

Updating export control regulatory and legal framework

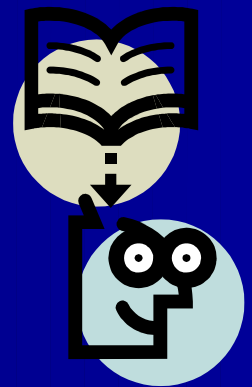
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Goal of the presentation

- Development stages of the legal framework
- Overall structure of the regulatory and legal framework
- Preconditions for the changes in the regulatory and legal framework
- What should updated legal framework solve
- Correlation between regulatory and legal acts
- Updating order
- Updating content of some acts
- Updating effect



Development stages of the legal framework

1993 – 1998 Creation of the legislative grounds
“based on needs”

- Acts on establishing control over “strategic” goods
- Memorandum on missiles equipment– 1995.
- Nuclear power industry– 1996.
- Control over dual-use goods- 1996.
- Control over military goods - 1997.
- Control over chemical and biological goods- 1998.
- Control over negotiations, guarantees, examination - 1998.
- General provisions on export controls - 1998.

Structure of the regulatory and legal framework in 1998 – 2003

Provisions on export controls

General acts

- Examination
- Guarantees and verifications (end user certificate, delivery confirmation certificate, import certificate, verifications)
- Negotiations
- Authority for military goods

Acts according to the commodity groups (5 documents)

- military goods
- goods under WA, MTCR, NSG, AG, CWC, BWC

Legislative support of the regulatory framework

(2003 – 2009 роки)

- Law “On the state control over international transfers of military and dual-use goods”
- Law “On criminal responsibility”
- Law “On administrative responsibility”

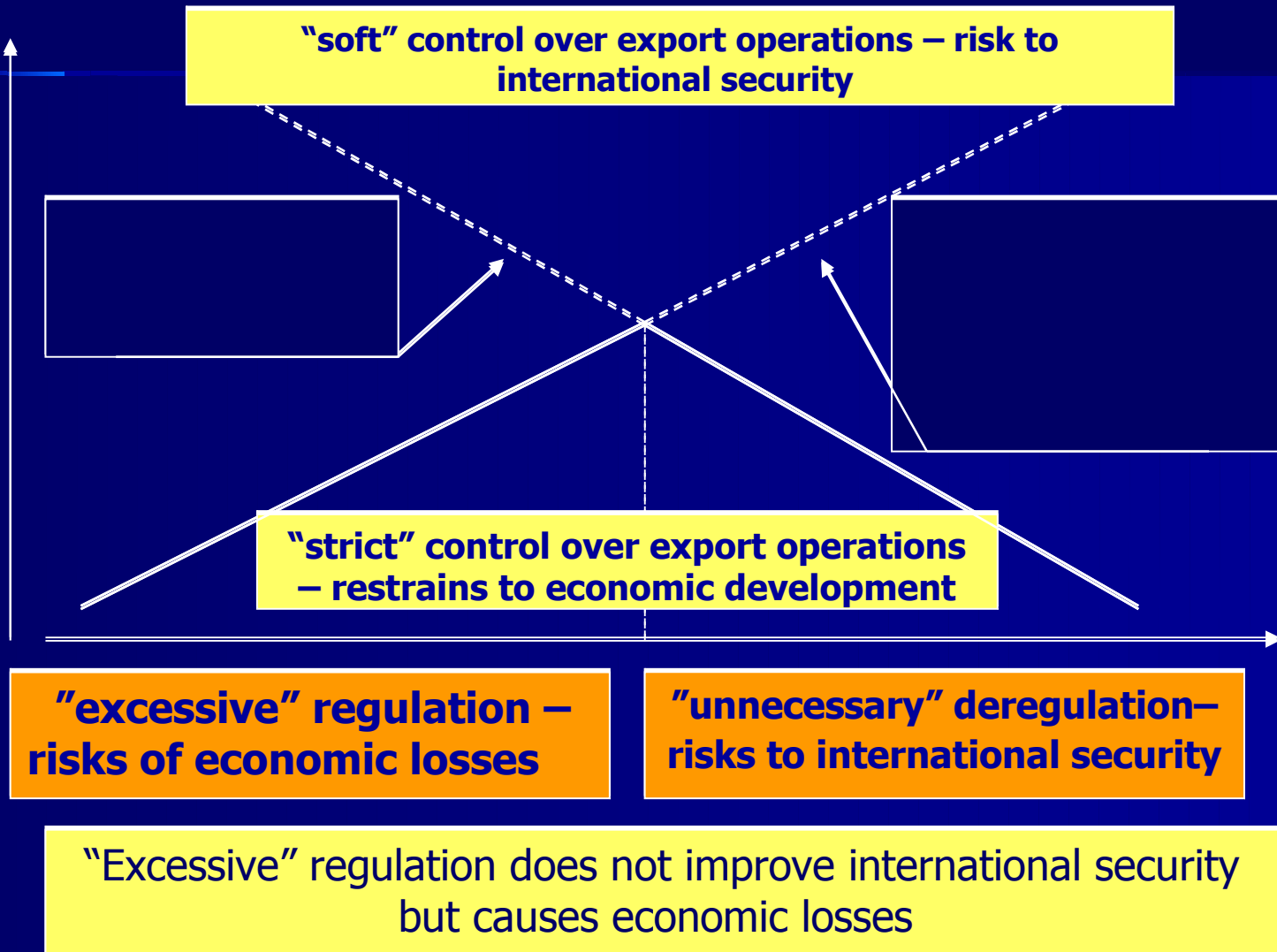
Establishment and use of a “strict” control

Updating of the legal and normative base

Experience workout

Analysis of the “strict” control risks

Influence of risks



Structure of the regulatory and legal framework in 2003 – 2010

Laws “On export control” and others

Improved general acts

- Examination
- Guarantees and verifications (end user certificate, delivery confirmation certificate, import certificate, verifications)
- Negotiations
- Powers for military goods
- Internal compliance systems

Improved acts according to the commodity groups (2 documents)

- military goods
- goods under WA, MTCR, NSG, AG, CWC, BWC

Preconditions for the changes in the regulatory and legal framework

- Needs for feedback on the change of circumstances
- International security and peacekeeping
- Facilitation of economic development
- Administrative reform
- Assistance to national exporters
- Transition from the “strict” control model to the “necessary and sufficient” model control
- Enforcement improvement

What should updated legal framework solve in a long run?

- Increasing efficiency of controlling and establishing perfect mechanisms of facilitating international peace and security
- Step by step transition to export control procedures resembling practice of the EU Member-States
- National implementation of the EU Control list of dual-use goods
- Step by step introduction of information technologies into the process of submitting applications and other documents to the SSECU

What should updated legal framework solve in a short run?

- reasonable measures of deregulation
(to the extent not inconsistent with international obligations and international security purposes)
- consideration of administrative reform realities
- specification of degree of control
(depending on commodity groups and types of international transfers)
- improving control procedures
(introduction of control procedures and interagency coordination, deadlines, denials criteria, etc.)
- increase the exporters' responsibilities
- increase the effectiveness of enforcement measures

Order of updating regulatory and legal framework

Primary

- Control over negotiations
- Control over transfers of goods
- End use verification
- Application of sanctions

Other acts

- Examination procedure
- Commission for identification
- Payments for granting documents (administrative services)
- Powers for military goods

Updating directions in regard to the control over negotiations

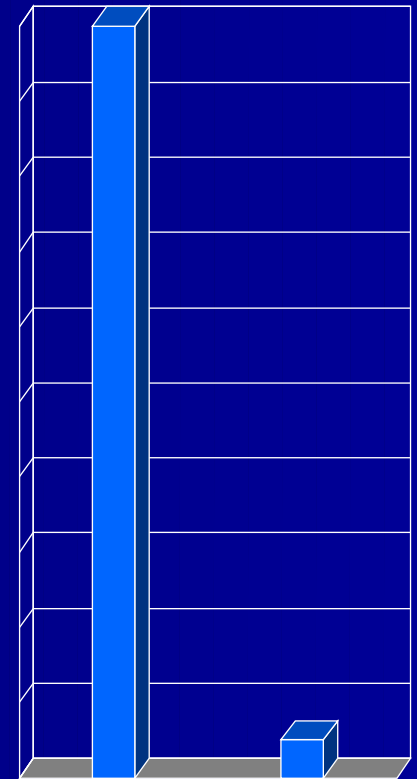
Transition from “total” to “partial” control

Limitations of control only to “partial” embargo cases

Effect :

- **creation of equal conditions for national and foreign exporters**
- **normalization of decision making procedures and terms at state authorities**
- **reduction of decision making terms for the contract approval**

Providing exporters with recommendations on export control requirements when signing contracts



Directions of updating the control over international transfers of goods

Deregulation :

- **procedures simplification** (*in regard to certain commodity groups, country groups, certain operations of international transfers, etc.*)
- **standardization of decision making terms at state authorities** (*setting the deadlines for interagency coordination for the state agencies, setting the deadlines for issuing permits, etc.*)
- **reducing the number of documents submitted to obtain permits** (*limited only to:
application in all cases
guarantee documents for "single" export and import only
contract for "one-time" export and import*)

Directions of updating the control over international transfers of goods

Transition to a single list of dual-use goods

(transition to the control list analogous to the one of the EU member states)

Transition to the generalized requirements for safeguards in regard to WMD and means of their of delivery

Creation of a legal basis for the catch-all control

(considering the norms of the export control Law in regard to "any" goods)

Creation of mechanisms for corruption risks reduction

(Restrictions of discretionary power of the state bodies by clearly defining the list of documents and rights of authorities for additional requests)

Introduction of the "necessary and sufficient" reporting *(reporting only in cases of exports and imports)*

Retrieving from "washing out" the state monopoly on export/import of military goods *(renunciation of using an "artificial" group - military goods allowed for civilian use)*

Оформлення документів про гарантії

Deregulation in regard to safeguards documents:

- **Timing of decisions made by the state authorities** (*setting the deadlines for interagency coordination for the state agencies, setting the deadlines for issuing permits, etc.*)
- **Reducing the number of documents submitted for obtaining guarantee documents** (*limited only to: application documents certifying the performance of guarantees contract*)

Procedure standardization of “internal” transfers of goods earlier imported to Ukraine

(submitted documents, decision making process)

Introduction of the second type end user certificate confirmed by the state authorities

(i.e. importer's guarantees confirmed by the authorized state body, as an example - end user certificate confirmed by the State Space Agency of Ukraine under the agreement with Russian Federation on space activity)

End use control

Exclusion of legal norms that exceed discretionary power of the state authorities *(in regard to the physical control over commodity delivery verifications)*

Introduction of the planned arrangements for inspections of imported goods and standardization of such inspections

Requirements to the content of the documents on confirmation of delivery of goods to foreign end-user

Verification notice at the stage of signing contracts and receipt of permits

Cooperation limitations for the national exporters with the foreign entities for violating commitment in regard to the end-use of goods

Other legal acts

Enforcement:

The size of fines – depending on the harm done to the national security according to the Art. 25 of the Law

Standardizing procedures of receiving conclusions from the State Security Service of Ukraine and other state agencies to determine the harm to national security

Creating mechanisms for compliance with procedural terms

Other legal acts

Examination:

Types of examination :

- **depending on stage** (*preliminary, main, additional, re-examination*)
- **depending on functions** (*identification, issuing permissive documents, issuing state guarantees documents, granting powers, etc.*)

Powers for commodity identification

Preparation procedures :

- **conclusions on identification**
- **expert conclusions at request of the law enforcement authorities**

Other legal acts

Powers on export/import of military goods:

Scope

Determination of exceptions on the necessity of granting powers

Improving criteria of granting powers

Improving decision making procedures of granting powers

Determination of rights and obligations of the entities obtaining powers

Determination of criteria and procedures of depriving of powers

Thank you for the attention!