

Approved by Decree No. 1005 by the Cabinet of Ministers of Ukraine dated 22 June 1996

**PROVISIONS About the procedures for control over export, import and transit of certain sorts of products, equipment, materials, software and technologies, which can be used to create armament, military or special engineering**

**I. General part**

1. General procedures for implementation of the state control over international transfers of dual-use goods have been established by Decree No. 117 by the President of Ukraine, dated 13 February 1988.

These Provisions establish specific features of the state control over international transfers of dual-use goods regardless conditions of delivery, agreements nature, customs regime and other specific features of those goods displacement .

2. For these Provisions purposes the terms "goods", "dual-use goods", "international transfers of goods", "export", "re-export", "import", "transit" and others are used in meanings, mentioned in the Provisions about the State Export Control in Ukraine, approved by Decree No. 117 by the President of Ukraine, dated 13 February 1998, with changes and amendments, introduced by Decree No. 283 by the President of Ukraine, dated 26 March 1999.

3. These Provisions are valid for all the agents of entrepreneurial activity, implementing any external economic activities with dual-use goods, including foreign trade, scientific-technical cooperation, specialization and co-operation in the field of production, science and engineering, display of exhibits on international exhibitions and fairs, coastal and border trade, goods exchange operations, conduct of works, provision with services etc.

4. Goods, international transfers of which to be a subject to control, in line with these Provisions, are listed in the List of Dual-Use Goods (hereinafter referring as the List), enclosed.

The List of goods, information regarding export of which to be passed by the State Export Control according to the existing procedures and forms to the Secretariat of the Export Controls for Conventional Arms and Dual-Use Goods and Technologies "Wassenaar Arrangement", are listed in the List annexes 1 and 2.

Item names, technical characteristics and codes according to Commodity Classification for External Economic Activity (hereinafter referring as the CC EEA) of goods, attributed to the List, can be specified by the State Export Control, according to submissions by bodies of executive power or other state bodies, upon concordance with the State Commission on Export Control Policy with further introduction of appropriate changes and amendments to the List in line with decision by the Cabinet of Ministers of Ukraine.

The codes of goods according to the CC EEA are adduced in the list for more information. The main sign to make a decision with regard to necessity to obtain the permission (conclusion) by the State Export Control is a compliance of goods, declared for customs registration, with description and items names of relevant goods, mentioned in the list.

5. Export of dual-use goods, containing data, attributed to state secrets, to be implemented in accordance with the current legislation on state secrets protection issues.

Conclusion by the agents of entrepreneurial activity of Ukraine of the agreements (contracts) with regard to export, participation in international exhibitions, distribution of those goods advertisements to be implemented by the agents of entrepreneurial activity with the permission by the State Export Control.

6. Negotiations, related with conclusion of the external economic agreements (contracts) about implementation of international transfers of dual-use goods to states, which are a subject to restrictions on deliveries of such goods, as well, as reporting to the State Export Control about their results to be implemented by the agents of entrepreneurial activity in line with the Provisions about the state export control over conduct of negotiations, related with conclusion of the external economic agreements (contracts) about the implementation of international transfers of goods, designated for military purposes, and those of dual use, approved by Decree by the Cabinet of Ministers of Ukraine, dated 4 February 1998 (Ofitsijnyj Visnyk Ukrainy, 1998, No. 5, p. 184, No. 22, p. 810).

## **II. Procedures for the implementation of control over transfers of dual-use goods**

7. Control over transfers of dual-use goods stipulates:

- registration of the agents of entrepreneurial activity by the State Export Control;
- issuing the permissions by the State Export Control authorizing implementation of export (re-export), import, transit and other operations with goods;
- declaration and customs registration of goods;
- obtaining (providing) in case of necessity of appropriate guaranties with regard to their final designation and place of use;
- implementation of control over their use by customers and in case of necessity conduct of inspections in places, declared those goods to be used in or stored;
- liability for violation of the existing procedures for implementation of operations with goods.

8. Registration of the agents of entrepreneurial activity, intending to implement international transfers of goods, to be conducted in line with the procedures established by the State Export Control.

9. Displacement of certain sorts of goods, equipment and materials, as well, as works and services, related with those, to be implemented by the agents of entrepreneurial activity basing on general and single permissions issued by the State Export Control. Displacement of certain sorts of software and technologies, as well, as works and services, related with those, to be implemented by the agents of entrepreneurial activity basing on single permissions issued by the State Export Control.

The permission issued by the State Export Control is required for transfer of software and technologies, regardless of the way, those to be displaced (transferred).

General permissions can be issued to any agent of entrepreneurial activity, who is a direct producer or an ultimate customer of dual-use goods and has created appropriate conditions, ensuring implementation of the current legislation of Ukraine requirements.

In other cases single permissions to be issued.

10. Dual-use goods to be a subject to obligatory declaration and presentation for customs registration to customs authorities, regardless ways of their transportation. Procedures for their declaration and customs registration to be established by the State Customs Committee according to concordance with the State Export Control.

11. International transportations of dual-use goods to be implemented in line with the general procedures by any mean of transport. International transfers to be

implemented as a rule by one mean of transport taking into account requirements of the international conventions on sea, air, motor and other transportations.

Procedures for sending of dual-use goods by international parcels, postal packets, as printed matters and by other ways of communication to be established by the Ministry of Communications, the Ministry of Press and Information, and the State Customs Committee according to concordance with the Commission.

12. Procedures for obtaining (providing) of appropriate guaranties with regard to dual-use goods final designation and place of use stipulate that the importer provides the exporter with the following:

- reliable data about a final customer, a final designation and a place, the goods, mentioned in the agreement (contract), to be used in;
- obligations to import the goods to the declared state of destination only. In case those not to be imported to that state, not to transfer those to any other place of destination;
- obligations not to re-export the imported goods to the third states without a permission issued by the state-importer (state of destination) export control bodies. Required obligations (guaranties) can be presented in a form of an import certificate, a final customer certificate, or another document, containing those.

Procedures for development of those documents to be established by the legislation of the state-importer (state of destination).

Data about the obligations (guaranties), mentioned in this paragraph, in certain cases in accordance with decision by the State Export Control can be not introduced into the external economic agreement (contract) and the import certificate or a similar document not to be presented in cases goods to be exported to the member-states of the Arrangement on Export Controls for Conventional Arms and Dual-Use Technologies. "Wassenaar Arrangement".

13. The final customer certificate to be issued by the final customer of goods, as a rule according to the existing form and to contain, as a minimum, the following data:

- registration number and date of issuing;
- customer of goods (a full name, address, area of activity);
- exporter of goods (a full name, address);
- item names and full description of goods with their codes according to the CN EEA;
- amount of goods and their unit of measurement;
- place of installation and/or use of goods;
- final designation of goods,

as well, as guaranties, that goods to be used for declared purposes only and not to be transferred to other places of use without a written permission to do that issued by the state of destination export control bodies.

The certificate to be signed and sealed by a Head of an enterprise, establishment or organization, issuing the one.

14. The import certificate (or a similar document) to be developed by the importer in the authoritative body of the state-importer (state of destination) and to contain, as a minimum, the following data:

- registration number and date of issuing;
- importer of goods (a full name, address);
- exporter of goods (a full name, address);
- item names and full description of goods with their codes according to the CN EEA;
- amount of goods and their unit of measurement;
- place of installation and/or use of goods;

as well, as guaranties, accepted by the importer with regard to the state of destination and non-re-export of goods to the third states, to under its control and in case of necessity a certificate confirming implementation of delivery to be presented to the state-exporter export control bodies.

The certificate to be signed and sealed by a Head of the body of state power, issuing the one.

15. If the importer and the final customer are the same juridical person, the final customer certificate can not be issued, and its provisions to be included by the importer into the text of the agreement (contract).

16. In case the importer is not the agents of entrepreneurial activity of the state of destination, the exporter to obtain from him the documents, which confirm the following:

- obligations by the importer that the imported goods to be used for declared purposes only and not to be a subject to copying, conversion or modernization, as well, as transfer or re-export to another customer without a written permission to do that issued by export control bodies of the state-exporter;

- guaranties by the state body of the state-importer, authorized to issue such, that implementation of obligations with regard to final designation, place of use, and keeping measures to prevent unauthorized re-export, accepted by the importer, to be a subject to control by it and the right to check their implementation can be granted to representatives of the state-exporter with participation of the competent authorities of the state-importer.

17. Procedures for implementation of control over use of exported (imported) dual-use goods by final customers and conduct of inspections in the places of such goods use or storage, to be established by the appropriate Provisions to be a subject to approval by the Cabinet of Ministers of Ukraine.

18. The exporter in line with the existing procedures, established by the current legislation of Ukraine is responsible for collection of information about reliability of the importer, availability of appropriate authorizations, obtaining reliable data about a final customer, final designation and place of use with regard to goods to be a exported, as well, as obtaining originals of a final customer certificate, an import certificate, and in case of necessity other documents, providing needed obligations (guaranties) and to identify the final customer, purpose and place the goods to be used.

### **III. Procedures for export (re-export) of dual-use goods form Ukraine**

19. Export (re-export) of mentioned in the List goods from Ukraine, to be implemented by the agents of entrepreneurial activity (hereinafter referring as the exporters) on the assumption of obtaining a single or a general permission, issued by the State Export Control, or in cases mentioned in the paragraph 29 of these Provisions, according with a conclusion by the State Export Control.

20. In order to obtain the single permission the exporter sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- an attested by lawyer copy of a request for obtaining the permission according to the certain form, approved by the State Export Control;
- an attested by lawyer copy of the certificate of the exporter state registration;
- an attested according to the existing procedures copy of the external economic agreement (contract) on export (re-export) of declared in the request goods to the state

of destination (including an attested copy of the State Export Control agreement, an order etc., if the exporter is an intermediary organization);

- certificate of goods origin;
- original documents establishing obligations and guaranties by the importer (final customer) of goods, with regard to their final designation and place of use;
- references, containing full name, brief description, data about designation (mentioning final complex or product), major and possible area of use as well, as complete composition (options) of each exported object delivery (a quality certificate for materials).

22. In case of necessity, according to a decision by the State Export Control, conclusions to be obtained from appropriate bodies of state executive power with regard to possibility to export and export conditions. The exporter is authorized to concord the export conditions with an appropriate ministry or establishment in advance.

23. In order to obtain the general permission the exporter sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- a request for obtaining the permission according to the certain form, approved by the State Export Control;
- an attested by lawyer copy of the certificate of the exporter state registration;
- a list of the agreements (contracts) concluded with foreign customers, a plan of export for a current year or an extract form a list of items to be delivered in accordance with the international agreements by Ukraine, with obligatory mentioning of goods full description, their codes according to the CC EEA, unit of measurement, amount, possible importer and goods final customer (state, full name of an enterprise, postal code, address, telephone number of a leader);
- a copy of an enterprise internal order about appointment of official persons and establishment of conditions needed for implicit implementation of these Provisions requirements;
- list of guaranty (in any form) about obtaining from the importer original documents with regard to each use of the general permission, establishing obligations (guaranties) by the importer (final customer) with regard to goods final designation and place of use;
- references, containing full name, brief description, data about designation (mentioning final complex or product, major and possible area of use as well, as complete composition (options) of each exported object delivery (a quality certificate for materials).

24. The exporters concluding the agreements (contracts) for export of goods, included to the List, obligatory to mention the final customer, final designation and place the goods to be used, as well, as obligations (guaranties) by the importer, that those goods to be transferred to the declared final customer only without copying, conversion or modernization, and not to be subject to transfer (re-export) to another customer without a written permission to do that, issued by the exporter and export control bodies of Ukraine;

25. The exporter to develop the international agreements (contracts) in line with the current legislation of Ukraine requirements and international rules of trade, obligatory mentioning in those:

- consent of the importer, if he is a final customer, to the right of the exporter to conduct in case of necessity inspections (with getting competent bodies of Ukraine

and of the state-importer to take part) with regard to use of exported goods for declared purposes and in declared place only;

- that the agreement (contract) comes into effect after obtaining by the exporter (importer) required permissions (licenses), issued by the appropriate export control bodies.

26. Required guaranties with regard to final designation, place of use and non-re-export to the third states to be received by the exporter from the importer in the form of documents, develop in line with requirements, stipulated by the paragraphs 12 and 16 of these Provisions.

The list of documents can be specified by the State Export Control while conduct of expertise taking into account goods category, information about the importer and the final customer.

27. Request for obtaining the permission to export software and technologies besides the documents, stipulated by the paragraph 21 of these Provisions to be supplemented with two copies of full content of the software and technologies and documents, confirming the fact of presence or absence in the content of those, data, attributed to state secrets. Those documents to be developed in line with the current legislation of Ukraine requirements and to be presented in two copies.

28. Re-export of goods, included into the List, to be implemented according to the procedures, stipulated by these Provisions for export of such goods. At that, besides the documents mentioned, the exporter to present documents, which confirm absence of restrictions on re-export, established by the supplier (state-exporter) of those goods to Ukraine.

29. In order to obtain the permission for temporary exportation (importation) of goods, for display on exhibitions, fairs with the purpose to advertise, for conduct of tests, certification, conduct of repair etc., which does not stipulate transfer of the right of property on goods, the exporter sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- an invitation, issued by an exhibition (fair) organizers, containing data about its name, place and term of exhibits display or an agreement (contract) on conduct of works on testing, certification etc;
- obligations (guaranties) by the importer (final customer) to return exhibits to Ukraine in time without changes to their quantitative and qualitative characteristics;
- a document, containing full description of goods and their code according to the CC EEA;
- a document, confirming goods mortgage costs.

31. All the documents, presented to the State Export Control, to be developed in official language. Official translations to be added to all the documents developed in foreign languages.

#### **IV. Procedures for import of dual-use goods to Ukraine**

32. Importation of goods, included to the List, with the exception of those marked with (\*), to the customs territory of Ukraine to be implemented without permission by the State Export Control, according to the procedures, established by the current legislation of Ukraine.

Importation of goods marked with (\*), to be implemented basing on general or single permissions issued by the State Export Control, and in cases stipulated by the paragraph 37 of these Provisions, according a conclusion by the State Export Control.

33. In order to obtain the permission for importation the importer sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- a request for obtaining the permission according to the certain form, approved by the State Export Control;
- an attested by lawyer copy of the certificate of the importer state registration;
- an attested according to the existing procedures copy of the external economic agreement (contract) on transfer of imported goods to the Ukrainian importer (if it is a final customer);
- an attested copy of the State Export Control agreement, an order, if the importer is an intermediary organization;
- a certificate of goods origin;
- a final customer certificate, developed by the Ukrainian customer in accordance with the existing form;
- attested copies of licenses, given to the importer (final customer) authorizing to perform certain activity, related with the goods, declared for import, namely: purchase, development, production, use or sale, if such activity to be a subject to licensing;
- references, containing full name, brief description, data about designation (mentioning final complex or product), major and possible area of use as well, as complete composition (options) of delivery tactical and technical characteristics of each imported object (a quality certificate for materials).

34. Concordance of conditions of import (including temporary importation) and use (realization) of goods, declared in the request, with appropriate bodies of state power to be implemented in case of necessity according to a decision by the State Export Control. The importer is authorized to concord export conditions with appropriate ministries or establishments in advance.

35. In case the importer is requesting the general permission, instead of copies of the agreements (contracts) list of those or a plan of import, or an extract form a list of items to be delivered in accordance with the international agreements by Ukraine, with obligatory mentioning of goods full description, their codes according to the CC EEA, unit of measurement, amount.

36. If the foreign exporter is requesting guaranties by the Government of Ukraine with regard to prevention of unauthorized re-export, those to be issued by the State Export Control and developed in the form of the import certificate of Ukraine or another document, containing required guaranties (obligations).

37. In order to obtain the permission for temporary importation of goods according to agreements nature, that does not stipulate transfer of the right of property (display (advertisement) on exhibitions, fairs or conduct of tests, implementation of repair etc.), the importer sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- an invitation, issued by an exhibition (fair) organizers, containing data about its name, place and term of exhibits display or the agreement (contract) on conduct of works on testing, certification etc;
- attested copies of licenses, given to the importer (final customer) authorizing to perform certain activity, related with the goods, declared for import, namely: purchase, development, production, use or sale, if such activity to be a subject to licensing;
- agreed with the appropriate body of the state power conditions of temporary use of goods, mentioned in the request;

- a document, containing full description of goods and their code according to the CC EEA.

38. Temporary importation of goods according to agreements nature that stipulates transfer of the right of property (purchase-sale, exchange etc), to be implemented basing on the permission, issued by the State Export Control.

## **V. Procedures for transit of dual-use goods via the territory of Ukraine**

39. Transit of foreign goods via the territory of Ukraine to be implemented without permissions by the State Export Control, according to the general procedures, established by the current legislation.

40. In order to obtain the permission for transit the exporter of the foreign state sends to the State Export Control a letter containing, a brief explanation of the appeal reasons and aim, adding the following enclosures:

- a request for obtaining the permission according to a certain form, approved by the State Export Control;

- lists of goods intended to be transported via the territory of Ukraine.

The lists to be developed in three copies according to the form established by the State Export Control with obligatory mentioning of item names and full description of goods with their codes according to the CN EEA, unit of measurement and amount.

## **VI. Procedures for consideration of requests, issuing and distribution of permissions**

41. Consideration of requests for obtaining State Export Control permissions to be implemented by the State Export Control with getting in case of necessity other competent bodies or organizations to take part after the person, requesting the permission, has presented all the documents required.

In case of necessity additional information can be requested from the person, requesting the permission, which enables to make a reasonable decision with regard to the request or confirms reliability of the data presented.

The person requesting the permission is authorized to supplement the request with other documents, which to assist to develop reasonable conclusions of expertise.

Procedures for consideration of requests by the State Export Control, ministries, establishments or organizations, to be involved in conduct of expertise, to be established by the State Export Control.

42. Decision to issue the permission or to deny transfer of dual-use goods to be made by the Commission basing on the consideration of the expertise results.

The agreement (contract) can not be a basis for an obligatory issuing the permission or the positive conclusion.

43. The State Export Control can refuse to issue the permission (positive conclusion) in the following cases:

- documents, mentioned in these Provisions have not been presented, have been developed in a wrong way, or have been forged;

- establishment of facts of beaching by the Ukrainian or foreign agents of entrepreneurial activity of conditions or rules for implementation of exportation or importation of goods, to be a subject to control;

- circumstances occur, which can be harmful for interests of Ukraine in the fields of defense, economy, foreign relations, security or such, which proceed from obligations by Ukraine according to the international agreements;



- absence of authorization and/or a license to implement appropriate activity, if such activity to be a subject to licensing according to the legislation;
- untimely reporting about realization of the permissions, have been issued earlier.

The requesting person to be notified about the decisions by the State Export Control to refuse to issue the permission with a letter by the State Export Control containing reasons for refusal.

44. Decision to issue the permission or the conclusion with regard to temporary exportation (importation) of goods or to refuse, with account of terms required by ministries and establishments, involved in conduct of expertise, to develop their conclusions, to be made within 30 working days since the State Export Control has obtained the full set of documents, required to conduct the expertise.

This period can be prolonged up to 45 working days, if according to the State Export Control decision experts on state secrets protection matters to be involved.

According to the State Export Control decision of consideration period can be prolonged up to 90 days, if additional expertise is required to make a reasonable decision.

45. Procedures for development and use of the permissions to be established by the State Export Control together with the State Customs Committee and to be a subject to approval by the Commission.

## **VII. Implementation of control over use of the permissions**

46. General control over use of the permissions to be ensured by the State Export Control with involvement of appropriate bodies of executive power and other state bodies according to the procedures established by the current legislation.

Check of implementation by the importer (customer) of obligations with regard to dual-use goods final designation and place of use, to be performed by the exporter and/or the State Export Control together with competent bodies of Ukraine and those of the state-importer (state of destination).

47. With the purpose of account of the permissions, issued by the Commission, the agents of entrepreneurial activity, which had received the permission for export, import or transit of products (works, services), within 15 days since it has been completely realized or since the date of its expiry to send to the State Export Control a written report about its realization.

The report to be presented to the State Export Control in a free form with obligatory mentioning of data about the date, state, goods, costs, and volumes of realization. The report to be supplemented with copies of customs declarations, to be attested according to the existing procedures by a customs body, which has accepted the permission for realization.

The report about use of general permissions, if that is specified in special conditions, to be supplemented by the exporters (importers) with original documents, which contain obligations (guaranties) by the importer (final customer) of goods with regard to final designation and place of use.

In certain cases according to a decision by the State Export Control another than mentioned in this paragraph regime of control can be established.

If the State Export Control has established the regime of control over stages of the permission use, information to be presented in terms mentioned in the permission.

In case of untimely reporting of that information the State Export Control to keep appropriate measures.

## **VIII. Procedure for suspension (cancellation) of permissions validity**

48. If the state registration of the agent of entrepreneurial activity is terminated the permission is not valid any more.

In case of juridical person reorganization or change of name, the agent of entrepreneurial activity within 15 days to request re-registration of the permission from the State Export Control. If the permission has been partly used, the request to be supplemented with a written report about its realization.

49. In case the permission has been lost a duplicate not to be issued.

50. In case the Ukrainian and/or foreign agent of entrepreneurial activity has violated the conditions or rules, of dual-use goods transfers, mentioned in the permission, as well, as circumstances occur, which cause harm to interests of national security of Ukraine, or to those proceeding from the obligations by Ukraine with regard to the international agreements, the State Export Control can temporary suspend validity of the issued permission or cancel it.

The State Customs Committee according to the State Export Control request to perform actions immediately to implement the decision by the State Export Control.

51. The decision by the State Export Control about refusal to issue the permission, suspension of its validity or cancellation can be protested by the agent of entrepreneurial activity in line with the procedures established by the current legislation.

## **IX. Liability of the agents of entrepreneurial activity for violations of the export control regime**

52. Persons, who have violated the existing procedures of control over transfers of certain sorts of products, equipment, materials, software and technologies, which can be used to create armament, military or special engineering, to be a subject to liability in line with the current legislation of Ukraine.

Minister of the Cabinet of Ministers of Ukraine V.Pustovoitenko