activity of subjects of foreign economic activity, establishing prohibitions or restrictions on the transfer of goods, supporting the interaction of national and international export control systems, etc.. Protection of the national economic interests of the state requires the existence of effective instruments for export control over the transfers of special-purpose and dual-use items. The solution of this problem is possible through the organization and development of electronic communication of the state bodies of Ukraine with the institutions of export control of foreign states and the bodies of international export control regimes, which is an urgent need for the development of international economic relations.

## **CONCLUSION**

As a result of the conducted study, it is important to note that regulation of issues of state control over international transfers of goods is carried out both at the level of existing Ukrainian legislation and internationally. To this end, relevant international organizations have been set up

in the international community, including the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group. Regarding the state-level regulation of the issue under study in Ukraine, the special normative legal act in this area is the Law of Ukraine "On the State Control of International Transfers of Military and Dual-Use Items" of 2003. In Ukraine, the state control over international transfers of goods is carried out by a whole system of authorized bodies. The central executive body, whose activities are directed and coordinated by CMU through the Minister of Economic Development and Trade and which implements the state policy in the field of the state export control is the State Service of Export Control of Ukraine.

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