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EXPERT AT THE STATE EXPORT CONTROL SERVICE OF
UKRAINE, AT THE OSCE WORKSHOP TO IDENTIFY THE PROPER
ROLE OF THE OSCE IN FACILITATION OF UNITED NATIONS
SECURITY COUNCIL RESOLUTION 1540**

Vienna, 27 and 28 January 2011

**Working session 1: Committee view on the proper role of
regional organizations**

**Implementation of United Nations Security Council resolution 1540 (2004) in
Ukrainian legislation regarding export controls**

In considering the question of the issuing of permits for international transfers of goods subject to State control, including goods that can be used to create weapons of mass destruction and their delivery systems, particular attention is focused on the guarantees regarding the use of such goods for their declared purposes.

Goods that fall under the State export control system are high-risk goods. This is because of the possibility that they may be diverted to activities connected with the creation of weapons of mass destruction and their delivery systems or because of the possibility that they may be used for terrorist purposes.

It is for this reason that, unlike the export of any other goods, these goods must be exported in accordance with an established procedure for their international transfer, and their end use must be exclusively for the purposes that were declared by the end user when drawing up the foreign trade contract and that were defined in the relevant document on guarantees (end-user certificate, import certificate or other such document).

The legislation provides that before the start of the international transfer of the goods the entity in question is required to submit to the State Export Control Service complete and reliable information on its knowledge of the end use of the goods that are scheduled for international transfer, along with the originals of the guarantee documents confirming the use of the goods exclusively for the purposes declared by the entity or some other end user.

In order to confirm the end use of the goods, the entity must take steps to verify the delivery and end use of the goods in the event that they are exported and must submit information about this to the State Export Control Service, in addition to assisting the authorized State agencies in carrying out these checks.

For the purpose of confirming the delivery and end use of the goods, the State Export Control Service and the other State agencies so authorized have the right to verify the delivery or end use of the goods at any stage in their international transfer and following the actual delivery of the goods to the end user.

Monitoring by the State of the performance by end users in Ukraine of their obligations to use imported goods for declared purposes is carried out on the basis of the results of an analysis of the reports of the entities (end users) on the actual use of the goods, and also by conducting planned random checks of the actual use of the goods in line with their purpose by the end users. These checks may be carried out by authorized officials of the State Export Control Service or by interdepartmental control commissions set up by the Service for that purpose.

The attention of Ukrainian importers should be drawn to the fact that, in accordance with the legislation, checks by representatives of foreign exporters and/or the exporter's competent State agencies to determine the actual use by end users in Ukraine of goods that were imported with the provision of State guarantees regarding their use for declared purposes may be carried out only in the cases provided for in the foreign trade contracts that were cleared in the approved manner by the State Export Control Service or when this is required by international treaties to which the export country and Ukraine are parties.

In cases when, on the basis of specific circumstances, a condition for the export of the goods from Ukraine is the provision by the end user of the relevant guarantees regarding the possibility of carrying out such verification, the entity must see to it that these guarantees are included in the foreign trade contract for the export of the goods from Ukraine or are included in some other document that is directly connected with the contract. In line with these considerations, the legislation provides that verifications by Ukrainian State agencies of the use by foreign end users of goods imported from Ukraine with the submission of written State guarantees by duly authorized State agencies of the foreign country regarding their use for declared purposes may be carried out when this is provided for in the foreign trade contract under which the goods have been imported from Ukraine or when this is required by international treaties to which the country in question and Ukraine are parties.

The State monitors the performance by end users in Ukraine of their obligations under the guarantees that imported goods will be used exclusively for declared purposes in the following way:

- By analysing the reports of the entities (end users) regarding the actual use of the goods;
- By carrying out planned random checks of the actual use of the goods according to their purpose by the end users.

This monitoring function is carried out by authorized officials of the State Export Control Service or by the appropriate control commissions.

In order to perform this control function, the State Export Control Service, in concert with other central executive branch bodies and with the Ukrainian Security Service, determines the time-frame for the verifications and approves the verification plan. What is more, where necessary, the State Export Control Service sets up a control commission, which

may include representatives of the Ukrainian Security Service, the State Customs Service and other central executive branch agencies.

The members of the control commission are authorized by the State Export Control Service to conduct the proper checks.

Information in written form regarding the authorized officials of the State Export Control Service or the composition of the control commission, along with the verification schedules, is submitted by the State Export Control Service to the head of the enterprise, institution or organization that is the user of the goods that are being checked.

The check is carried out at the place where the imported goods are installed (or are being used).

Under the law, the head of the end-user enterprise, institution or organization is obliged to make available any necessary documentation to the authorized officials of the State Export Control Service or the relevant control commission, and must assist them in their work. The end-user enterprise, institution or organization is to be advised in advance by the State Export Control Service, at the time when the international import certificate is drawn up, of the possibility of an end-use check of imported goods.

Verifications involving representatives of foreign exporters and/or competent State agencies of the export country to check the actual use by the end users in Ukraine of goods imported with the submission of guarantees regarding their use exclusively for declared purposes may be carried out only in the cases provided for in the foreign trade contracts cleared in the approved manner by the State Export Control Service or when this is required under international treaties to which the foreign export country and Ukraine are parties.

Verifications in these cases must be carried out in accordance with Ukrainian laws on State secrets.

Notifications of the intention to conduct verifications on Ukrainian territory must be submitted by the foreign partner in the established manner through diplomatic channels.

Once notification has been received from the foreign State agencies, the Ministry of Foreign Affairs submits it to the State Export Control Service or some other central executive branch agency dealing with the importing enterprise, institution or organization.

The verification procedure is similar to the one mentioned for checks by the State Export Control Service and is carried out with the participation of representatives of the foreign exporters and/or of the competent State agencies of the export country.

Verification on the territory of foreign importers by Ukrainian State agencies of the use by foreign end users of goods that have been exported from Ukraine and imported by foreign economic agents with the provision of State guarantees regarding their use for declared purposes may be carried out only if the foreign trade contracts under which the goods were imported from Ukraine provide for such checks, or if this is required under international treaties to which the foreign import country and Ukraine are parties.

The justification for these checks lies in the relevant written guarantees provided by the duly authorized State agencies of the importing country submitted in connection with the import of the goods in question from Ukraine.

These verifications are carried out at the place where the goods imported from Ukraine by the foreign economic entities are installed (or are being used). These checks are performed by authorized officials of the State Export Control Service, the Ukrainian embassy in the country in question, or by a commission that may include representatives of the enterprise or organization that exported the goods in question, the Ministry of Foreign Affairs, the Ukrainian embassy in the country in question, the Ukrainian Security Service, the State Customs Service and the State Export Control Service.

Notifications regarding the intention to conduct verifications are submitted to the relevant State agencies of the import country by the State Export Control Service via the Ministry of Foreign Affairs.

Questions regarding the conduct of verifications (agreement on scheduling of the verification with the foreign importer, visa formalities, etc.) are dealt with through diplomatic channels.

On the basis of the results of the verification of the use by foreign end users of goods imported from Ukraine by foreign economic entities with the provision of State guarantees regarding their use for declared purposes, officials of the State Export Control Service, the Ukrainian embassy in the country in question or the commission prepares a report, which is then forwarded to the State Export Control Service for consideration.

If it is established that the foreign importers or end users have violated any commitments, the Ministry of Foreign Affairs, as advised by the State Export Control Service, notifies via diplomatic channels the competent State agencies of the foreign importing country of these violations.

A foreign importer and/or end user found to have violated commitments is included by the State Export Control Service in a list of foreign economic entities with whom business relations with respect to goods subject to State export controls are prohibited or restricted.

Under the law, a Ukrainian exporter must take steps to verify the delivery and end use of the exported goods, with the State Export Control Service informed of the results.

This entity must assist the authorized State agencies of Ukraine in carrying out the necessary verifications and, if required, involve these agencies in the verification of the delivery of the goods to the end user and/or the use by that user of the exported goods for the declared purposes.

Should any information be received regarding violations of the conditions for the delivery of the goods to the end user or regarding the use of these goods for purposes other than those declared or by other users, the exporter is required to report this immediately to the State Export Control Service and the Ukrainian Security Service.

The exporter monitors the delivery of goods to the end user through the receipt from the foreign economic entity, and the submission to the State Export Control Service, of a

delivery-confirmation certificate or another document completed and approved by an authorized agency in the destination country, confirming the delivery of the goods to the territory of the destination country and their receipt by the end user.

In some cases, depending of the category of the goods in question, the destination country, the end user and other factors, the State Export Control Service may decide that the delivery of the goods to the end user will be monitored by having a representative (or representatives) of the exporter accompany the goods throughout their transport.

The State Export Control Service notifies the entity of the decision as regards the need to have the delivery of the goods monitored by having them accompanied during their transport when the decision is taken regarding the submission of an opinion as to possibility of conducting negotiations having to do with the conclusion of foreign trade contracts on the export of goods or regarding the provision of a permit for their export.

Persons authorized by the exporter to accompany goods must be full-time employees of the exporter.

If necessary, at the written request of the exporter to have the goods accompanied and their delivery to the end user monitored, representatives of the Ukrainian Security Service, the State Export Control Service, the State Customs Service and other central executive branch agencies may be involved.

Representatives of Ukrainian diplomatic institutions in the countries receiving the goods may be involved (with the consent of the heads of these institutions) in monitoring the delivery of the goods to the end user and/or in verifying their use for the declared purposes.

In order to ensure the participation of representatives of diplomatic institutions in monitoring the delivery of goods to the end user and/or in verifying their use for the declared purposes, the exporter must contact the Ministry of Foreign Affairs in good time via the State Export Control Service, requesting the involvement of appropriate representatives in the relevant monitoring or verification measures. Together with this application, the exporter must also provide the necessary information on the procedure for the export of the goods, their means of transport, the shipping company, the place to which the goods are to be delivered, and their end user. Upon receipt of this application, the State Export Control Service forwards it to the Ministry of Foreign Affairs for a decision to be taken on this matter.

Following the delivery of the goods to the end user, the exporter submits to the State Export Control Service a document, drawn up or approved by an authorized State agency in the destination country, confirming delivery of the goods, with a reference to the relevant foreign trade contract under which the goods were exported from Ukraine.

The document confirming delivery of the goods must contain the following information:

- Place to which the goods were delivered;
- Name of the end user and confirmation that he has received the goods in accordance with the end-user certificate issued earlier, and the details of that certificate;

- Designation and quantity of the goods received;
- Surname, first name and position of the person who issued the document;
- Note by the authorized State agency, indicating its title, and also the surname, first name and position of the person who approved the document;
- Date on which the document was drawn up and its number.

In the event that delivery of the goods to the end user is monitored by having the transport accompanied, in addition to the document confirming the delivery of the goods the exporter is to submit to the State Export Control Service a report on this monitoring, indicating in it:

- Initials, surnames and positions of the persons who accompanied the goods and monitored their delivery;
- Designation and quantity of the goods and the fact that the goods are of the same designation as indicated in the contract and end-user certificate;
- Means of delivery of the freight, type and registration number of the means of transport used, its owner (country, firm, person), the shipping company and entity that ordered the shipment;
- The declared route for the delivery of the goods and the route actually followed, indicating the intermediate landings/stops and their dates, the partial unloading of the goods exported from Ukraine, and the name of who authorized that unloading (person, firm, country);
- Date and point of delivery of the goods (city, airport or seaport, country), the names of the representatives of the end user and State agencies who received the goods and issued the document confirming their delivery;
- Any other information confirming delivery of the goods.

The document confirming delivery of the goods must as a rule be submitted by the exporter to the State Export Control Service within 45 days.

The procedure for State monitoring of the implementation of commitments regarding the use of goods subject to State export controls for declared purposes is set out in the Statute on the Procedure for Guarantees and State Monitoring of the Implementation of Commitments regarding the Use for Declared Purposes of Goods Subject to State Export Controls. This Statute was approved under Decision No. 920 of the Cabinet of Ministers of Ukraine of 27 May 1999 (with amendments).