

A PILOT MODEL
for
INTERNAL COMPLIANCE SYSTEM

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PREFACE AND ACKNOWLEDGEMENTS

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This work is the first attempt to generalize the experience in the area of internal export control compliance accumulated in Ukraine both at the government level and in companies dealing with international transfers of goods subject to export control. The proposed internal compliance system model is built on the basis of this experience. Another purpose of this work is a comparison of the best world practices in the field of internal export control compliance with the proposed model in order to define similarities and discrepancies in various approaches to internal compliance and draw corresponding conclusions.

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Introduction

The main aim of this pilot project is the preparation of recommendations on establishment of internal export control compliance systems at the enterprises the activity of which is related to international transfers of goods subject to export control.

These recommendations would assist to form clear mechanisms which insure legitimacy of foreign trade transactions, promote efficient management of foreign trade activities, facilitate executing procedures related to obtaining license and authorization documents for export/import, and prevent infliction of harm to both an enterprise and a state as well entailed by breach of international obligations in the sphere of nonproliferation of weapons of mass destruction.

PART I. INTERNAL EXPORT CONTROL COMPLIANCE – UKRAINIAN GOVERNMENT APPROACH

Chapter 1. Establishment and organization of work of internal compliance units at enterprises

1.1. Basis for establishing export control internal compliance systems

1.1.1. Purpose of establishing export controls

Companies make profits as they carry out foreign trade-related activities and develop new products in seeking an entry to new market outlets. While financial risks of such international transfers have been thoroughly analyzed and factored in, the sphere of export control is unfortunately perceived as a “bureaucratic hurdle” that can cripple competitiveness. General foreign trade procedures are normally well-known and not questioned by entrepreneurs. At the same time, a portion of goods designed or manufactured by companies may be instrumental in the manufacture of weapons of mass destruction or their delivery means.

The purpose and objectives of export control lie in safeguarding Ukraine’s national security interests by establishing such controls that will ensure nonproliferation of weapons of mass destruction and their delivery means and also ensure that international transfers of conventional arms are carried out exclusively within the limits of Ukraine’s international commitments in this regard.

In order to reach the export control objectives, a state system of export control of Ukraine was established with a view to implementing controls over international transfers of controlled items. It is worth emphasizing that while additional controls are introduced for strategic goods only they still somewhat “complicate” existing general foreign trade procedures. Of course, such procedures are perceived by some entrepreneurs as ones that may downgrade competitive ability. Nevertheless, assuming that the sphere of Ukraine’s national security and its international commitments undoubtedly prevail over the wish of an

entrepreneur to raise profit, the entrepreneur's non-compliance with export controls may warrant much heavier economic losses than extra expenditures on ensuring compliance with such controls. The major focus therefore is on the need to establish such a system within the company that will secure the company maximum protection from potential troubles associated with the export of controlled goods. In terms of export controls, such a protection system is referred to as the "export control internal compliance system" of the company. This system is primarily established for the following purposes:

preventing violations of current state export control law and related administrative, criminal, and economic sanctions which may be imposed on the company;

reducing the company's exposure to risks as it carries out international transfers of goods subject to state export control;

assisting in identifying and terminating international goods transfers which can inflict damage on the state or breach relevant international commitments with regard to nonproliferation of weapons of mass destruction, their delivery means, and conventional arms;

facilitating the company's efforts to efficiently complete international goods transfers and obtain licensing (authorization) documents from relevant state licensing authorities in a timely manner.

1.1.2. Regulatory and legal basis

It generally makes sense for establishing an export control internal compliance system to be laid down as a recommendatory legal norm, yet taking into account the specifics of international transfers of strategic goods, companies seeking to carry out operations with such goods on an international scale benefit from establishing an export control internal compliance system both from the perspective of the company's safe existence and from the perspective of its economic interest.

Ukraine's example: *Pursuant to part 23 of Article 1 of the Law of Ukraine On State Control of International Transfers of Military and Dual-Use Goods, an export control internal compliance system is a set of administrative, legal, awareness-raising, and other arrangements pursued by an international trader to ensure observance of export control law requirements by itself and its subordinate subdivisions.*

Part 1 of Article 14 of the Law envisages that companies establish export control internal compliance systems "pursuant to recommendations of the especially authorized administrative body for state export control (SSECU – author's remark) that assists in establishing such a system and provides the company with information and methodology support". In pursuance of this regulation, SSECU Order № 412 dated 12 November 2006 approved Methodology recommendations on establishing by entities involved in international transfers of goods export control internal compliance systems.

It is again worth underscoring that companies do benefit from implementing the set of relevant arrangements for establishing export controls, and of an export control internal compliance system in particular. Such a benefit is resultant of substantial economic advantages to be claimed by the company once the system is put in place. Thus, a company that has established an export control internal compliance system and had it certified as appropriate enjoys the following privileges:

1) obtain additional powers for trading in strategic goods and, owing to this, implement a more efficient marketing policy to expand foreign market outlets;

2) obtain general or open licensing (authorization) documents from relevant state licensing authorities instead of individual documents respectively, which significantly saves operational costs and time compared to obtaining individual documents;

3) other concessional terms depending on the specifics of the country's licensing mechanisms (see the example).

Ukraine's example:

Pursuant Articles 13 and 14 of the Law of Ukraine On State Control of International Transfers of Military and Dual-Use Goods if a company has no certified export control internal compliance system, it can only obtain individual licensing (authorization) documents for each international goods transfer within one year. If it does have an export control internal compliance system in place, it can obtain general and open licensing (authorization) documents for an unlimited number of international goods transfers within up to three years. Thus, the company's "benefit" lies in a multiple reduction of operational expenditures.

Clearly, one should be aware that gaining such benefits and advantages must result from the company's conscientious approach to export controls. That is why establishing an export control internal compliance systems is a mandatory requirement of export control law in case the company seeks to obtain additional powers to export or import military goods or to obtain general or open licensing (authorization) documents.

The establishment of export control internal compliance systems within companies should be confirmed by state licensing authorities through state certification of such a system and issuance of a relevant certificate to the company.

Ukraine's example: *The certification procedure is set forth in the "Procedure for state certification of the export control internal compliance system established by an entity involved in international transfers of goods", approved by Cabinet of Ministers of Ukraine Resolution № 1080 dated 17 July 2003.*

Establishing an export control internal compliance system includes implementing a set of administrative, awareness-raising and legal arrangements.

1.1.3. Company statement on the objectives of establishing an export control internal compliance system

A very important first step is for the company's management to develop a transparent and clear statement on export control objectives, as well as a philosophy of establishing such controls within the company. A possible first step may be to widely inform the entire managing personnel of the company on the objectives and philosophy of establishing export controls within the company, as well as on advantages of having an export control internal compliance system in place.

Important!!!

The following factors should be considered in order to properly plan the development of an export control internal compliance system and related procedures:

- 1. How big is the percentage of controlled goods' export?*
- 2. Can the goods be used for military purposes or potentially used in the manufacture of weapons of mass destruction or their delivery means?*
- 3. What range of goods have been listed as goods subject to state export control?*
- 4. How many export procedures required a license (authorization) during the reporting period?*
- 5. How many applications for a licensing (authorization) document have been rejected during the reporting period?*
- 6. Has the export control internal compliance system established within the company undergone external audits (verifications)?*
- 7. Have measures been taken to address the findings and recommendations offered as a result of verifications?*

Export controls and the requirement to stick to certain export control-related rules and procedures are sometimes perceived by the personnel as a nuisance obstructing quick solutions to the company's foreign trade problems. That's why the management's task once a clear awareness of all export control aspects has been reached is not just to establish relevant controls within the framework of an export control internal compliance system, but also to ensure their general adoption by the company personnel.

Important

Among other provisions, the following can be included in the statement on the objectives of establishing an export control internal compliance system within the company:

“...ensuring adherence to legal requirements in the area of state export control;

...refraining from any international goods transfers which may result in violating the law and Ukraine’s international commitments or prejudice its national interests;

... company’s mandatory adherence to the policy principles regardless of commercial benefit of any order;

...refraining from foreign trade agreements (contracts) for international transfers of any goods or refraining from participation in their implementation if the company has become aware that such goods can be used by foreign states or foreign partners for the purpose of manufacturing weapons of mass destruction or their delivery means;

... refraining from fulfilling foreign trade agreements (contracts) on international transfers of any goods if the company has become aware that such goods will be used for a purpose or by an end-user other than declared in the agreements (contracts) or documents associated with them, based on which the authorizations or conclusions were obtained, as well as international import certificates;

...timely submission to state licensing authorities of reports on the actual use of obtained authorizations or conclusions”, etc.

In the process of expounding such a philosophy the first and foremost thing to be emphasized is that taking such measures does not only see to it that the export control objectives, namely those of national security and adherence to international commitments, are reached, but also ensures the company’s economic security and protects its good business reputation.

Developing such a policy statement is consistent with the objective of establishing the export control internal compliance system and emphasizes required adherence to export control law.

Questionnaire on the company's management statement on objectives of establishing the export control internal compliance system

Does the company's management statement contain information (explanations) on the principles of Ukraine's export control policy?

Does the company's management statement contain information on your company's commitments in the export control area?

Does the company's management statement contain explanations as to why these commitments are so important?

Does the company's managing official in charge of export control or the export control department manager regularly review the company's philosophy for relevance? Have other management resolutions been made regarding the contents of this philosophy?

Personal conviction of the company's management in the necessity of adherence to export control law and establishing the company's export control internal compliance system for that purpose will undoubtedly be a solid contribution to the company's economic security and the high level of confidence in it both on the part of state authorities and business partners.

1.2. Administrative arrangements and requirements

1.2.1. Preliminary arrangements

One crucial factor in the process of establishing an export control internal compliance system is addressing such criteria as the company size, product range, business partners, production capacities, personnel qualification, etc. Special consideration should be given to that portion of the company's products that are strategic from the perspective of export control objectives.

The export control internal compliance system established within the company should be adequate to the scope of its commercial interests, its economic capabilities, and business activity at international markets.

In the process of establishing an export control internal compliance system and planning administrative arrangements required for the system's efficient functioning it is also necessary to take into account the activity profile and production structure of the company, existence of affiliated branches and subsidiaries, the potential to use exported products in the manufacture of weapons of mass destruction and their delivery means or in the manufacture of

conventional arms and military equipment, as well as volumes and geography of such products' export supplies.

Establishing of and ensuring compliance with export control requirements should be the responsibility of the company's management, which should be provided with proper conditions and relevant resources both for proper compliance with the export control requirements and for the control over such an activity.

The company's management need to introduce a transparent and clear system of rules to direct the personnel towards proper adherence to state export control law. The structural basis for such a system should include a provision that no contracts or no other activities can be implemented if they are found to be in violation of state export control law, regardless of their commercial benefit to the company.

Such rules need to be established at all organizational levels of the company, especially at those associated with export, import, (importation, exportation), re-export, sale, provision of services, delivery of goods or any other activity encompassed by export controls.

1.2.2. Appointment of a managing official in charge of export control

On top of the organizational structure of an export control internal compliance system there should be a managing official (for example, the company's director, first deputy director, deputy director for economic security of the company, deputy director for export control, etc.) who has been vested with appropriate powers including those ensuring export control coordination between all the departments of the company. This managing official must be adequately knowledgeable of state export control law and perfectly aware of the goods (products, technology, services) internationally transferred by the company and the requirements to implementing such transfers.

The functions and powers of one of the company's managers in terms of the responsibility for export control shall be clearly defined in this manager's responsibility chart. Such powers wielded and the position assumed by the manager significantly strengthen the company's export control philosophy and enable efficient functioning of the export control internal compliance system established within the company.

The company's managing official in charge of export control (checklist)

Does the official in charge of export control belong to the managing personnel of the company?

Do job descriptions of the official in charge of export control include functions and powers for taking export control measures

within the company?

Has his or her name been communicated to state licensing authorities?

The managing official in charge of export control shall be fully responsible for establishing and implementing export control provisions within the company. Such a manager shall implement administrative guidance/instructions on export control matters, ensure that these instructions are followed by the company's personnel, compile qualification requirements to the company's personnel involved in these activities, create conditions for training of such personnel, and monitor due compliance with export control provisions by the company's personnel.

1.2.3. Organization of the export control department

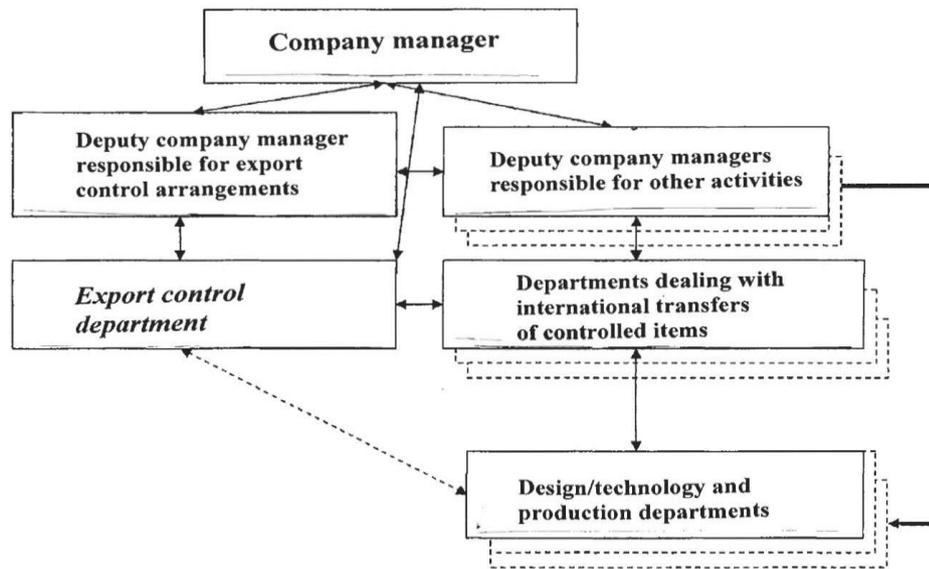
To provide for the company's operational activity in the export control area, it is desirable to create within the company a relevant export control department, with due account of the principle of its maximum centralization.

To comply with this principle, it is recommended to organize the export control department as a stand-alone unit reporting directly to the company's manager in charge of export control measures within the company.

For the sake of its independent operation, the company's export control department must not report to other departments of the company, especially to departments in charge of marketing of market outlets, those involved in goods sales, conducting negotiations or contracting or involved in goods customs processing.

The export control department does need a certain degree of independence within the company. The smaller the company, the harder it is to ensure this independence. The company must guarantee that this activity will not result in a conflict of interests. If the personnel of the export control department are in charge both of exports control and, for example, of sales, the conflict of interests becomes outstandingly evident. The best method would be to make the export control department as independent as possible. It is recommended to create an actually detached department to deal with these issues or provide the relevant status to the official in charge of export (at very minor companies).

An option of structural and organizational interfaces of the export control department is given below. Under this arrangement the export control department is independent and reports both to the company's manager and his or her deputy in charge of export control.



Of course, the level of material and technical capacities of the export control department is very important.

1.2.4. Personnel selection

Selection of the right personnel, appointment of the export control department manager, as well as working out an efficient cooperation mechanism represent a critical milestone.

Personnel of the export control department should only receive instructions regarding their activity directly from the manager of the department or from the company's manager in charge of export control. It is none but they who are

authorized to give instructions concerning one instance of international transfers of goods or another. The personnel of the export control department and its manager should in a timely manner and without hindrance notify the company's manager in charge of export control of any issues of concern in this area. The manager will hence be able to swiftly respond to any challenges.

The personnel of the export control department should be given a relevant training and be sufficiently qualified in the area of state export control.

Undoubtedly, the export control department manager is a key person in establishing the company's export control internal compliance system. He/she is in charge of ensuring adherence to the established regulations. He/she is the one who determines the level of organization of the export control internal compliance system, selection of the right personnel, conducting pre-trainings, and carrying out verifications. Along with that, he/she is to indorse with his/her signature the company's applications for licensing (authorization) documents from state licensing authorities.

The manager of the established export control department must report directly to the company's manager in charge of export control and be vested with enough powers for performing his/her functions, including the right to require the management to discontinue implementing international transfers at any stage in the event of identifying any circumstances which can lead to a violation of state export control law or to non-compliance with Ukraine's relevant international commitments.

Important!

The export control department manager must be involved in all foreign trade-related processes within the company! If he/she is alienated from current operations, he/she will be unable to duly perform his/her duties.

The export control department manager should pay special attention to the selection of personnel who will deal with export controls. He/she is to guarantee that employees with adequate professional (legal and technological) background complete pre-licensing expert examinations (identifications) in all the departments of the company involved in foreign trade activities. It should be brought to notice of the company's manager in charge of export control through the submission of relevant documents, diplomas, etc. New employees should be given a training to familiarize them with the organization of the export control internal compliance system, legal commitments and regulatory system, which will enable them to act in compliance with export control law.

Personnel selection

✓

For qualified employees in charge of export control who work in the export control department

Does the employee meet necessary professional requirements?

(Organizational habits, knowledge of specific processes, procedures and relevant logistics, etc., general knowledge of goods and their specifications, sufficient expertise in export control)

Does the employee meet necessary personality requirements?

(Reliability, sense of responsibility, analytical and organizational skills, self-assurance, negotiation skills, aptness and readiness to make decisions, aptness and willingness to learn relevant instructions and on-going improvement of this knowledge level)

The rules, procedures, and job descriptions of export control specialists within the company should be formalized in such a way that adherence to them would be ensured regardless of any personnel changes. The company's manager in charge of export control should provide ongoing training for the personnel, including development of relevant reference materials, to provide the personnel with sufficient knowledge for implementing mandatory export controls.

The export control department must act as a coordination center for other departments of the company and inform them on any new rules and provisions, changes in the internal processes, adjustments of the processes associated with export control, etc. This information must be brought to notice of relevant employees. Along with that, the entire company should be aware of who is the contact person to address issues related to export control law. A list of contact persons should be accessible to all employees, for example, through its placement on the company's local network, and it should be checked on a regular basis by the company's manager in charge of export control, as well as by the export control department manager.

1.3. Main tasks of the export control internal compliance system

In the process of establishing the export control department and export control internal compliance system as a whole, one should outline main tasks in this area and mechanisms for their accomplishment. A clear definition of all tasks to be eventually included into the Provision on the export control internal compliance system will enable the export control department to perform its functions of

monitoring compliance with the legislation at all stages of preparing and implementing foreign trade operations with controlled goods.

A tentative list of some of the main tasks of the export control internal compliance system

For more confidence in having implemented relevant administrative arrangements within the export control internal compliance system, one should clearly outline the main tasks of this system including:

developing and administering the company's export control program (action plan and electronic database);

developing and communicating to the company's departments guidance, directives, and instructions on meeting export control requirements by specific departments;

reviewing all commercial offers, foreign trade agreements (contracts), and their drafts to be subsequently documented;

identifying the nature of the operations associated with international transfers of goods carried out by the company's departments and of licensing (authorization) documents needed for their implementation;

identification of goods to determine correspondence of specific goods proposed for international transfers to the designations and descriptions of goods listed as goods subject to state export control;

preparation and submission to state licensing authorities of applications for licensing (authorization) documents and other documents as required by the country's law;

control over the use of licensing (authorization) documents;

obtaining and submitting to state licensing authorities documents on goods delivery to the end-user;

participation in exercising physical control over the goods' delivery to the end-user;

regular reporting to state licensing authorities on the use of obtained licensing (authorization) documents and guarantee documents;

implementing training and advanced training programs for employees of the company in the area of state export control and

elaborating necessary training materials;

developing recommendations on compliance with licensing (authorization) document requirements at all stages of implementing international transfers of goods (marketing, negotiations, contracting, and other international activities of the company);

activity coordination with the company departments' employees in charge of export control, who take measures in pursuance of tasks of the company's export control internal compliance system, including employees of such departments as the marketing department, technical department, procurement department, legal department, financial department, contracts department, professional training department, customs and licensing department, economic security department, auxiliary departments, etc. (depending on the staffing structure of the company);

verification of customers of exported products for risks of the products' use for purposes other than declared;

verification of all the involved parties for possible presence in the lists of "banned" partners;

immediate notifying state licensing authorities and other state authorities of detected violations of state export control law by customers or other parties involved in international goods transfer operations;

record-keeping on the use of licensing (authorization) documents and guarantee documents.

This list of tasks is tentative and depends on the activity specifics and size of the company; however in practice these tasks are fundamental to the export control internal compliance system.

1.4. Main functions of the export control department

Determining specific functions of the company's export control department is of no less importance - it will provide all other departments with a clear understanding of what the company's export controls are and of the scope of work that should be carried out in the course of routine operation.

To examine the performance of the main export control functions on the part of the company's export control department, it is necessary to determine the availability of mechanisms for this department to efficiently

perform the functions listed below:

- developing a list of export control-related arrangements/measures and monitoring their implementation;
- monitoring compliance with regulatory requirements in the area of state export control at all stages of the company's activity;
- ensuring adherence to export control requirements in the process of interaction between departments which manufacture goods and departments which prepare and carry out international transfers of goods;
- participating in the development of guidance documents to govern the company's foreign trade activities;
- export control-related training and advanced training for the company's employees involved in foreign trade activities;
- implementing procedures for analysis of all foreign commercial offers (requests) and foreign trade operations within the company and determining their compliance with export control requirements, as well as documenting the results of such analysis;
- ensuring compliance with export control rules and procedures in the course of the company's activities associated with participation in international exhibitions, conferences and seminars;
- performing control functions at all stages of goods preparation, shipment and delivery;
- developing guidance on the procedure for obtaining from state licensing authorities necessary licensing (authorization) documents and guarantee documents for controlled goods;
- regular performance examinations (audits) of the departments and personnel involved in pre-sale preparations and international transfers of strategic goods;
- regular reporting to state licensing authorities on the company's use of obtained licensing (authorization) documents or guarantee documents on the use of goods for declared purposes.

1.5. Rights and responsibilities of the export control department

As early as the very first steps are taken in establishing the export control internal compliance system within the company it is necessary to work out a

clear list of rights and responsibilities of the export control department itself and its manager, which will produce an understandable and transparent system of its interaction with all the company's departments involved in foreign trade activities.

A tentative list of responsibilities of the export control department (*to be complemented depending on the specifics of the company's activity*):

carrying out its activities in strict adherence to the country's state export control law;

monitoring amendments and addenda to the legal framework of state export control and notifying the company's employees involved in the foreign trade activities on these amendments' and addenda's content and implementation procedure;

verifying correspondence of the cargo prepared for shipment to the approved documentation and obtained licensing (authorization) documents;

ensuring retention of all the documents based on which relevant authorizations (conclusions) or guarantee documents were obtained for no less than five years since the completion date of foreign trade agreements (contracts)

other commitments depending on the specifics of the company's activity

A tentative list of rights/powers of the export control department and its manager:

is entitled to propose to the company's management a suspension of any agreements on international goods transfers in case circumstances have occurred under which Ukraine's state export control law or international commitments assumed by it can be violated;

is entitled to obtain from all departments of the company information as necessary to perform the functions assigned to the department;

is entitled to participate in negotiations, international seminars, and conferences on export controls;

is entitled to apply as appropriate to the company's manager with suggestions to include into the company employees' job descriptions relevant provisions to ensure compliance with export control requirements by the departments being part of the company's export control system;

other provisions as determined by the specifics of the company's activities.

1.6. First steps to be taken in establishing an export control department:

The checklist given below will assist in sorting out the issues as an export control department is established

Are the employees selected for the export control department adequately qualified?

Is it a correct statement that not only the company's manager in charge of export control, but also the export control department manager (his/her deputy in case of unavailability) is entitled and authorized to propose to the company's management a suspension of any agreements on international goods transfers in case circumstances have occurred under which Ukraine's state export control law or international commitments assumed by it can be violated?

Have the tasks, functions, rights, and responsibilities of the export control department been worked out?

Is that representative adequately informed and involved in the day-to-day operation?

Is the export control department clearly identified within the staffing structure of the company?

Is the export control department sufficiently independent within the company?

Is the export control department entitled to directly (immediately) inform (report to) the company's manager in charge of export control?

Is it only the company's manager in charge of export control or the export control department manager who can issue direct guidance/instructions on export control department activities?

Is the export control department prepared to act as a coordination center for providing information on new regulatory acts and provisions, changes in internal processes, personnel changes and other export control-related issues?

Is this information communicated to employees of other involved departments the soonest way possible?

Are all employees aware of who to contact in case of issues related to export control law?

Is the list of such contact persons accessible to all employees, for example, through placing it on the Intranet network or otherwise?

Does the export control department verify this list for adequacy on a regular basis?

1.7. Organization of interaction between company departments with a view to due compliance with export control requirements

The export control department manager should be initially aware that export control is a must for many processes underlying the company's activities. Therefore, in establishing a mechanism for interaction between the departments involved in the company's foreign trade activities, one should proceed from the idea that it is a *system* of export control internal compliance that should be established, to embrace all these departments, with the export control department acting as a coordination center for export control-related activities.

Therefore, if your only focus is on working out export control department functions, the next recommended step would be to list other departments to be made part of the export control internal compliance system and to deal with the company's foreign trade activities.

Before developing such a list and establishing the export control internal compliance system in the first place, one should have an idea of what actually needs to be organized. It can only be comprehended through a painstaking scrutiny of the company's operation processes and gaining clear awareness of what the export control internal compliance "system" is.

Important

It is recommended that experienced employees should be the ones in charge of export controls within the company. If this cannot be the case, the management should take all possible measures to enable the export control department manager to scrutinize all the operation processes of the company.

In assessing how many processes are subject to export controls, one should take into account the company's size and type of business.

Below is a tentative list of activities potentially dealing with export controls and of functions that can be assigned to departments involved in these activities:

- Sales and economic security of the company: verification of partners, of goods end-use, and final destination
- Product marketing: classification of one's own produce and equipment
- Procurement: verification of partners, classification and identification of the product for trade
- Logistics: assessing and tracking the use of licensing (authorization) documents during delivery
- Development of a new product: technology transfer, product classification
- Development of production processes: technology transfer
- Finance: payments for licensing documents
- Management: administrative and supervisory functions with respect to subsidiary companies and branches.

Important

Another example could be to assign the following functions to the sales department or the contract department: submit to the export control department manager reports on visits to customers in other countries as long as the goods and their end-use are concerned, reports on commercial trips/visits to customers who have for one reason or another appeared to be irregular, etc.

It makes sense to clearly specify in a relevant document (for example, an order or a directive issued by the company director) the functions of each department regarding adherence to export control rules and procedures. The name of the specific person in charge of the assigned function within the relevant department should be specified in this document as well. These functions should also be included in the job descriptions of the personnel in charge.

Questions of personnel selection for other departments involved in export control

Do only those employees get appointed who have an adequate professional, legal, and technical level of expertise?

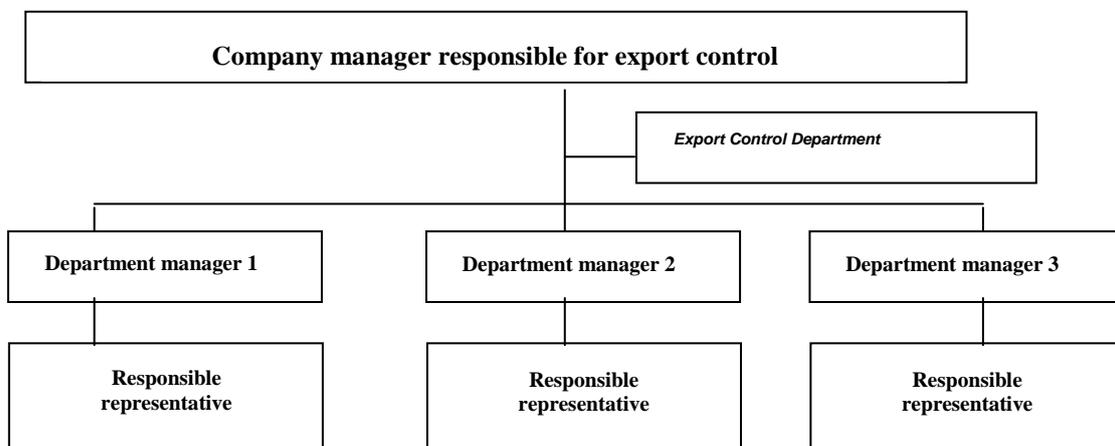
Has the level of these employees' expertise been discussed with the senior managing official in charge of export control, have documents/diplomas to that effect been produced to him/her?

Have new employees been trained in a way that familiarized them with the organization of the export control internal compliance system, legally imposed obligations, and related regulations?

Therefore, if the line manager of a department is authorized as appropriate and reports to one of the company's managers in charge of all the departments being part the export control internal compliance system, it enables efficient interaction between departments and prompt export control decision-making.

Clear definition and distribution of functions of concern for adherence to export control rules and procedures among the company's departments involved in foreign trade activities **enables the export control department manager to perfectly coordinate their activities** under constant monitoring on the part of the company's manager responsible for general management in the export control area.

An example of organizational structure is shown on the figure below. Departments 1, 2, 3, etc. are the company's departments mentioned above. A responsible person is appointed in each department to perform export control functions. As experience shows, it makes sense to appoint to such a position a department manager, but it can as well be an "ordinary" representative of such a department.



To streamline internal information exchange, especially within companies of a complex administrative hierarchy, it could be useful to prepare periodic requests to the export control department for essential information in this area.

Moreover, for diversity-challenged companies with a complex hierarchy it is recommended to include internal audit as an export control-related activity and, for example, follow at certain audit stages a procedure for information exchange, reporting, etc.

1.8. Personnel training

In addition to the right selection and training of the personnel in charge of export control, one major task of the export control department manager is to keep up the level of their awareness of the legal framework in the export control area and related amendments and addenda. Amendments and addenda to legal regulations are a frequent occurrence, and it is necessary to keep the personnel updated on them. Regular training to that effect makes sense as well.

The export control department manager should think over which documents are necessary for the personnel in charge of export control and in what way to update them on new regulatory provisions quickly and efficiently. For example, such information can be disseminated via electronic media (for example, the Internet) or in the course of scheduled meetings attended by all the personnel.

Ukraine's example: *Up-to-date information on amendments and addenda to legal regulations is readily available on the SSECU web-site at www.dsecu.gov.ua in the subsection "Effective" of the section "Regulations". It is also recommended to monitor the subsection "Under Development" where drafts of future regulatory documents currently under public consideration and interdepartmental coordination are published.*

It is very important for paperwork training and is an efficient means of preliminary training.

Personnel training checklist

Do the personnel in charge of export control get trained on a regular basis?

Do the personnel in charge of export control have access to up-to-date revisions of documents related to their activity?

1.9. Monitoring performance of duties

The company's manager in charge of export control must constantly monitor and check whether his/her instructions of concern for all export control rules and procedures are complied with.

1.10. Organization of export control processes and procedures within the company

1.10.1. Developing the process plan

The complete procedure from designing a new in-house product and receipt of an order up to the final shipment under a signed foreign trade agreement (contract) ought to be carefully planned. Each export control-related step should be based on an in-depth analysis.

As was mentioned above, it is the company's export control-related objectives that must serve the basis for such a plan. To work out a detailed process plan is the responsibility of the company's manager in charge of export control in interaction with other officials of the company's senior management and the export control department personnel.

Such a plan is based on the principle of "who, how, when, and what" questions to be addressed to avert damage to the company.

1.10.2. Instructions

It is important that all organizational details are set forth in accurate instructions and guidance materials to enable the personnel to handle critical situations or guide them as to whom to address in case of uncertainty.

1.10.3. Data Processing System

It is recommended to support export control processes via information technologies. If an electronic paperwork/record-keeping system has been put in place within the company, the export control database can be integrated into relevant databases and the export control department may use them for mandatory verifications, as a reminder on reporting due, etc.

Electronic data processing system checklist

Have you got an electronic data processing system incorporating export control functions?

Y

Is export control integrated into the general electronic database of the company?

Does the system ensure automatic execution by the personnel of necessary steps associated with export control procedures?

Are control steps documented by the electronic data processing system?

1.10.4. Application of export controls at early stages of foreign trade contracting

Based on considerations of the company's security, including its economic security, the company's manager in charge of export control must be entitled to halt negotiations, contracting, or even the manufacture of goods in case the proposed international transfer is or may be in violation of export control law, or when such an international transfer may not be approved for obvious reasons (for example, in case of embargo).

Of special importance is to apply export controls at early stages of preparing a commercial offer and receipt of an order. The company may save time and money if it determines already at this stage whether a licensing (authorization) document is required for the goods' international transfer and whether obtaining this document is feasible. Applying to state licensing authorities for a licensing (authorization) document at the stage when the shipment is already due within a definite period of time bogs down all the processes associated with the order, to say nothing of the troubles with the already signed contract once it turns out that a licensing (authorization) document may not be issued for the international transfer of such goods.

Ukraine's example: *If as early as at the stage of negotiations it becomes clear that a licensing (authorization) document is required to comply with the terms of the foreign trade agreement (contract), the company should be aware of the need to submit to state licensing authorities an application supported by a package of deliverables as appropriate for registration of the company as an international trader. This will be a sort of a test to see if such an international goods transfer is possible and under what conditions, before further investing into this agreement.*

Checking the possibility to involve the export control department at early stages of planning exports

Y

Are all the managing personnel aware of how important it is to involve the export control department in all processes associated with foreign trade activities?

Are all the managing personnel aware that this is very important both from the economic and financial perspective?

Were export controls implemented as early as at the stage of planning and development?

Are the technical experts familiar enough with the lists of goods subject to state export control, in order to plan the development of those products primarily that do not match the specifications given in these lists?

Was the export control department involved at the stage of negotiations, preparation or review of the commercial offer or receipt of the order?

Is it a new project? Are you going to submit to state licensing authorities an application with the package of deliverables as appropriate for registration of your company if so stipulated in the country's legislation?

1.10.5. Information transfer to the export control department. Draft contracts analysis. Evaluation sheet

The company's management should realize the importance of one of the main tasks of the export control department – to implement an in-house procedure for evaluating all foreign trade-related commercial offers (requests) and foreign trade operations, assessing their compliance with export control requirements, and documenting the results of such evaluation. This function can work properly only if the postulate “all commercial orders (requests) and draft foreign trade contracts (agreements) are subject to advance approval by the export control department” has been expressly stated and included in relevant guidance documents (orders and directives or company standards related to the mechanism of review and processing of draft agreements (contracts).

Along with this, based on the results of the commercial orders (requests) review, an evaluation sheet is filled out as appropriate to include all necessary export control-related information. This document is to be signed by the export control department manager.

Important

A sample evaluation sheet is given below. Of course, this form that is related to contracts for international goods transfers is not a dogma and requires further adjustment as determined by the country's export control law and the company's specifics.

EVALUATION SHEET TO CONTRACT № _____

(document name, number, date)

Department: *Export control department*

1.	Commodity (product)		
2.	Item classification and identification	<input type="checkbox"/> Military commodity: (regulation) cl. _____	<input type="checkbox"/> special conditions: other _____
		<input type="checkbox"/> Dual-use commodity (regulation) Annex № _____ item _____	
		<input type="checkbox"/> does not match any item of the Lists by name, description, and specifications	
3.	International transfer type	<input type="checkbox"/> export <input type="checkbox"/> temporary exportation <input type="checkbox"/> import <input type="checkbox"/> temporary importation	<input type="checkbox"/> other _____
4.	Information on the international transfer parties:		
4.1.	Exporter (details)	1)	2)
4.1.1.	Exporter's state	3)	4)
4.2.	Importer (details)	1)	2)
4.2.1.	Importer's state	3)	4)
4.3.	End-user (details)	1)	2)
	End-user's state		
4.	Brokers (details)		
4.1.	Brokers' states		
5.	Availability of an interstate or an international agreement		
4.6.	Presence of restrictions on export to the state (states), including for the goods proposed for shipment		
4.7.	Presence of signs of a significant risk to implementing the international transfer ("red flags")		

1) Full name and other details of the international transfer party

2) Characteristics of the activity type and prior relations

- 3) State of the international transfer party
- 4) Participation of the state in a relevant international regime (WA, MTCR, NSG, AG, etc.) or assuming commitments to adhere to its requirements

5.	Availability in the agreement (contract) of special data, commitments and condition:			
5.1.	Details of the end-user and the end-use	<input type="checkbox"/> yes	<input type="checkbox"/> no & not needed	<input type="checkbox"/> no and it's possible not to include them (reason, condition)
5.2.	Commitments regarding the end-use	<input type="checkbox"/> yes	<input type="checkbox"/> no & not needed	<input type="checkbox"/> no and it's possible not to include them (reason, condition)
5.3.	Conditions regarding submission of the import certificate	<input type="checkbox"/> yes	<input type="checkbox"/> no & not needed	<input type="checkbox"/> no and it's possible not to include them (reason, condition)
5.4.	Conditions regarding submission of the end-user certificate	<input type="checkbox"/> yes	<input type="checkbox"/> no & not needed	<input type="checkbox"/> no and it's possible not to include them (reason, condition)
5.5.	Conditions regarding submission of the delivery confirmation certificate	<input type="checkbox"/> yes	<input type="checkbox"/> no & not needed	<input type="checkbox"/> no and it's possible not to include them (reason, condition)
5.6.	Other special conditions and (or) guarantees	Present: (specify)		& not needed
6.	Conditions of adherence to requirements of export control law at the time of concluding and implementing the contract:			
6.1.	Availability with the company of authority to implement the international goods transfer	<input type="checkbox"/> yes (specify):	<input type="checkbox"/> no	<input type="checkbox"/> not needed
6.2.	Obtaining a state licensing authorities conclusion (explanations) on eligibility for contract negotiations	<input type="checkbox"/> needed	<input type="checkbox"/> not needed	
6.3.	Obtaining authorization for the international goods transfer	<input type="checkbox"/> needed	<input type="checkbox"/> not needed	
6.4.	Registration of the contract with specified state authorities (if so stipulated by law)	<input type="checkbox"/> needed (specify)	<input type="checkbox"/> not needed	
6.5.	Entry of the goods into delivery lists as part of the scientific and production cooperation	<input type="checkbox"/> needed (specify)	<input type="checkbox"/> not needed	
6.6.	Obtaining from state licensing authorities an import certificate (upon the supplier's request)	<input type="checkbox"/> needed	<input type="checkbox"/> not needed	

6.7.	Other conditions (specify):	<input type="checkbox"/> yes (specify)	<input type="checkbox"/> none															
7.	The export control department's conclusion on eligibility for contracting																	
7.1.	The contract can be concluded directly by the company	<input type="checkbox"/> yes	<input type="checkbox"/> no (specify the reason)															
7.2.	The contract can be concluded through an authorized organization	<input type="checkbox"/> yes	<input type="checkbox"/> no (specify the reason)															
7.3.	Conclusion of the contract is impossible	<input type="checkbox"/> yes	(specify the reason)															
Analysis completed by <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">_____</td> <td style="width: 33%; border: none;">_____</td> <td style="width: 33%; border: none;">(_____)</td> </tr> <tr> <td style="border: none;">(position)</td> <td style="border: none;">(signature, date)</td> <td style="border: none;">(Name)</td> </tr> <tr> <td colspan="3" style="border: none;"> </td> </tr> <tr> <td style="border: none;">The export control department manager</td> <td style="border: none;">_____</td> <td style="border: none;">(_____)</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">(signature, date)</td> <td style="border: none;">(Name)</td> </tr> </table>				_____	_____	(_____)	(position)	(signature, date)	(Name)	 			The export control department manager	_____	(_____)	_____	(signature, date)	(Name)
_____	_____	(_____)																
(position)	(signature, date)	(Name)																
The export control department manager	_____	(_____)																
_____	(signature, date)	(Name)																

All the departments should be briefed on the obligation to supply information to the export control department, for example, on the end-user or intended use of goods. Among other things, such information is important for filling out the application and checking all issues of concern for the goods' applicability.

The export control department, in its turn, must be entitled to request any information from other departments of the company, i.e. the interdepartmental interaction mechanism should function efficiently.

1.11. Practical measures preceding the application for a licensing (authorization) document

1.11.1. Determining the need for obtaining a licensing (authorization) document

As we have already stated, one of the major tasks of the export control department is implementing an in-house procedure for the analysis of all foreign trade commercial offers (requests) and foreign trade agreements (contracts) and establishing their compliance with the export control requirements, documenting the results of such an analysis, as well as determining whether a licensing (authorization) document is needed; and if yes, whether it is feasible to obtain. If the answer to the last question is negative, the export control department shall immediately discontinue implementing the agreement and notify all the parties involved. In this way the company can save time and money, which would

otherwise have been invested in a futile effort. It is these considerations that emphasize the importance of the export control department's early involvement in all the processes.

The requirement to complete a detailed analysis of draft agreements (contracts) enables clarifying all the aspects of an international goods transfer. First it should be checked whether the goods are included in the lists of goods subject to state export control. These lists of goods containing items subject to export control (as well as related technologies and software) include the technical features and specifications of such goods.

1.11.2. Company's goods directory

If possible, relevant technical experts (technical, engineering or design departments) must be involved in the study of these technical specifications/parameters. If the company has a properly compiled directory of goods, it would suffice to classify them factoring in the experts' examination of the goods with reference to control list items and to enter this classification to the data processing system, thereby compiling **the company's own individual list of goods**, or a matrix of the company's goods. In case of changes in commodity specifications or the control list, the identification should be revisited. It is important to constantly consult the technical departments once goods of individual manufacture are ordered.

1.11.3. Determining eligibility for obtaining a general or an open license (authorization)

Once goods proposed for an international transfer have been identified, the question arises whether a general or an open authorization can be used. The use of such documents helps save time as it eliminates the need to go through the procedure of obtaining an individual authorization for an international transfer of specific goods to a specific state.

Ukraine's example: *Article 15 of the Law of Ukraine On State Control of International Transfers of Military and Dual-Use Goods contains an explanation that a general authorization or conclusion can be issued to a registered company planning multiple negotiations associated with foreign trade agreements (contracts) or multiple execution of such goods transfers to specific end-users under foreign trade agreements (contracts) that are concluded during the validity term of the authorization or conclusion and are valid during a set period, but no longer than three years.*

Pursuant to this article of the law, an open authorization or conclusion respectively can be issued to a registered company planning multiple negotiations associated with foreign trade agreements (contracts) or multiple

execution of such transfers to various end-users of a specific state of destination under such agreements (contracts) that are concluded within the validity period of such an authorization or conclusion under relevant international agreements, or in case of carrying out such transfers to states participants of international export control regimes or states towards which a relevant state policy is pursued, and it is valid for a set period, but no longer than three years.

In this respect it is important that such types of licensing (authorization) documents can be obtained provided the export control internal compliance system has been put in place within the company, which ensures compliance with state export control requirements in the process of carrying out specific international transfers of goods, proper retention of the documents related to such transfers, and submission to state licensing authorities of reports on the actual use of relevant authorization or conclusion. It is under these conditions only that the so called “licensing exemptions”, such as a general and an individual licensing (authorization) document, can be enjoyed.

1.12. Preparing an application for a licensing (authorization) document

Employees of the export control department must thoroughly examine intended international transfers of goods. An application should be filled out only when the export control department has come to a conclusion that this transfer is subject to export controls. Filling out an application “just in case” and submitting it to state licensing authorities without first identifying the need to obtain authorization is time-consuming both for the company and for state licensing authorities employees involved in this activity.

The application should be prepared meticulously – in order to avoid any delays resulting from additional questions and clarification of details in the course of state licensing authorities review. It is extremely important to make sure all the required documents have been submitted.

In case the application has been meticulously prepared as appropriate, the necessary licensing (authorization) document will be obtained within the legally established period.

1.13. Reporting on the actual use of a licensing (authorization) document

If the licensing (authorization) document was issued under certain conditions specified for the international transfer, the export control department manager shall ensure appropriate compliance with these conditions. For this purpose, it would make sense to develop a plan of steps (processes) to achieve compliance with such conditions, getting them documented and the business partner informed accordingly.

Ukraine's example: *reporting on the use of a licensing (authorization) document is done pursuant to the procedure envisaged by SSECU Order № 86 dated 05 October 2009, registered with the Ministry of Justice of Ukraine under № 994/17010 dated 28 October 2009.*

Untimely submission to state licensing authorities of reporting documents is a common concern.

Article 24 of the Law of Ukraine On State Control of International Transfers of Military and Dual-Use Goods establishes that failure to submit or untimely submission to the specially authorized state export control authority of reports and relevant documents on negotiation outcomes, as well as on actually completed international transfers of military and dual-use goods based on the obtained authorizations or conclusions, as well as on the use of these goods for declared purposes is a violation of the state export control legislation requirements. Pursuant to Article 25 of this Law, such a violation is punishable with a fine.

To prevent such a violation and to meet the conditions of the international transfer, it is recommended to develop recommendations (directives) containing types of the reporting documents to be submitted by the company, completion samples with a detailed description of how to fill out each entry, and a clear statement of submission deadlines. It is also reasonable to periodically prepare and submit for the company's management review reports on the status of the use of licensing (authorization) documents obtained by the company for fulfilling any contracts with foreign companies.

Reporting and compliance with authorization document requirements (checklist)

- v
- Has the function of reporting on the use of licensing (authorization) documents been included in the Provision on the export control department and in its manager's job descriptions?
- Has the responsibility for constant monitoring of adherence to licensing (authorization) document requirements been established?
- Has the business partner been informed on special conditions of the licensing (authorization) document (if it concerns the business partner)?
- Does compliance with the licensing (authorization) document's special conditions get documented?
- Have reporting mechanism instructions been developed?

Does the export control electronic database have a function of tracking the report submission schedule?

Does the export control electronic database have a function of monitoring compliance with the licensing (authorization) document's special conditions?

1.14. Export control department's participation in dispatching goods subject to shipment

The final important stage is goods dispatch. The goods dispatch requires that certain clearly defined responsibilities be established and responsible people appointed.

Prior to dispatching the goods, their packaging is controlled. The pre-dispatch control is exercised by the personnel in charge of the dispatch with the participation of the export control department's representatives. The objective of such control is to make sure the goods proposed for dispatch match the details specified in the delivery documents and licensing (authorization) documents.

In case of a discrepancy, the preparation to shipment shall be suspended until all the circumstances which have caused the discrepancy are clarified and rectified.

In organizing the shipment process, it should be determined who exactly will carry out the actual shipment and delivery of goods. Whether it is the company's managers who take care of these issues or some other company (probably a transportation company) is contracted for this purpose – in any event adherence to export control law will always remain the exporter's responsibility.

Dispatch for shipment (checklist)	
Is a final examination of goods before the dispatch scheduled?	<input type="checkbox"/>
Who is in charge of the actual dispatch? The company's own employees or other organization?	<input type="checkbox"/>
Does the export control department have exclusive authority to participate in the dispatch?	<input type="checkbox"/>
Does the export control department have appropriate rights within the data processing system (access to relevant database information)?	<input type="checkbox"/>
Who is in charge of customs formalities and does the export control department have information on the results of customs processing?	<input type="checkbox"/>

1.15. State licensing authorities’ denial of a licensing (authorization) document or notification of the need to suspend the international transfer

If a state licensing authority has denied a licensing (authorization) document, the export control department should be in a position to immediately suspend the implementation of the export agreement in its entirety. The same concerns “catch-all” instances.

Ukraine’s example: *When SSECU informs the company on circumstances, conditions, and requirements as to placing a commodity under export controls as set forth in Article 10 of the Law of Ukraine On State Control of International Transfers of Military and Dual-Use Goods (The so-called “catch-all”, that is comprehensive control of any goods associated with the manufacture of weapons of mass destruction, their delivery means or transferred contrary to Ukraine’s international commitments), the company is obliged to take action to suspend the international transfer at any stage.*

Based on these factors, the export control department must be able to keep in touch with the company's manager in charge of export control in any critical case. Relevant guidance must envisage that an international transfer of goods can only be carried out upon the goods’ pre-shipment verification. Such verification should be the done by the export control department’s representative or a responsible person from another department being part of the company’s in the export control internal compliance system, who is qualified in the export control area. Under this arrangement, a detailed report on the findings of such verification shall be submitted to the export control department manager.

Checklist for cases of denial or notification by state licensing authorities	
	√
How are denials or notifications incorporated by the company into the process of decision-making on goods export?	<input type="checkbox"/>
Can the shipment be immediately suspended in case of getting a denial or a notification?	<input type="checkbox"/>
Can the department in charge of shipment get in contact at any time with the export control department manager or with the export control department’s authorized representative or a responsible person from another department being part of the company’s in the export control internal compliance system, who is qualified in the export control area?	<input type="checkbox"/>
Has it been made clear that an international transfer of goods can only be carried after their pre-dispatch verification executed by	<input type="checkbox"/>

<p>the export control department’s authorized representative or a responsible person from another department being part of the company’s in the export control internal compliance system, who is qualified in the export control area?</p>	
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1.16. Chart of denials

In this regard it would be advisable to compile and keep a chart of denials of authorizations or conclusions (“a list of denials”) listing states, goods, goods customers and users in whose regard the issuance of licensing (authorization) documents is declined “as a rule”, based on the provisions of Ukraine’s law and international commitments, or information about denials issued to the company.

It is also worthwhile to keep track of and enter in the relevant database other restrictions on goods supply (for example, the need for special powers, the need for licenses authorizing specific activities, etc.), which may be not covered by the export control system yet should be taken into account when contracting and planning international transfers of goods.

1.17. Proper organization of paperwork/record-keeping

Each company ought to develop a documentation keeping program.

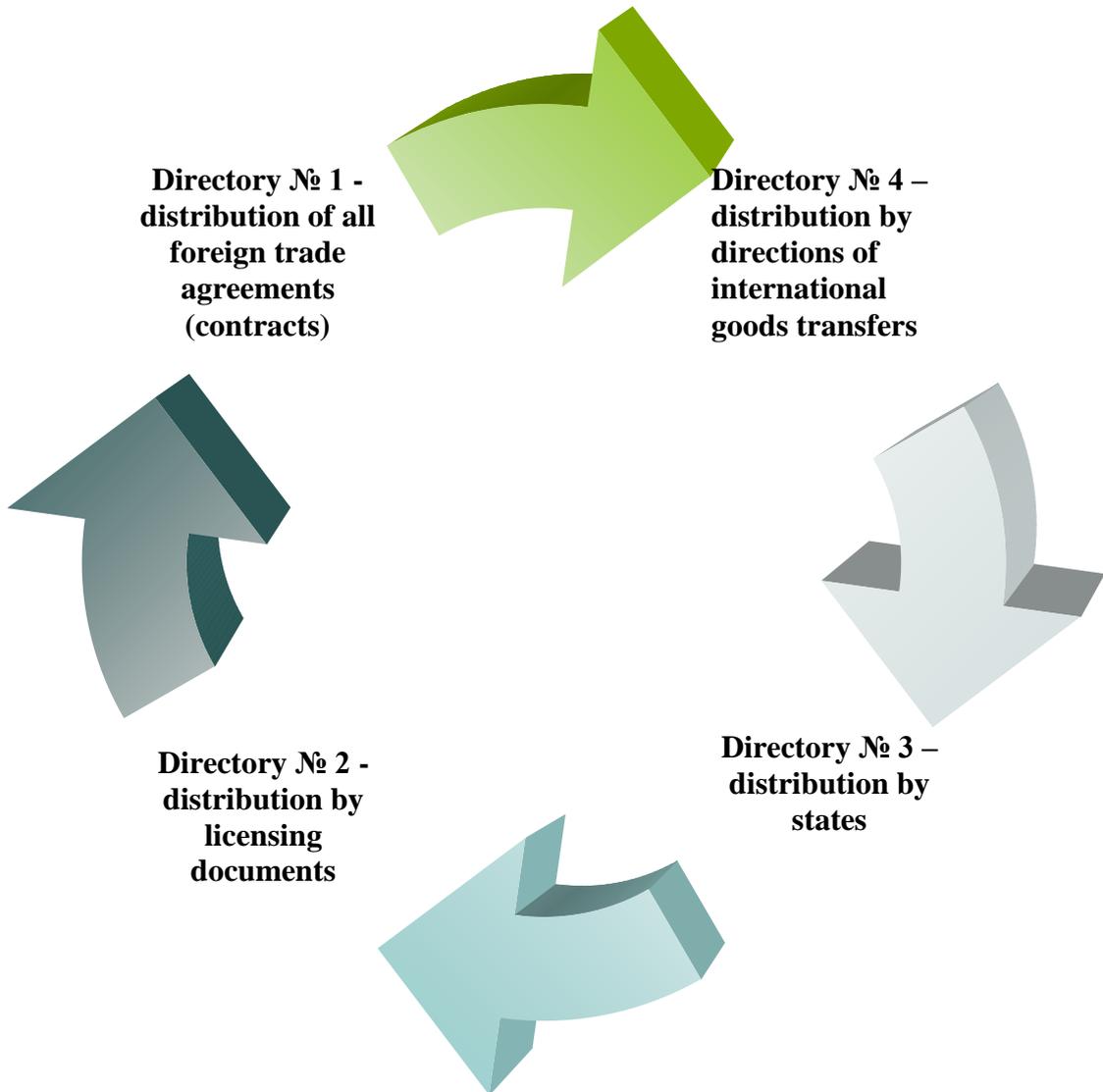
The purpose of such a program is to create conditions for proper retention of all documents related to specific operations of planning and implementing international transfers of goods. (Orders, contracts, details on brokers and end-users, documents on commitments and guarantees, documents on freight forwarders, routes and kinds of transportation, delivery confirmation certificates, financial documents, etc., even documents not covered by export control requirements but obtained in the process of specific operations of international goods transfers.)

Ukraine’s example: *These documents are kept for no less than 5 years from the date of completing the specific contract and are submitted to state export control authorities or other competent state authorities upon request.*

As experience shows, to ensure proper record-keeping of necessary documentation it is worthwhile to establish a certain system of interrelated directories kept in soft and hard versions.



A sample directory layout is shown on the figure below:



where:

Directory № 1 is a distribution of all foreign trade agreements (contracts) by individual folders and creating a relevant directory with the list of these folders (folder № 1 – Contract № 32 dated 31 November 2003, folder № 2 – Contract № 41 dated 02 March 2004, etc.).

Directory № 2 is a distribution by licensing documents: authorizations, conclusions, international import certificates and creating a relevant directory with reference to the list of folders featured in Directory № 1 (authorization № 20500362 – folder № 1, authorization № 20300204 – folder № 5, etc.).

Directory № 3 – a distribution by states with reference to the list of folders referred to in Directory № 1 (Russian Federation – files №№ 3,7,8,10, etc.; Czech Republic – files №№ 2,4,5,9, etc.).

Important

It is recommended that the company's export control department should keep copies of all the correspondence with each country that the company has relations with, regardless of whether any shipments have been carried out to this state.

Directory № 4 – a distribution by directions of international goods transfers (export – files № 4,6,10, etc., import – files № 2, 7, 9, etc., transit – files № 7, 9, 11, etc.)

It is this approach that can provide the export control department personnel with operational access to all necessary information.

It should be borne in mind that despite the potential offered by electronic means and availability of relevant electronic databases, it is reasonable to keep files with complete documentation packages on a paper medium containing the original (if impossible – authenticated copies of) documents.

The export control department of the company is recommended to keep copies of all correspondence with each customer, consignor, state authorities, as well as the correspondence on products classification by types or designations.

Checklist

The most important documentation to be retained

Foreign trade agreement (contract) on the supply of goods (services) signed by the customer

Copies (or originals) of contracts specifying customers' references, lists of goods, their price, special delivery conditions, and other details recommended to include in contracts

Documents on brokers and end-users

Commitments and guarantee documents

Documents (certificates) on the secrecy level of goods

Technical certificates enabling to unambiguously identify the goods by respective control list entry

Authenticated copies of end-user certificates, import certificates, and delivery confirmation certificates

Reports to state export control authorities on the use of licensing

(authorization) documents or guarantee documents

Documents on the freight forwarder, routes and kinds of transportation (a bill of lading or an air waybill), including:

documents signed by a sea vessel's captain, owner, or agent, being a written confirmation of the goods shipment, and the agreement on their transportation

documents issued by airlines for international goods shipments, containing relevant airlines' requirements

1.18. Monitoring, audit, and internal audit

1.18.1. Verification and monitoring of employees' activity

1.18.1.a. Internal audits

The company's manager in charge of export control should take measures as appropriate to monitor adherence to and compliance with his/her administrative instructions. Along with that, such verifications are conducted in order to make sure that the company's system of ensuring adherence to the established procedure for international goods transfers is efficiently functioning and meets all requirements set forth by state export control rules.

The responsibility for due compliance with the procedures is imposed on the company's manager in charge of export control (control function), and the export control department manager (executive function).

Depending on the size of the company, this monitoring is performed through standard verifications and systematic audits. Standard verifications are to be conducted by the company's manager in charge of export control, and/or the export control department manager. In the course of these verifications, the performance of export control functions by responsible personnel of all departments included in the export control internal compliance system is monitored.

Audits of the system's overall performance and of that by the export control control department can be conducted by the internal audit department (if available within the company) or by a duly authorized ad hoc committee, for example 1 – 2 times a year. The company's manager in charge of export control is to develop their fundamental criteria to be stated in writing. Such systematic audits are very important.

Important

Routine coordination discussions on adequacy of export control-related administrative arrangements should be held within the company with the participation of all departments involved (meetings, general assemblies, hearings, etc.)

Verification and monitoring (internal audit measures)	
Who controls the audit procedure?	<input type="checkbox"/>
Does the company's manager in charge of export control monitor adherence to and execution of the organization's documents and instructions?	<input type="checkbox"/>
What internal audit measures/arrangements are undertaken by the company management?	<input type="checkbox"/>
Is it possible to guarantee (for the duration of the audit) that no unauthorized international transfer of controlled goods will be carried out?	<input type="checkbox"/>
Are periodical verifications planned?	<input type="checkbox"/>
Who conducts them?	<input type="checkbox"/>
Is the systematic audit conducted 1-2 times a year?	<input type="checkbox"/>
Are systematic audits conducted by your company's internal audit department?	<input type="checkbox"/>
Does the company's manager in charge of export control have criteria for these verifications?	<input type="checkbox"/>
Is the company's manager in charge of export control concerned with documenting these criteria and findings of these verifications in writing?	<input type="checkbox"/>

1.18.1.b. External audits

Pursuant to the legislation, state licensing authorities shall assist companies in establishing export control internal compliance systems and provide them with the information and methodology support in establishing such systems.

With a view to determining the level of the established export control internal compliance system's functionality and efficiency, state licensing authorities and

other state authorities can send their representatives directly to the company, for conducting relevant verifications.

The grounds for verifications (visits to the company) can also include the company's violations of export control requirements as revealed by state authorities. The state licensing authority shall be entitled to undertake a verification of the export control internal compliance system at any stage of its functioning. During verifications, specialists of the company are requested to give relevant explanations and comment on different questions as regards establishing export controls within the company. After scrutinizing all circumstances and facts indicative of the system's efficiency, the company is given specific recommendations on improving the system.

It is in the company's best interests to furnish all necessary assistance to such verifications and take individual and/or administrative actions pursuant to the given recommendations. These can even include replacing some officials involved in the company's export control system or making structural or organizational changes in the system.

External audit checklist	
Is your documentation on export controls properly compiled, pursuant to the state licensing authority's recommendations?	<input type="checkbox"/>
Do you adhere to the legally envisaged documentation retention term?	<input type="checkbox"/>
Is your export control internal compliance system documented at such a level that you can easily show and explain all the system procedures to state licensing authorities during a visit to your company?	<input type="checkbox"/>

Chapter 2. Main principles of export control internal compliance system structure and functioning

The information given below is meant to illustrate by practical experience what administrative, legal, awareness-raising, and other arrangements/measures need to be pursued by a company to comply with legal requirements in the field of export control and to minimize the risk of violating the law.

Neither total economical security, nor total protection of the company's interests is possible unless its export controls are properly laid down, organized, and accepted by all the company's employees.

2.1. Principles of structuring the export control internal compliance system

2.1.1. Principle of proper training organization

The basic principle of training organization must consist in compiling a training program, its planning, implementation within the company, and feedback in monitoring the efficiency of such training.

In-house export control begins with making all the personnel involved in foreign trade aware of the existence of export controls. Besides, now that legal regulations in the area of state export control are regularly updated to meet the national security needs and international commitments of Ukraine, the company's specialists involved in operations related to international goods transfers and control over their implementation need to undergo regular retraining.

The company's management are recommended to determine the extent and level of company employee involvement in international goods transfer operations and define the scopes of retraining they need. Based on this, a relevant training and retraining schedule is compiled for state export control specialists.

In order to conduct a competent training, certain prerequisites need to be met:

- First of all, the export control department manager must be identified as the person responsible for training and introduced in this capacity to the company.
- The export control department manager must be appropriately qualified to conduct trainings, i.e. he/she must have obtained in-depth special information, if necessary via advanced training courses and practical trainings conducted by state licensing authorities on a regular basis.

Important

Time and effort needed by any company to organize training primarily depends on its size and staffing structure. The more employees are involved in export control-related activities, the more ramified is the distribution of individual tasks in this area between employees of different departments, the more challenged the export control department manager is in providing relevant trainings.

Of principal importance is training program “adjustment” to a specific company. Superfluous regulations of little concern to the company's specifics do little to facilitate proper perception of training.

- Desirably, it would be the export control department manager who is to work out the training program. To do this, he/she should first analyze what export control tasks could be interesting from the perspective of the company's individual operation processes, and to what extent, and select trainers. Subjects, participants, typical cases, and suggested solutions as well as testing tools would be selected as appropriate.
- The export control department manager works out a training program, identifying the personnel to undergo the training, the company's functions to be learnt by this personnel, and within what period.

Important

A special focus should be on training for the company's managing personnel. In this regard, it is especially important to reach a proper level of “awareness”.

- The export control department manager or trainers assigned by him/her should plan training courses according to training plans and conduct them accordingly. The bigger the company, the higher is the likelihood that it will be impossible to organize a centralized training for everybody at the same time. A solution to that can be for trainers to visit every location of the company's departments and place training materials on the company's website.
- Employees who have received training should be listed in a registry with a record of their names, relevant positions and functions, as well as the training content.
- Training should be subject to quality control.
- A questionnaire survey of the trainees should be a standard element of each training event, to discuss training-related information, the quality of conducting the event, and trainer performance, etc., as well as suggestions on improving the training process.
- Feedback is essential to the export control department manager as an important prerequisite for preventing sloppy training organization.

2.1.2. Principle of implementing a system of internal and external verifications (audits)

An important task within the framework of establishing an export control internal compliance system is the organization and implementation of control functions. Clearly, they ought to be organized on a systematic and regular basis.

The basic principle underlying the system of verifications (audits) refers to their planning, programming, organization, and follow-up, as well as reporting on the findings of such verifications.

If all employees of other departments who deal with export controls provide adequate and up-to-date information about expected control actions, the inspector can expect the export control system to function in the company's best interests.

2.1.2.a. Audit plan

An important task is therefore to make out a plan of audits, containing information on the administrative units to be inspected, within what period of time, and with what issues to be addressed. For this purpose and for specifying further details in the plan, one needs to be knowledgeable about the legal framework and internal regulations, information technology processes, preliminary analysis processes, and be aware of the existing affiliated organizations. If all these conditions are met, then implementing these regulations in the course of processes and procedures must be addressed.

At the end of this process, the auditor must have all answers to standard questions, in order to assess what particular items should be checked.

2.1.2.b. Audit questionnaires

<i>Possible elements of the audit questionnaire</i>	
The export control department's status within the company	<input type="checkbox"/>
Availability of and compliance with internal regulations	<input type="checkbox"/>
Analysis of special issues related to the company's activity	<input type="checkbox"/>
Contacts with state authorities and specifics of implementing export controls within the company	<input type="checkbox"/>
Use of licensing (authorization) documents (according to their types)	<input type="checkbox"/>
Creating and implementing a training program	<input type="checkbox"/>
Creating and implementing an audit program	<input type="checkbox"/>
Documentation and relevant processes in the export control area	<input type="checkbox"/>
Availability and use of processes related to information technology, and relevant tools	<input type="checkbox"/>
• Products database and classification	
• Customers/partners database	<input type="checkbox"/>

•Order processing techniques	<input type="checkbox"/>
•“Black” lists: countries of concern, fishy companies, etc. This information can be placed on the licensing authority’s website.	<input type="checkbox"/>
•Technical integration of export control issues in case of changes made	<input type="checkbox"/>
Process logistics	<input type="checkbox"/>
Control and implementation of typical verifications as appropriate (<i>examples</i>)	<input type="checkbox"/>
•Products classification	<input type="checkbox"/>
•End-use control, applicability and partner identification	<input type="checkbox"/>
•Use of licensing (authorization) documents	<input type="checkbox"/>
Technology (incl. software) transfers and providing services (technical assistance)	<input type="checkbox"/>
Standard export control-related contract clauses	<input type="checkbox"/>
Engagement of affiliated organizations	<input type="checkbox"/>

Understandably, an audit of a specific department (e.g. departments involved in sales, product marketing, procurement, supply, etc.) cannot cover all the elements listed above. In this case priorities should be identified for each area to be verified.

Important

Periods between audits and follow-up checks should be adequate, for example in case of a serious risk (e.g. in case of an unauthorized international transfer) special verification measures need to be taken without delay, that is within a few days. If the risk is not that significant, this period can go up to three months or more.

*In any event, the emphasis is to be laid on the **systematic character of audits and follow-up.***

2.1.3. Principle of compliance with legal requirements in the export control area

Compliance with legal requirements is a key point within the competence of the managing official in charge of export control.

The managing official in charge of export control is to decide on how to organize the export control internal compliance system. There are three main elements at his/her disposal:

2.1.3.a. Element 1: Organizational documents of general nature

These documents are expected to outline a framework for relevant standards. For example, the following instruments can be used:

- An Order on establishing the export control internal compliance system and the related department

Below are typical pattern texts of organizational documents. The form and content of these documents need to be adjusted to address the specifics of each company

Ukraine's example:

Sample draft order

(COMPANY LETTERHEAD)

ORDER

Date __. __. ____.

Location _____

On establishing the export control internal compliance system and the export control department

For the purpose of:

safeguarding the company from possible violations of the current legislation in the field of state export control and related administrative, criminal, and economical sanctions which can be applied to the company;

reducing the company's risks while implementing international goods transfers subject to state export control;

facilitating the company's efficient foreign trade activities and timely obtaining of licensing (authorization) documents from state licensing authorities,

I HEREBY ORDER:

1. Establish an export control internal compliance system within the company.

2. Appoint (*identify a manager of the company in charge of export control*) **as the person responsible for export control issues within the company**

(position and full name)

3. Establish within the company's staffing structure a new stand-alone unit – a division (*department, section, bureau, etc.*) for export control.

4. Appoint _____ (*name*) **as the manager of the export control department**

4. Stipulate that the export control department manager directly reports to (the person identified in Clause 2 of the Order)

— (position and full name)

5.

—
(identify the person referred to in Clause 2 of the Order)

Within the period through _____ ensure elaboration and submittal for my approval of the following:

A Provision on the company's export control internal compliance system.

A Provision on the company's export control department.

6. Monitoring of the execution of this Order shall be reserved for myself.

Director General

(Full name)

Order on organization of interaction in the export control area

(typical pattern Order text)

(COMPANY LETTERHEAD)

ORDER

Date __.__. ____.

Location _____

On establishing a mechanism of the company's departments interaction in the export control area

For the purpose of establishing an efficient system of interaction of the company's departments in the export control area,

I HEREBY ORDER:

1. Identify the below-listed departments as ones involved in in-house export control and specify their respective functions:

- *Marketing and sales departments, to ensure verification of partners, final destination, and end-use of the goods.*
- *Logistics department, to ensure compliance with licensing (authorization) document requirements at all stages of goods supply.*
- *Technical department, to ensure preparation of documents on goods classification and identification according to export control requirements.*

- _____
- _____
- _____

2. Appoint the below-listed as persons responsible for enforcing export controls within the departments specified in Clause 1 of this Order:

Marketing department – department manager

(Full name)

(name of the division) *(Full name)*

(name of the division) *(Full name)*

3. Include the functions specified in Clause 1 of this Order into the job instructions for the persons specified in Clause 2 of this Order.

4. Appoint _____ *(full name)* as the export control department manager.

5. _____ *(position)* _____ *(managing official in charge of export control)* _____ and the export control department manager shall make up a plan of audits of the implementation of functions specified in Clause 2 of this Order and submit it for approval by the Director General of the company.

6. The first deputy director general of the company *(managing official in charge of export control – author’s remark)* _____ and export control department manager shall determine a scope and level of the company specialists’ involvement in operations on international goods transfers and make up a relevant training and retraining plan.

7. Monitoring of the execution of this Order shall be reserved for myself.

Director General

(Full name)

Terms of Reference for the system and department

A pattern

APPROVED

by Director General Order

№ _____ dated “ _____ ” _____ 20__

**TERMS OF REFERENCE
for the export control system**

_____ (name of
company)

1. General provisions

1.1. The company's policy in the export control area is built on the following principles:

ensuring observance of legal requirements in the area of state export control;

refraining from any international goods transfers which may result in violating Ukraine's law and international commitments or in inflicting damage on its national interests;

refraining from international goods transfers without prior obtaining relevant authorizations or conclusions, yet with information available on intended or possible full or partial use of any goods proposed for export or temporary exportation to other states for development, production, assembly, testing, repairs, maintenance, modification, upgrade, operation, management, storage, detection, identification or for proliferation of weapons of mass destruction or their delivery means, or for military end-use in states on which UN Security Council resolutions, other international organizations of which Ukraine is a member, or national law have imposed a full or partial embargo for supplying military goods;

refraining from concluding foreign trade agreements (contracts) on international transfers of any goods or from participating in their fulfillment if it has become cognizant that such goods could be used by foreign states or foreign business entities in the manufacture of weapons of mass destruction or their delivery means;

refraining from fulfilling foreign trade agreements (contracts) for international transfer of any commodity if it has become cognizant that the commodity will be used for other purposes or by a different end-user than was specified in the agreements (contracts) or associated documents based on which a authorization, conclusion or international import certificate was obtained;

timely submission to state licensing authorities of reporting on the actual use of authorizations or conclusions obtained from them.

The company shall adhere to the above principles regardless of commercial benefit to be gained from fulfilling an order.

1.2. The Provision identifies employees' actions under the company's export control internal compliance system (hereinafter – the System) to be consistently taken with respect to controlled goods, and represents the company's main guidance document regulating the activities of the company-established Export Control Department.

Specific export control procedures shall be set forth in in-house rules and instructions addressing the functional particularities of specific departments.

1.3. Involved in the System are specialists whose official duties relate to supplying goods subject to export control, who have comprehensively mastered guidance documents in the export control area and have been appointed as persons responsible for these matters within their departments.

2. Purpose

2.1. The main purpose of the System's establishment is to create conditions within the company for implementing the main provisions, rules and requirements in the export control area on the basis of national approaches in this area. The department charged with administrative and control functions in the export control area is the Export Control Department (hereinafter – the Department), which is a stand-alone department of the company.

The main tasks of the Department shall include:

developing and administering the company's export control program;

developing and communicating to the company's departments guidance, directives, and instructions on meeting export control requirements by specific departments;

identifying the nature of the operations associated with international transfers of goods carried out by the company's departments and of licensing (authorization) documents needed for their implementation;

participation in goods identification, which implies determining the correspondence of specific goods proposed for international transfers to the designations and descriptions of goods listed as goods subject to state export control;

preparation and submission to state licensing authorities applications and deliverables necessary for obtaining licensing (authorization) documents;

obtaining licensing (authorization) documents and controlling their use;

obtaining and submission to state licensing authorities of documentary evidence of goods delivery to the end-user;

participation in exercising physical control over goods delivery to the end-user;

reporting to state licensing authorities on the use of obtained licensing (authorization) documents and guarantee documents;

developing training programs for company employees in the area of state export control and elaborating necessary training materials;

developing instructions (recommendations) on compliance with licensing (authorization) document requirements at all stages of implementing international transfers of goods (marketing, negotiations, contracting, and other international activities of the company);

activity coordination with employees responsible for export control within the company departments' involved, including employees of such departments as the marketing department, technical department, procurement department, legal department, financial department, contracts department, professional training department, customs and licensing department, economic security department, auxiliary departments, etc.

verification of customers of exported products for risks of the products' use for purposes other than declared;

verification of all the involved parties for possible presence in the lists of "banned" partners;

immediate notifying state licensing authorities and other state authorities on detected violations of state export control law by customers or other parties involved in international goods transfer operations;

record-keeping on the use of licensing (authorization) documents and guarantee documents.

3. Functions of the Department

3.1. The Department shall perform the following main functions:

developing a list of export control measures and monitoring their implementation;

monitoring compliance with regulatory requirements in the area of state export control at all stages of the company's activity;

ensuring effort coordination between company departments when implementing export control procedures;

participating in the development of orders and other guidance documents regarding foreign trade activities of the company;

training for the company's employees involved in foreign trade activities;

implementing in-house procedures for analysis of foreign trade operations and determining their compliance with export control requirements, as well as documenting the results of such analysis;

ensuring compliance with export control rules and procedures in the course of the company's activity associated with the participation in international exhibitions, conferences, and seminars;

performing control functions at all stages of goods preparation, dispatch, and delivery;

development of instructions (recommendations) on the procedure for obtaining from state licensing authorities necessary licensing (authorization) documents and guarantee documents for goods subject to state export control, as well as goods to which state export controls are applicable;

conducting regular performance examinations of the departments and personnel involved in foreign trade and covered by the company's export control system;

regular reporting to state licensing authorities on the company's use of obtained licensing (authorization) documents or guarantee documents on the use of goods for declared purposes.

4. The Department's rights

4.1. The Department shall be entitled to:

propose to the company's management a suspension of any agreements on international goods transfers in case circumstances have occurred under which Ukraine's state export control law or international commitments assumed by it can be violated;

obtain from all departments of the company information needed for performing functions assigned to the Department;

participate in international and national seminars and conferences on export controls;

apply as appropriate to the company's manager with suggestions to include into the company employees' job descriptions relevant provisions to ensure compliance with export control requirements;

suggest other provisions as determined by the specifics of the company's activity.

5. The Department's responsibilities

5.1. The Department shall be responsible for:

carrying out its activities in strict adherence to the legislation of Ukraine in the area state of export control;

monitoring amendments and addenda to the legal framework in the area of state export control, and notifying the company's employees involved in the foreign trade activities on these amendments' and addenda's content and implementation procedure;

verification of correspondence of the cargo prepared for shipment to the approved documentation and obtained licensing (authorization) documents;

retention of all the documents based on which relevant authorizations (conclusions) or guarantee documents were obtained, for the duration of no less than five years from the date of execution of the foreign trade agreement (contract).

6. Organizational structure and principles for building an export control system

6.1. The export control department is a basic company unit responsible for implementing export controls within the company and reporting immediately to the (*First Deputy or Deputy*) Director General (*full name*).

6.2. As export controls are implemented within the company, relevant services by other companies can be used provided general requirements are met as to establishment and functioning of the System.

6.3. In all company departments involved in export or transfer of controlled goods, responsible persons on export control shall be appointed to perform export control-related functions within their department as directed by the Department.

6.4. For accomplishing tasks assigned to the Department, in each specific case respective task forces can be created to involve specialists from other departments as well as other companies or organizations.

7. Organization of interaction with state licensing authorities

7.1. Interaction with state licensing authorities shall be ensured by

the Department. The Department will:

- **prepare material to be included in applications for licensing (authorization) documents;**
- **inform on incidents taking place during controlled goods shipments, attempts on the part of foreign customers to conclude contracts on goods use for other agendas, and on other facts of violating export control rules and requirements;**
- **organize the preparation of responses to application-related questions;**
- **prepare scheduled reports on the use of issued authorizations;**
- **provide for other export control-related correspondence.**

7.2. Applications for licensing (authorization) documents shall be drawn up according to established forms and requirements.

7.3. When obtaining a licensing (authorization) document the Department shall carefully verify the consistency between the contract signed and the license (authorization). Attention is also paid to special conditions of international transfer as specified in the license (authorization).

8. Documentation of the Department

8.1. For the Department to function properly, the documents listed below must be referred to:

8.1.1. Order on the Department's establishment.

8.1.2. Provision on the export control internal compliance system and on the Department (this document).

8.1.3. Order on appointing responsible persons in charge of export control within company departments.

8.1.4. Job instructions of employees (responsible persons) of the Department.

8.1.5. The list of goods proposed for export by the company and subject to export control.

8.2. Legislative and regulatory documents the company is governed by in carrying out operations with controlled goods, guidance documents of international control regimes, as well as methodology and other documents in the export control area.

8.3. Job instructions for employees of the Department shall be developed in accordance with this provision.

8.4. The list of goods proposed for export by the company and subject to export control shall be approved by state licensing authorities. The list of

goods shall include relevant services (if any). The list of goods is communicated to all responsible persons dealing with the company's foreign trade activities.

8.5. Guidance documents related to compliance with export control rules as per company activities shall be developed in accordance with the specifics of the company's foreign trade activities and the list of goods proposed for export by the company and subject to export control. When developing the material, guidance documents of relevant international control regimes shall be consulted.

8.6. Documents on international transfers of controlled goods shall be retained within the company for 5 years of the contract completion date.

To that effect, a Documentation Directory is created, with copies to be retained in the Department:

Directory № 1 – a distribution of all foreign trade agreements (contracts) by individual folders and creating a directory with the list of these folders (folder № 1 – Contract № 32 dated 31 November 2003, folder № 2 – Contract № 41 dated 02 March 2004, etc.).

Directory № 2 – a distribution by authorization documents: authorizations, conclusions, international import certificates and creating a directory with reference to the list of folders featured in Directory № 1 (authorization № 20500362 – folder № 1, authorization № 20300204 – folder № 5, etc.).

Directory № 3 – a distribution by states with reference to the list of folders referred to in Directory № 1 (Russian Federation – files №№ 3,7,8,10, etc.; Czech Republic – files №№ 2,4,5,9, etc.).

Directory № 4 – a distribution by directions of international goods transfers (export – files № 4,6,10, etc., import – files № 2, 7, 9, etc., transit – files № 7, 9, 11, etc.)

9. Provision of information and equipment support to the Department

9.1. Provision of information and equipment support to the Department shall be consistent with the tasks assigned to it and intended to address the following:

9.1.1. Provision of the company's management and employees of the Department with export control-related information, including the legal framework, company guidance documents etc.;

9.1.2. Provision of employees of the Department with updates on partners and controlled goods for completing applications for authorization of controlled goods export;

9.1.3. Provision of the Department with relevant computer and office equipment and software necessary, so as to technically enable:

- **obtaining on-line export control-related information via electronic means;**
- **completing applications and other documents authorizing the export of controlled goods;**
- **e-mail transmission of documents to state licensing authorities, including the application and other deliverables for obtaining licensing (authorization) documents;**
- **providing information on the functioning of the Department.**

10. Liability

10.1. The Department Manager and employees shall be held personally liable for meeting the current export control regulatory requirements in accordance with Ukrainian legislation.

Export Control Department Manager _____
(full name)

Appendices:

- *Company policy principles, for instance, - no military projects, references to other internal prohibitory directives, etc.*
- *Job instructions.*
- *The Code of Conduct – not based directly on regulatory provisions, but rather being a compilation of recommendations or definitions with due account taken of the company's activities and processes.*
- *Other documents important for export controls.*

2.1.3.b. Element 2: Information

The export control department manager must be kept informed on changes and complements made to legal and regulatory acts. If he/she is aware that such changes directly affect the company's operation, all employees involved in export control processes in other departments (employees in charge appointed by an order of the company manager) must be updated accordingly. This way an employee in charge of export can duly perform his/her duties associated with informing.

Important

A really useful measure would be to publish a series of regular circulars – on export control issues. General changes to the company's policy, or changes in the legislation expected in the future can also be covered in these circulars.

Having such a tool of communication at his/her disposal, a managing official in charge of export control and the export control department manager are able to improve the understanding of export control regulations and promote their positive perception in general.

2.1.3.c. Element 3: Methodology guidance/instructions

All necessary detailed instructions in the export control area essential to the company, and measures to ensure compliance with export control law should be based on regulatory acts. These instructions should be as practical as possible. Any person who is not a specialist in this area must be able to locate all necessary information in these instructions.

Such job instructions or methodology guidelines can address a variety of issues of concern.

Ukraine's example: *a major problem of delayed SSECU reviews of applications submitted by companies is that they draw up the documentation in violation of legal regulations in the export control area. One solution to this concern could be the availability of recommendations (guidance/directions) worked out by the company on the procedure for preparing and drawing up documents required for obtaining from SSECU relevant company and goods registration documents, licensing (authorization) documents, and guarantee documents. It is assumed by Ukrainian companies that these recommendations (directions) would be formalized in such a way that their observance would be ensured despite personnel rotation.*

Compiling such recommendations (directions) will make sure the material is prepared systematically and with due account of all requirements of the current legal framework. At the same time newly appointed employees and representatives of other departments will be able to get detailed awareness-raising (training) material. In such recommendations it would make sense to distribute the information by respective sections (registration, negotiations, military goods export, military goods import, dual-use goods export, transit, etc.), to clearly list documents to be submitted for various types of licensing (authorization) documents, and by various types of international goods transfers with attached patterns for drawing up (filling out) such documents, as well as to determine specific functions of all departments from the perspective of their involvement in this process. In addition to that, the recommendations should

define a procedure for preparing an application for guarantee documents with related patterns attached.

After having analysed the current legal regulations, the system of job instructions given below can cover most items which need to be taken into account:

- Prohibitions
- Classification and identification of goods manufactured by the company and other goods
- Control over the goods end-use, their final destination and partners
- Assessment of licensing requirements to technology and software transfer
- Material (tangible) export
- Intangible export (through electronic media, data transfer systems)
- Export control in the sphere of providing services
- Licensing (authorization) documents (only the licenses/authorizations which are actually used)
- Export procedures
- Goods dispatch
- A system of reporting on the use of licensing (authorization) documents, etc.

Any job instructions should give an answer to **five key questions**: who, what, when, how, why? How does it affect the actual development of job regulations?

Who: Any company employee expected by a managing official in charge of export control and the export control department manager to take certain control measures, who must be known as an expert in export control issues.

What: If the employee is now aware that he/she is required to comply with export control requirements, the next question comes up: what specific things is he/she to do? The mechanisms for executing relevant processes need to be explained.

EXAMPLE 1

Personnel involved in sales should check whether they can establish business relationships with a new customer. With this aim, based on job instructions titled “Control over the end-use, final destination, and partner”, the employees are to identify, for example, whether this customer has been

added to any “black list”, answer the significant risk (“red flags”) questionnaire, etc. Job instructions are also to identify what the employee should do with findings of his/her investigation, for example, notify the export control department in case of suspicious or negative information available.

EXAMPLE 2

An employee dealing with products marketing who has been put in charge of exports comes in touch with a series of goods yet at the stage of identification. Therefore he/she should get relevant classification and identification of goods from other (technical) departments without delay, be it by intensely studying the above control lists or using the “Goods Classification Tool” provided to him/her by the export control department, and he/she is to coordinate the further proceedings with the export control department manager.

When: stages of operation during which export control measures should be taken as appropriate.

How: by publishing available tools and other manuals (lists), also possible by identifying useful contacts (for example, of the export control department); employees who are specialists in the export control area are provided with information on how required control should be exercised.

Why: As it has already been stated, adequate information on export control measures is of major importance in terms of personnel motivation. For example, why it is necessary to obtain a licensing (authorization) document at early stages: the shipment may be delayed if the application for a licensing (authorization) document is submitted overdue or is ill-prepared.

The question is to what extent the said list of job instructions makes up a “system”.

Condition 1: job instructions should be understandable to a person who is not a specialist in the export control area, in particular he/she should be able to derive the answer to his/her questions in the export control area even from the title and contents of the instruction. Job instructions should be structured accordingly, consistent with the company's operation processes.

Condition 2: on the other hand, they shall address all prohibitions and requirements, for example, accurate instructions for employees who are not specialists in the export control area should be worded in a clear practical language in order to safeguard these employees from possible violations of the legislation.

Processes analysis and knowledge of the legal framework serve a basis for establishing a system of internal standards which incorporate the said conditions in their entirety.

2.1.4. Principle of analysis and regulation of the company's operation processes, factoring in export control requirements

After having scrutinized the company's operation processes, prepared answers to all five main questions (who? what? when? how? why?), factored in the size of the company and type of its activity, it is possible to start developing individual export control steps within the framework of each process. In the course of this, a level of involvement of employees in charge of export control is determined for all procedures, e.g. for the following activities:

processing commercial requests (orders);

conducting negotiations;

drafting and concluding every contract (during which an appropriate review scheme is developed and approved);

exhibition and advertising events;

goods dispatch;

preparation of applications for licensing (authorization) documents

international goods transfers

control over the end-use goods as intended

etc.

EXAMPLE

When a certain stage in developing and creating a new product is achieved, the person in charge of export control in the technical department is expected to ensure:

- classification and identification of the future product according to lists of goods subject to state export control.

Important

Besides, it is reasonable for the export control department manager to describe export control as a separate process being part of the company's general operation processes.

2.1.5. Principle of establishing and maintaining liaison/contacts with state authorities for export control and other state bodies

Contacts with state authorities may vary, for example:

- **with state licensing authorities:** registration, obtaining licensing (authorization) documents, reporting, etc.

- **with customs authorities:** customs procedures, etc.
- **with tax authorities:** declarations, taxes, etc.

Of course, this list is incomplete; it shows however that all these contacts have one feature in common. One must be competent enough in order to properly go through all the stages without doing harm to the company as a result of negligence or ignoring requirements of the legal framework. The handling of all contacts with state authorities would be best to impose on the export control department.

Important

In order to avoid duplication of effort, and especially appearance of different views on the same subject within the company, a strict delimitation of responsibilities should be made at all its levels, which should be reflected in relevant directives and job instructions.

2.1.6. Principle of applying information technology when enforcing export controls

The bigger the company, i.e. the ampler dataflow in the export control area, the more important is the integration of export control functions in automated information processes. This principle gains particular importance for large companies operating with considerable amounts of international goods transfers.

Ideally, an automated system of export control with a complete data package should be in place within companies. In this regard it does not matter what software and what applications are used by your company. Of course, integration of individual electronic components in the procedures depends on the level of employees' ingenuity and available budget.

It is essential that key words are entered for control elements, such as:

- Goods classification and identification
- Control over the end-use
- Reporting
- Technology transfer

2.1.6.a. Goods classification

All procedures for order processing are based, as a rule, on two databases: a goods database and an orders/customers database.

In the course of goods classification and identification, a goods database, i.e. a database of the company's products, is primarily used. In addition to technical

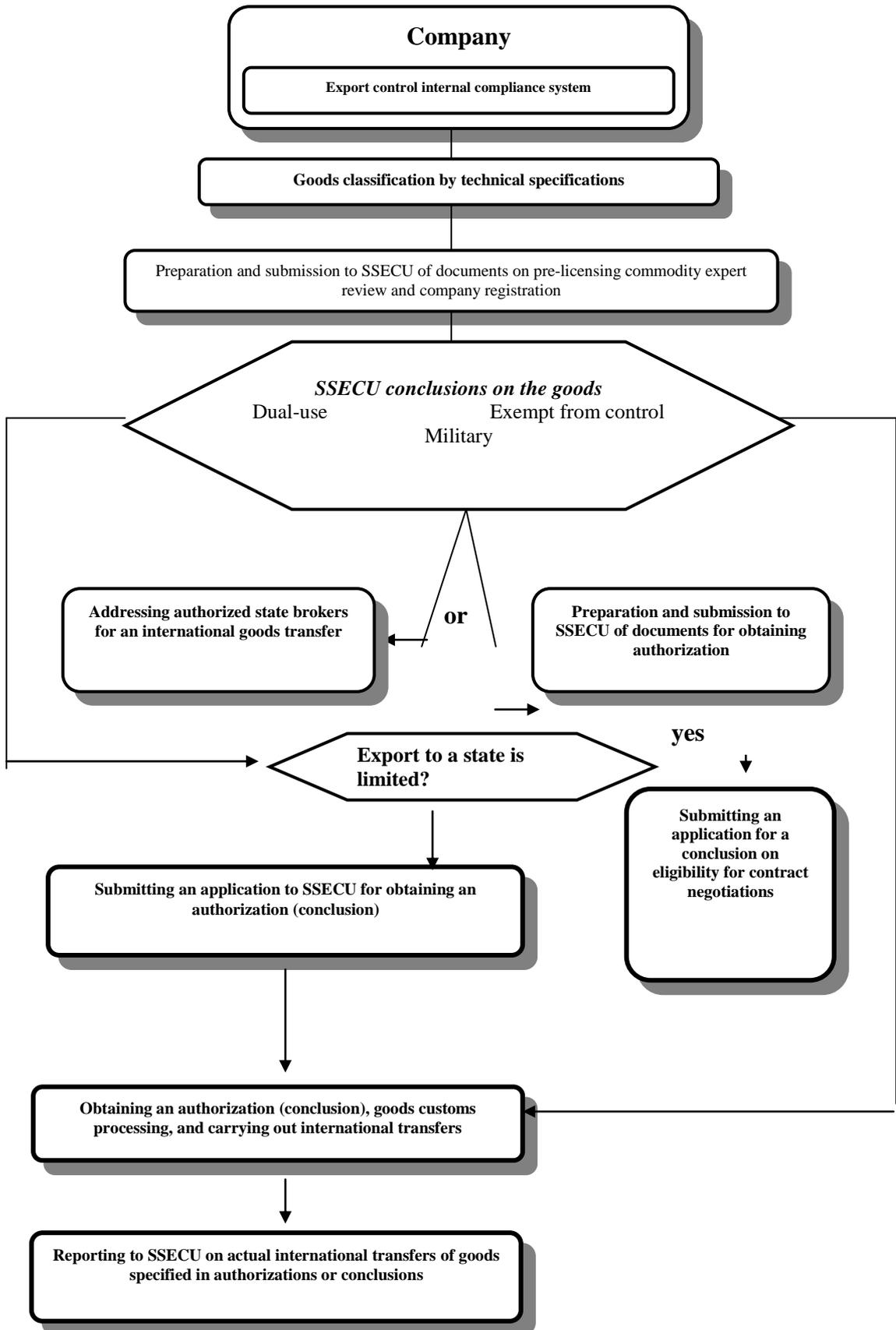
and logistic information, such databases must contain characteristics related to export control, in particular goods identification according to lists of goods subject to state export control. The products are to be linked to respective database fields.

The export control department manager must develop a “decision-making tree” to lead the user to one article of the control list via a relevant questionnaire. This works and can be determined only in case the goods classification and identification have already been entered in the database.

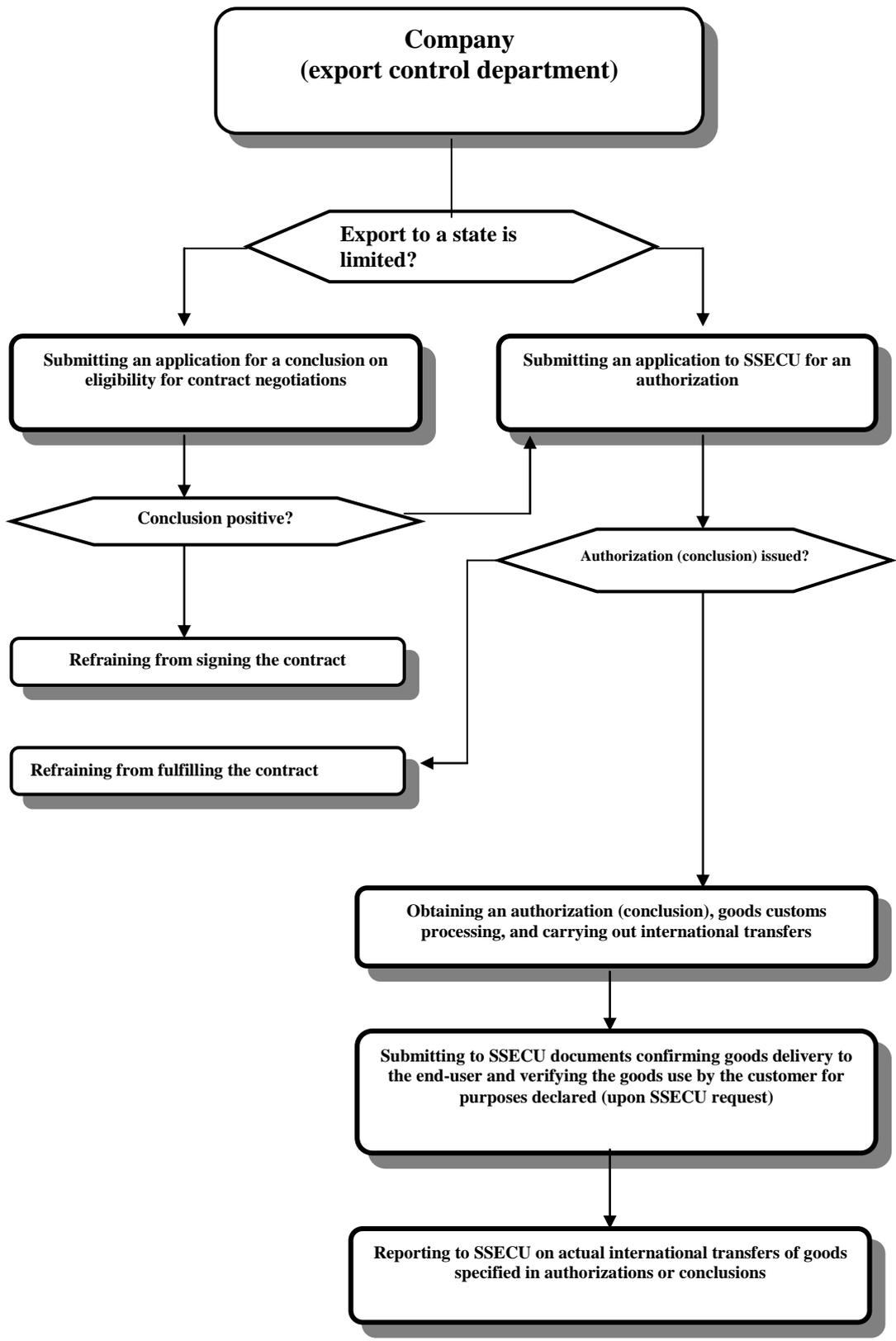
Therefore, the specialization and business habits of the employee in charge of export control must be combined with technical expertise of technical departments’ specialists.

Examples of decision-making trees that are recommended in Ukraine:

Layout 1

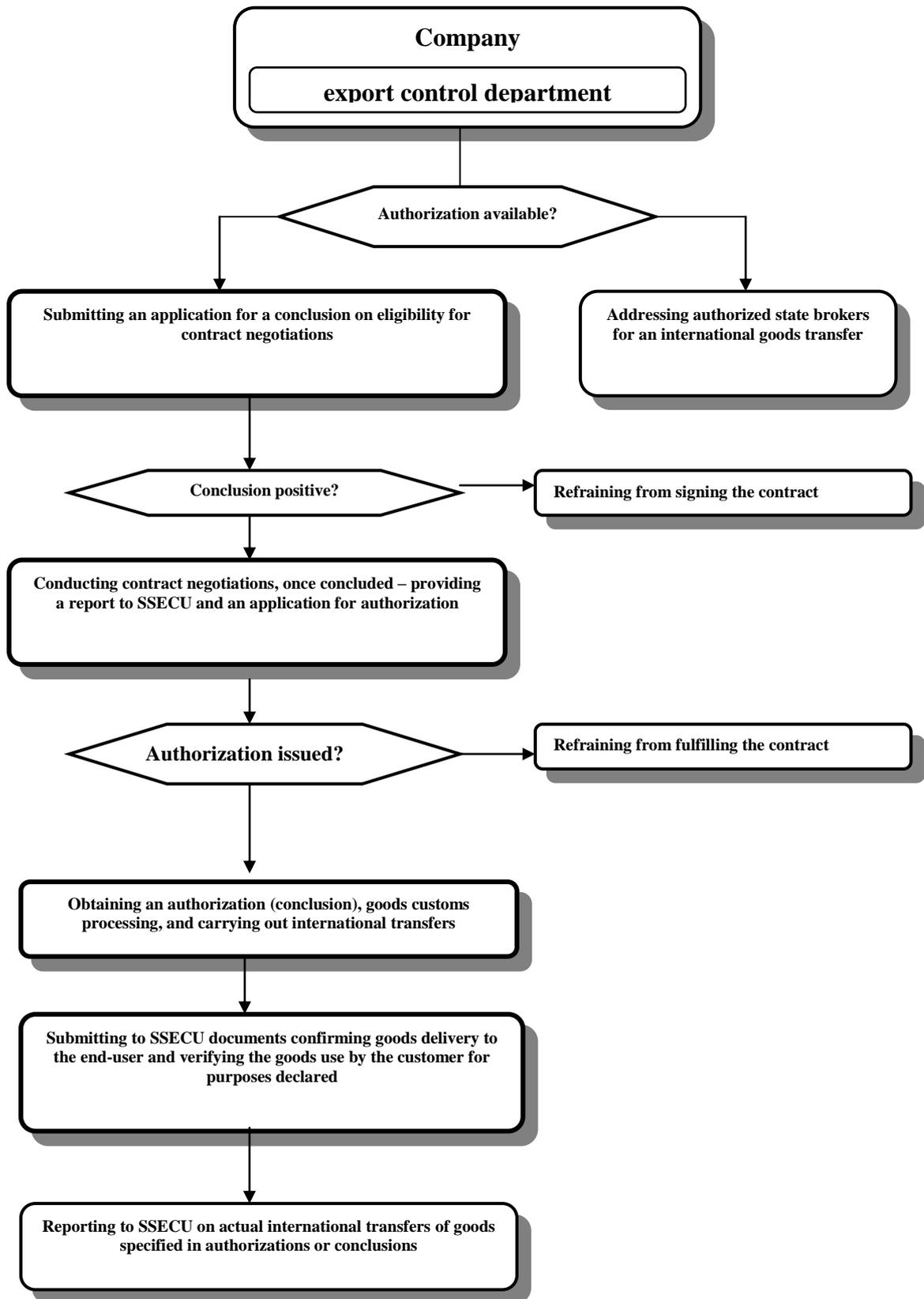


A sample layout of main export control procedures during planning and carrying out international transfers of dual-use goods
Layout 2



A sample layout of relationship between key export controls during planning and carrying out international transfers of military goods

Layout 3



2.1.7 Principle of implementing legal and regulatory provisions in the company's internal guidance documents

Meeting all export control requirements depends on awareness of how the legal regulations are applied. It is hence extremely important to gain knowledge of legal and regulatory provisions.

In-depth knowledge of legal and regulatory provisions can be acquired by studying the original sources, i.e. the provisions themselves. However, considering the large number of regulations, their versatility or just their complexity, the use of secondary sources is really worthwhile. It can be seminars, internal training or explanatory circulars. Whatever method is chosen, the training will go easier if experienced specialists in this area get involved.

Besides external support, regular reviews of one's own information should be mandated, using the information published on the state licensing authorities' Internet sites.

Ukraine's example:

The SSECU Internet site address is www.dsecu.gov.ua. The legal framework in the export control area is available in the section "Regulatory acts", subsection "Effective". It is also important to review the subsection "Drafts" of the section "Regulatory acts". There you will be able to familiarize yourself with drafts of new documents as well as amendments and addenda to current regulations.

2.2. Presentation of the export control internal compliance system

Establishing the export control internal compliance system within companies should be accompanied with an appropriate "presentation" campaign, depending on the activity type and size of the company itself. If the tips given above have been followed to have established the export control internal compliance system, this system needs to be "presented" to the company's personnel.

The ideal presentation form is the one which makes the content of all aspects of the export control internal compliance system understandable and intuitive.

The rationale for the existence of an export control internal compliance system within the company should never cease to be a major focus in the course of all presentations. It is also necessary to explain that in case of alleged violations a manager in charge of export control within the company should prove at any point that the company has taken all necessary in-house measures and set all the rules so as to prevent the alleged violation. Therefore, explanations as regards accurate record-keeping are very important.

A presentation, as a rule, should contain the required elements as listed below:

- The team of employees dealing with export control (export control department and responsible employees of other departments involved in the company's foreign trade activities)
- Regulatory acts
- Job instructions
- Training
- General export control-related information
- Audits
- Standard texts and forms
- Technical and special terms related to the company's specifics and export control issues
- Customs information

Some elements of the export control internal compliance system to be highlighted during its presentation	
The team of employees dealing with export controls (with tasks and areas of responsibility defined)	<input type="checkbox"/>
• A managing official in charge of export control	<input type="checkbox"/>
• The export control department manager	<input type="checkbox"/>
• Employees responsible for export control functions in other departments included in the export control internal compliance system	<input type="checkbox"/>
• Responsible employees in affiliated branches (representative offices)	<input type="checkbox"/>
Legal framework	<input type="checkbox"/>
• Based on regulatory and legal provisions	<input type="checkbox"/>
• Based on the company's policy	<input type="checkbox"/>
Job instructions	<input type="checkbox"/>
• Prohibitions	<input type="checkbox"/>
• Determining conditions of implementing	<input type="checkbox"/>

international transfers of controlled goods	
<ul style="list-style-type: none"> • Classification (goods, manufacturing equipment, precursors, software and technology, goods of the company's own manufacture, services, etc.) 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Control over the end-use, final destination, and partners 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Assessing conditions of international technology and software transfers 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Intangible export (via data transfer lines) 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Technical assistance (services) 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Licensing (authorization) documents 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Departments involved in the dispatch of goods 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Recommendations (guidance) on the procedure for preparing and processing documents required for obtaining from state licensing authorities relevant documents on the registration of the company and goods, licensing (authorization) documents, and guarantee documents 	<input type="checkbox"/>
<p>Training</p> <ul style="list-style-type: none"> • Training plan 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Training program 	<input type="checkbox"/>
<p>General information</p> <ul style="list-style-type: none"> • Informing via mass media 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Information circulars of the export control department 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Circulars of regulatory nature: Sample documents 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Audit plan 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Audit questionnaires 	<input type="checkbox"/>
<p>Available tools</p> <ul style="list-style-type: none"> • Goods classification and identification 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Control over the end-use, final destination, 	<input type="checkbox"/>

and partners	
<ul style="list-style-type: none"> • Identification of licensing (authorization) documents 	<input type="checkbox"/>
Involvement of affiliated branches and representative offices, subsidiaries	<input type="checkbox"/>
<ul style="list-style-type: none"> • Presentation of principles for the making of an export control internal compliance system 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Individual decisions by the company's management regarding the export control internal compliance system – standard texts and forms 	<input type="checkbox"/>
<ul style="list-style-type: none"> • End-user certificates 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Guarantee letters 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Company standards 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Lists of necessary (verification) measures 	<input type="checkbox"/>
Registry of technical terms	<input type="checkbox"/>
Registry of references or sources	<input type="checkbox"/>
<ul style="list-style-type: none"> • Websites of state licensing authorities 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Internet page for export control subject matter maintained by a subsidiary (affiliated branch, representative office) 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Details on information technologies 	<input type="checkbox"/>
<ul style="list-style-type: none"> • Customs information 	<input type="checkbox"/>

Chapter 3. Organization of the export control internal compliance system from the perspective of the export control department manager (elements to be factored in by the manager)

The management's task is not only to put in place necessary controls under a relevant export control internal compliance system, but also to make sure these controls are generally accepted by the whole company; a task that can be a real challenge and even require taking some unpopular yet necessary measures.

The perception-related content, organization and measures can vary depending on the company size and activities.

3.1. Company profile

3.1.1. Company size

The company's size plays an important role in the making of an export control internal compliance system. Very small companies can disregard some structural aspects, but only in terms of hierarchy and operational administration. Organizational requirements are comparable to those implemented within major companies, as far as export control requirements are concerned.

Important: *The bigger the company, the larger output of production or other activities, the higher are administrative and supervisory requirements.*

Minor companies: *if the company size/scope allows, export control should also be maximum centralized, i.e. for instance, classification of goods; the system of management and compliance with commitments; control over end-use, final destination and partner verification will all be the responsibility of one and the same person/department. This will save funds for conducting audits and training, creating job instructions and liaison/interfaces; it means that this central department/person should implement appropriate export control processes as well as ensuring self-control.*

Medium-sized companies: *as the scope of activities increase, ever more operational control aspects should be delegated to other company departments rather than to the export control department. The more actively this process unfolds, the more organizational requirements emerge. There are no ready decisions to be offered, it is instead recommended to explore in what form and with what intensity export control processes should be described and implemented.*

Major companies: *here organization is everything. Except for general management and day-to-day control under the procedure for analysis of foreign trade agreements (contracts), virtually no operational tasks are assigned to the export control department. Its key role is to monitor functional performance and make sure the strategic goal of export control is achieved.*

Company size affects the total amount of resources needed to implement export controls. To estimate the actual need in additional resources, one ought to have strong arguments in hand.

List of possible arguments for increasing export control department resources:

- *a snowball of new or amended regulatory provisions;*
- *enhanced or strengthened legally established controls;*
- *loss of eligibility for using simplified procedures (for instance, a general license);*

- *enhanced training activities due to committed violations or high risk;*
- *increased scope of activities;*
- *structural changes to establish more stringent controls over processes and products;*
- *changes in the partners' structure, including enlargements of the list of partners in countries of concern;*
- *introduction of more complicated processes, etc.*

3.1.2. Activity type

Apart from the company's size, its activity type plays a decisive role in organization of the export control internal compliance system.

Export controls shall cover all activity types (the manufacture, activities related to multiple wholesale supplies), which is in the company's interest.

3.1.2.a. Manufacture

The manufacture refers to developing and supplies of goods of one's own manufacture, including whole plants or systems. This often includes not only software and technology, but also, as a rule, services and infrastructure related to assembly, delivery of spare parts, test and measuring equipment.

EXAMPLE

Designing a specific facility. Key elements:

- *design documentation*
- *equipment (test or production)*
- *manufacturing technology*
- *provision of services*

Given below are additional key elements for the export control internal compliance system:

3.1.2.a.1. Commodity-specific control. Commodity classification

In this regard, it is important for the export control department manager, employees of this department, and technical departments to conduct training based on the knowledge mentioned below, of concern for "classification", "identification", and lists of goods subject to state export control. Specifically, it should be clearly understood that:

With a view to creating favorable conditions for the control over international transfers of specified groups of goods, relevant international export control regimes recommend control lists according to groups of goods that are fundamental to the goals pursued by each of these regimes.

These lists and procedures for their application are implemented by each of the participant states at the national level.

Ukraine's example: *The procedure for compiling such lists is established in Article 9 of the Law of Ukraine On State Control over International Transfers of Military and Dual-Use Goods.*

These lists specify two classes of goods subject to state export control, namely: military goods and dual-use goods.

These classes are specified in Article 1 of the Law.

Apart from these classes of goods, Article 10 of the Law also specified the class of “unlisted goods”, to which state export controls can also be applied in cases specified in this Article.

The class of “military goods” is at the same time a group of these goods listed based on the corresponding military list (“Munitions List”) recommended under the international regime Wassenaar Arrangement.

The class of “dual-use goods” is divided into groups of these goods pursuant to recommendations of a specific international regime, namely:

The international regime Wassenaar Arrangement;

The group of “goods that can be used in the manufacture of missile weapons, “Missile Technology Control Regime”;

The group of “goods that can be used in the manufacture of nuclear weapons”, listed under the international regime Nuclear Suppliers Group;

The group of “goods that can be used in the manufacture of chemical weapons”, listed based on the corresponding list of dual-use goods recommended under the international regime Australia Group and International Convention on the Prohibition of Chemical Weapons;

The group of “goods that can be used in the manufacture of biological, bacteriological and toxin weapons”, listed based on the corresponding list of dual-use goods recommended under the international regime Australia Group and International Convention on the Prohibition of Biological, Bacteriological and Toxin Weapons and the International Convention on the Prohibition of Chemical Weapons.

Based on the above distribution of goods into respective classes, the term “classification” implies referring specific goods to one of these classes of goods related to various legally established procedures for exercising state export control with respect to their international transfers.

The method of goods identification implies establishing correspondence of specific goods to be internationally transferred to the designation and description of goods listed as those subject to state export control.

Therefore, the export control department is to determine the conditions of international transfers of goods, i.e. determine if the goods match the descriptions given in the lists of goods subject to state export control. If partial supplies are intended of multiple components and spare parts that will be used during the foreign trade agreement (contract) implementation period, all these goods should be clearly identified and classified as well. If a licensing (authorization) document is needed, the classification results will become the subject of regular procedures for application submission as appropriate.

- Classification, identification and documentation of results

One is not only to perform the classification and identification of goods against lists of goods subject to state export control, but also to clearly document the results in order to avoid an unnecessary and sometimes technically complicated and expensive reiterated classification procedure.

- Classification and application submission

The following rules must be applied:

- Classification of analogous goods should yield the same result.
- One should be confident that enough time is left for preparing an application and obtaining a licensing (authorization) document, due to having completed the classification and identification of all the components well in advance. Delayed supplies due to lack of an authorization can entail penal sanctions under the foreign trade agreement (contract).

Important

It is oftentimes the subcontractor alone that can classify a commodity correctly, yet it is the “exporter” that is and will remain responsible for correct classification.

- Monitoring of licensing (authorization) document validity

Under long-term foreign trade agreements (contracts) it often occurs that the customer/partner requests changes to be made in the order. Considering that such changes can affect the commodity, especially if some upgrade is involved, it should be checked if such changes in the supply are covered by the already obtained licensing (authorization) document; if not –an additional application is required.

Important

The company’s management should be briefed on the need to notify the

export control department manager of all predictable changes in goods supplies or technical specifications.

In general, for each specific commodity type proposed for international transfers of goods (products, services or technology) the export control department manager is recommended to set relevant requirements as to the procedure for international transfers of such goods, to be complied with by all of the company's personnel.

Considering the above, we conclude that the possibility of international transfers of any goods depends on three main factors:

classification and identification of goods against lists of goods subject to state export control or the "catch-all" principle;

destination country and present restrictions on the supply of specific goods to this country;

specific end-use and end-user of goods.

To facilitate decision-making with consideration of these factors, it makes sense to develop a "commodity matrix" for the company, which could contain:

- designation of goods with their distribution according to categories:

military goods;

dual-use goods;

goods that are exempt from export control, with a distribution of such goods according to export control lists and regimes, namely:

military goods;

military goods which are admitted for civil use as appropriate;

dual-use goods, including:

dual-use goods that can be used for creating conventional types of armaments and military equipment;

goods that can be used in the manufacture of nuclear weapons;

goods that can be used in the manufacture of chemical weapons;

goods that can be used in the manufacture of biological (bacteriological) and toxin weapons;

goods that can be used in the manufacture of missile delivery means of weapons of mass destruction (nuclear, chemical, biological (bacteriological) and toxin).

- restrictions on supplies of specific items under specified categories to specific countries.

Such a matrix is a key element of decision-making on the procedure for international goods transfers and is subject to constant update as additional

information is obtained. Copies of this matrix should be distributed to all of the company's employees in charge of contracting for and carrying out international transfers of goods.

Control over end-use, final destination, and the partner

Over the recent years verifications of partners and declared use have become much more complicated than the above-mentioned commodity-specific verifications.

“Catch-all” instances should be kept in mind as well: if exports or temporary exportations are carried out to states on which UN Security Council resolutions, other international organizations or national law have imposed a full or partial embargo for supplying such goods, then such exports shall be subject to export controls.

One should implement and routinely enforce the controls listed below:

Verification of the partner (firms and persons participating in agreement implementation)

Under anti-terrorist law, relevant lists of partners participating in foreign trade agreement (contract) implementation should be verified as early as possible to rule out known terrorists or their organizations from participating in the planned contract. New partners and list updates should be routinely checked throughout the contract implementation.

Important

In such a situation close co-operation between the export control department and the project (contract) management units gains a special significance. From the very beginning they should work with identical documentation.

Control over end-use

State licensing authorities always expect reliable documentation on the end-use of all goods consignments under a contract and licensing (authorization) document, not only in the form of an end-user certificate or officially obtained import certificate of the destination country. I.e. the story is not over upon submitting the above documents. State licensing authorities expect constant cooperation on goods end-use control between supplying companies. Exporters shall report any changes in the end use of the goods supplied under the authorization as soon as they become cognizant thereof and regardless if the export has been completed. Nor does it matter if the foreign trade agreement (contract) has been completed.

Control over final destination

Export of items not listed as goods subject to state export control may require authorization depending on the final destination/purpose of this commodity and the country of final destination. The company's management and export control department should make sure there are no signs of the partner planning to use the commodity for a purpose other than specified in the contract. Maintenance contracts concluded after project completion enable goods end-use verifications, including on a long-term basis. Should there be any grounds to suspect unauthorized military end-uses, one must inform the state licensing authorities accordingly.

It can be summarized that correct and problem-free foreign trade related to the manufacture is only possible under intensive interaction between the export control department and the company management in charge of foreign trade agreements (contracts). The key to it is exercising necessary control and implementing relevant procedures. The export control department should ensure the persons responsible for the contract are informed to that effect at the beginning and in appropriate intervals during its implementation. For this purpose, it makes sense to conduct training, issue information circulars and charts, as well as conduct audits.

3.1.2.b. Activities related to multiple supplies

Unlike the manufacture-related activities, during activities related to multiple supplies export controls are applied to a large number of individual agreements and/or supplies which may depend one on another. Often a large number of customers and/or partners require implementing different work arrangements.

Customer requirement to complete the goods supplies within a short period is a challenge for the export control department, which is supposed to foresee such a requirement and have in hand a fairly completed package of necessary documents for obtaining a relevant licensing (authorization) document. Therefore, on the one hand the export control department should constantly and intensively work with the list of all goods and technology used and the partner structure, and on the other hand – with all documents necessary for obtaining a licensing (authorization) document.

Main export control components remain the same for all commercial activities, taking into account the universal legal framework. Yet procedures for control organization and implementation differ greatly.

3.1.2.b.1. Commodity-specific control

- Identifying if the commodity is subject to export control

When an international goods transfer is carried out, a licensing (authorization) document is obtained if the goods proposed for supply shall be controlled according to the lists of goods subject to state export control. As the quantity and variety of both goods of one's own manufacture and purchased goods grow, it becomes ever more difficult for the export control department to monitor and classify their correspondence to lists of goods subject to state export control, in order to identify if such goods are a target of export control. It is therefore very important to engage in co-operation with relevant technical departments, goods classification and identification should be a joint effort.

Important

To avoid a new classification procedure for each supply of identical commodities, the results of the original classification of this commodity should be registered in the form of a list or database (judging by the volume) to be accessible for all involved in the international goods transfer. The first tool to make use of is the respective goods database for various procedures of contract analysis. Solving the problem of keeping up-to-date records, as well as the problem of these records' reliability is considerably facilitated by using information technology.

Should it become necessary to reclassify the goods during their existence and application in relation to their modification or updating the lists of goods subject to state export control, it must be done at once, because one can be confident that it will become the main issue for an external audit – it is especially true for cases when a commodity was originally classified as such that is exempt from export control while it suddenly becomes clear that a licensing (authorization) document is nevertheless required.

From the moment a competent and centralized classification has been completed and its results have been registered as appropriate, the question now is how to make this classification equally accessible for all company departments involved in operations with the commodity in one way or another (production, sales, marketing, research and development etc.). For instance, by integrating contracts into the general electronic processing (analysis) procedure or exchanging this information through a local generally accessible network or even by distributing via e-mail.

- Determining the type of licensing (authorization) document required

Conducting activities related to multiple (wholesale) supplies of any type based on individual authorizations as a permanent working arrangement is impossible due to limited time, for a number of reasons:

time needed for obtaining an authorization -

duration of application review procedures and issuance of such a authorization

If goods proposed for an international transfer are identified as such that are subject to export control, then it makes sense to use general or open licensing (authorization) documents. Using such documents saves much time by avoiding the need to undergo the procedures for obtaining an individual authorization for export of a specific commodity to a specific country.

Therefore, the export control department's objective is to clarify what type of a licensing (authorization) document is the most acceptable for the agreement associated with the company's activities.

3.1.2.b.2. Control over the end-use, destination and partners

The principles of controlling the end-use and final destination as well as relevant lists which should be followed are the same as were discussed with respect to manufacture-related activities. Yet there seems to be a notable difference in their practical applications. The earlier discussion was that the main focus would be placed if possible on early verifications of relevant partners involved in a foreign trade agreement (contract); the results of such verifications are, as a rule, valid throughout a long period of time. The main focus of activities related to multiple (wholesale) supplies is placed on verifications of a large number of partners which, under certain circumstances, can often vary, and on multiple ordering the same goods.

Accordingly, the organizational requirements to the export control internal compliance system will have various features:

Identification of partners

- The number of partners and orders to be controlled require the use of data processing tools to expedite the comparison and analysis of foreign trade agreements (contracts).
- The process, competency, and responsibility for partner control should be envisaged in job instructions (guidelines, methodology).

Controlling the use

- If the number of orders for controlled goods is too large to be able to control each one for the final destination and end-use, it becomes particularly important to deal with a reliable partner. In this case the interim between regular inspections can be longer. Nevertheless, it should be realized that enhanced capacity to deal with increased control over end-use and final destination will greatly increase the risk level.

A partner can be classified as a "reliable" one when it has commercially co-operated with the company for a long time without any hindrances and when the company, taking into account such a long-term co-operation, has valid grounds to assume it is not implicated in any unlicensed or questionable supplies/use of such goods.

- Exercising control over and implementing procedures for partner reliability verification should be documented, so that in case of a violation it would be easy to prove that control has been exercised on a systematic and quality basis and in adequate scope.

- The process, competency, and responsibility for controlling should be envisaged in job instructions (guidelines, methodology).

Important

Partner reliability: reliability of partners can only be determined in co-operation with the sales, marketing or economic security departments of the company. As experience shows, it is these departments that maintain the information about customers and goods.

The control periodicity: the larger is the quantity of orders and the higher is the customer/partner's reliability, the longer are the interims between verifications. In general, it is recommended that the periods between verifications should not exceed six months.

3.2. Information technology within the export control internal compliance system

Using information technology is recommended for necessary updating and adjusting the export control internal compliance system.

The best choice would be to use the existing database structure. If the company already has a database in place, it would make sense to supplement it with export control-related information. One necessary function is that of warning, to be applied, for instance, to remind of the need to perform any analysis as early as possible, i.e. as early as at the stage of reviewing a commercial proposal.

It makes sense to establish relevant procedures and filters consistent with organization documents (Instructions, directives) of concern for all employees and according to which international transfers/services are only possible following the established procedure under signed contracts.

Database maintenance features periodic information updates, following changes to the lists of goods subject to state export control. Regular updates should be envisaged from the beginning, and this function should be included into relevant processes.

If identification of database materials has already been completed with respect to foreign trade agreement (contract) data, all the information should, as a result, become accessible from other local stations, and this information can be used for automatic generation of further documents/reports.

Chapter 4. Alarms and “red flags” as a tool in assessing the risks of illicit acquisition of goods

4.1. Awareness

Companies along with state export control authorities are interested in preventing sensitive goods supplies from being put to use in programs related to weapons of mass destruction and their delivery means.

Being knowledgeable and aware of this on the part of the industry plays the key role in achieving this goal. State export control can be effective if all parties (manufacturers, exporters, engineers, managers, etc.) contribute to and support such control.

In this regard it should be mentioned that combating the proliferation of weapons of mass destruction and their delivery means requires close interaction between exporters and state authorities. Appropriate awareness and understanding of risks related to sensitive goods and their use for other agendas is a mandatory condition for quality and effective company performance.

One prerequisite for any responsible export by companies should be their understanding that it is only a commercial agreement built on reliable facts that may be implemented.

It should also be in the interest of any reliable company to be willing to have nothing in common with scandals or unauthorized uses of manufactured or supplied goods. Therefore, appropriate awareness and understanding is not only the responsibility of state export control, but also any business’s vital interest.

The information below must assist companies in decision-making when addressing the threats of getting inadvertently implicated in programs related to developing weapons of mass destruction, as well as in sorting out cases when additional consultations with state authorities are necessary.

It must be understood that information when possessed by the exporter alone does not always automatically guarantee obtaining relevant licensing (authorization) documents.

4.2. Detecting attempts of illicit acquisition of goods

4.2.1. Attempts of illicit goods acquisition

Anybody who supplies dual-use goods can be inadvertently implicated in planning or implementing other states’ programs related to the manufacture of

weapons of mass destruction or their delivery means. Special vigilance is needed to detect attempts to acquire such a commodity in “sensitive” cases.

Suspicious conduct	
New customers make enquiries, yet their identification remains vague, or they provide elusive answers to questions on their identification	<input type="checkbox"/>
There is a suspicion whether such a customer exists at all: it is unknown to the industry, not listed in telephone and trade directories and not represented on any website or other information resource	<input type="checkbox"/>
The customer is unable to provide details on former business partners	<input type="checkbox"/>
There are doubts as to whether the customer has relevant equipment for processing of ordered goods considering quality/quantity parameters or a suspicion that the customer’s business is inconsistent with the order placed	<input type="checkbox"/>
The customer does not respond or provides inadequate answers to questions regarding the end-use of ordered goods or regarding relevant commercial or technical aspects of the goods use process	<input type="checkbox"/>
The customer does not respond or provides inadequate answers to questions regarding commodity destination	<input type="checkbox"/>
The customer does not respond or provides inadequate answers to questions of commercial or technical nature, to be normally discussed during commercial negotiations	<input type="checkbox"/>
The customer demands excessive confidentiality regarding the commodity use or destination or other details of concern for goods, materials or spare parts to be supplied	<input type="checkbox"/>
The customer demands excessive security measures related to planned commodity use	<input type="checkbox"/>
It is evident to the supplier that the customer is insufficiently knowledgeable of normal security measures in the handling of ordered goods	<input type="checkbox"/>
A supplier (contractual partner) is denied access to production facilities or companies under suspicious circumstances	<input type="checkbox"/>
The customer breaks the contract for equipment assembly as insufficient information is available on complete order fulfillment and/or end-use of goods	<input type="checkbox"/>

The customer demands completing a procedure that has been performed in part by a different company	<input type="checkbox"/>
As regards a destination state there is information that it has been implicated in proliferation of weapons of mass destruction or their delivery means	<input type="checkbox"/>

Suspicious contracts	
	Y
The goods description is vague or the goods are specified in too much detail.	<input type="checkbox"/>
The contract per se is not understandable, for instance the amount or quality of ordered goods is higher or lower than stipulated in declared use	<input type="checkbox"/>
The posted price of goods is inconsistent with normal commercial practices	<input type="checkbox"/>
An equipment system or part of the equipment in existing or planned assembly is to be modified so as to enable the manufacture of chemical or biological weapons or their precursors	<input type="checkbox"/>
The activity profile of the company where a system or equipment is to be assembled is inconsistent with this equipment type.	<input type="checkbox"/>

Suspicious status of business activity	
	Y
The business situation, especially if a broker is involved, is extraordinary and departs from normal practices, <i>For instance:</i> the importer is one person while the amount of products suggests that these products can be used for production purposes by other companies	<input type="checkbox"/>
The export documentation is inconsistent with the information about its recipient's activity profile and/or description or volume of	<input type="checkbox"/>

goods proposed for supply, The customer-submitted documentation has an unusual format or contains spelling errors or other plain errors	
The customer's requirement as to packaging of ordered products or their parts is inconsistent with the proposed transport and differs from the declared or stated	<input type="checkbox"/>
The customer demands putting false marking or other records	<input type="checkbox"/>
The types of commodity packaging and handling are inconsistent with declared use and/or final destination of goods or parts proposed for supply	<input type="checkbox"/>
The customer offers extremely lucrative payment terms, for instance the price and percentage notably exceed normal market prices, advance payment is effected in cash, bank papers depart from usual standards	<input type="checkbox"/>
The level of transportation insurance is inadequate compared to usual business norms (too high or too low)	<input type="checkbox"/>

4.2.2. Attempts of illicit acquisition of advanced designs and technologies

Scientific co-operation is used by some states to acquire special knowledge that could eventually be used for the development and manufacture of weapons of mass destruction or their delivery means.

Most states maintain free access to universities and other scientific and technical institutions for scientists, students and technical specialists from states suspected of pursuing programs for the manufacture of weapons of mass destruction or their delivery means. This enables specialists from such states to access special knowledge in the high-end technology sector. The knowledge thus acquired can be used not only for civilian programs, but also for arms-related activities.

Entrepreneurs and scientists must realize that know-how can be transferred during national or international conferences, commercial fairs, special exhibitions, symposia, joint research efforts, as well as under development projects or training programs. Events of this kind also enable personal contacts between specialists of various states, which helps specialists from "states of concern" gain special knowledge on an informal basis.

One common type of transferring advanced know-how, designs, and technologies is scientific and academic exchange under relevant programs between industrial states and "states of concern" suspected of developing arms-related programs. Furthermore, private invitations provide ample opportunity for contacts and information exchange.

Another form of acquiring special knowledge is via direct contacts with experts and/or technical personnel, for instance, during assembly and adjustment of production equipment.

The parameters given below can help determine if the knowledge will be used for creating weapons:

Risk indicators during know-how transfer	
	√
A person requests information, but is unable to properly word the request, or orders training related to construction or facilities	<input type="checkbox"/>
A person requests information, demanding extraordinary confidentiality, for instance as regards the location of equipment installation or provision of services	<input type="checkbox"/>
A person requesting information asks for help or advice on matters related to “special” technology	<input type="checkbox"/>
Scientists, experts or employees of research institutes and laboratories request information that is unusual and unexpected from such persons whereas they have no apparent reasons to request such information	<input type="checkbox"/>
A person requesting information provides no sufficient explanations on the reasons for transferring know-how or conducting training	<input type="checkbox"/>
Explanations on matters of concern for some activity or its technical aspects as provided by a person requesting information prompt one to assume that this person does not have relevant special knowledge normally required for projects of this kind	<input type="checkbox"/>
A person requesting information demands extraordinary measures to be taken during know-how transfer, which prompts one to assume that this person is apparently ignorant of normal security measures that are routinely taken under a contract.	<input type="checkbox"/>

4.2.3. Attempts of illicit acquisition related to terrorism

The following additional facts should be taken into account in order to prevent terrorism:

Suspicious indicators in terms of terrorism	
	✓
Referred to as suspicious can be those requesting persons:	<input type="checkbox"/>
...whose identity remains unclear because the company letterhead is unintelligible;	<input type="checkbox"/>
...who can only be reached by mobile phone or a P.O. box;	<input type="checkbox"/>
...whose statements on transportation routes are geographically or economically incoherent;	<input type="checkbox"/>
...who provide no credible explanations regarding the location of goods supplied earlier;	<input type="checkbox"/>
...who apparently ignore or disregard necessary technical preventive measures during processing or transportation of these goods	<input type="checkbox"/>
... who apparently lack advanced technology or facilities necessary or recommended for safe storage or use of goods.	<input type="checkbox"/>

Important

Manufacturers and suppliers should be keen to gather all possible information on their customers before the entry into force of contractual undertakings on supplying goods and/or technology that can be used in the manufacture of weapons of mass destruction or for terrorist purposes.

Chapter 5. State certification of export control internal compliance systems

Ukraine's example

5.1. Mechanism of state certification of export control internal compliance systems

Article 14 of the Law of Ukraine *On State Control over International Transfers of Military and Dual-Use Goods* stipulates that whenever a company seeks to obtain a Cabinet of Ministers authorization for export, import of military goods and of goods containing data that constitute a state secret, or seeks to obtain a general or open authorization or conclusion, establishing an export control internal compliance system is mandatory.

In its turn, the State Service for Export Control of Ukraine, in confirming that the company has completed the set of administrative, legal, awareness-raising, and other arrangements pursued by an international trader to ensure observance of export control law requirements by itself and its subordinate subdivisions, completes state certification of such systems and issues certificates to that effect to the applicant companies.

The procedure for such certification is established by the Procedure for state certification of the export control internal compliance system established by an entity carrying out international goods transfers, approved by Cabinet of Ministers of Ukraine resolution № 1080 dated 17.07.03.

5.1.1. List of documents to be submitted for state certification of the export control internal compliance system

Documents required to be submitted to state licensing authorities for state certification of the export control internal compliance system, are listed in i. 5 of the above Procedure for state certification.

These include the following to be submitted by the company:

5.1.1.a. a written request for state certification of the compliance system;

Important

In addition to the request for state certification, the letter lists all the documents attached. It is executed on the company letterhead and is signed by the manager.

5.1.1.b. a copy certified as appropriate of its SSECU registration as an entity involved in international transfers of goods subject to state export control;

Important

In addition to the copies of registration (re-registration) certificates, one is to submit copies of the SSECU letters with relevant goods lists that were issued together with the certificate.

5.1.1.c. a certified as appropriate copy of the special authorization to conduct activities associated with state secret (or a statement on absence of such a authorization);

5.1.1.d. documents confirming its completion of the set of administrative, legal, awareness-raising, and other arrangements pursued by an international trader for observance of export control law requirements, including:

a copy of the order establishing the service (department, team) for export control and its subordination as well as appointing the manager or person

responsible for this activity. The order identifies the tasks of the service (department, team) or functional duties of the responsible person, the procedure for interaction with other departments, and the person responsible for interaction with SSECU;

a copy of the Terms of Reference for the service (department, team) for export control of the company involved in international transfers and Order on approval of this Terms of Reference;

information:

- on creating a database on electronic and paper media of legislative and other regulatory acts in the area of state export control;
- goods proposed for international transfers and their identification for correspondence (noncorrespondence) to specific positions in lists of goods subject to state export control;

The list of goods is recommended to be executed according to the form below:

<i>No</i> <i>n/n</i>	<i>Full designation (description) of commodity</i>	<i>UCFTG Code</i>	<i>CMU resolution</i>	<i>Position</i>
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- foreign trade agreements (contracts) for these international transfers;

Important

The list of agreements (contracts) for the preceding and current years is recommended to be executed according to the form below:

<i>Number, date and validity term of agreement (contract)</i>	<i>Nature of international transfer (export, import, transit, temporary importation/exportation)</i>	<i>Importing (exporting) state</i>	<i>Brief list and categories of goods</i>
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elow is a completing sample to follow)

Contract № RT-2 dated 26.07.03	Export	Moldova	Devices US1-6 (5.A.1.b.)
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- applications for obtaining authorizations or conclusions, as well as guarantee documents on international transfers of

such goods and documents obtained from state licensing authorities in response to these applications;

Important

The list of applications for the preceding and current years is recommended to be executed according to the form below:

<i>№ n/n</i>	<i>Out. number and date of application for SSECU licensing (authorization) documents or guarantee documents</i>	<i>Nature of international transfer (export, import, transit, temporary importation/exportation)</i>	<i>Number and date of licensing (authorization) document</i>
<i>(below is a completing sample to follow)</i>			
1.	Outg. № 32/546 dated 15.02.04	import	Authorization № 35400000 dated 13.03.04

- reports on actual use of authorizations or conclusions, as well as documents on said guarantees;

The statement must include the list of all licensing (authorization) documents obtained by the company for the preceding and current years and respective reports on their use. Is recommended to be executed according to the form below:

<i>№ n/n</i>	<i>Number and date of licensing (authorization) document</i>	<i>Out. number and date of report on use</i>
<i>(below is a completing sample to follow)</i>		
1.	Authorization (or conclusion) № 35400000 dated 13.03.04	№ 352/RP-34 dated 09.04.04

document signed by the manager of the company international transfers and stamped, containing commitments;

The commitments shall include:

ensuring observance of legal requirements in the area of state export control;

refraining from any international goods transfers, which may result in

violating Ukraine's law and international commitments or in inflicting damage on its national interests;

refraining from international goods transfers without obtaining relevant authorizations or conclusions yet with available information on intended or possible full or partial use of any goods, which are intended for export or temporary exportation to other states for development, production, assembly, testing, repairs, maintenance, modification, upgrade, operation, management, storage, detection, identification or for proliferation of weapons of mass destruction or their delivery means, or for military end-use in states on which UN Security Council resolutions, other international organizations of which Ukraine is a member or national law have imposed a full or partial embargo for supplying military goods;

refraining from concluding foreign trade agreements (contracts) on international transfers of any goods or from participating in their fulfillment if it has become cognizant that such goods could be used by foreign states or foreign business entities in the manufacture of weapons of mass destruction or their delivery means;

refraining from fulfilling foreign trade agreements (contracts) for international transfer of any commodity if it has become cognizant that the commodity will be used for other purposes or by a different end-user than was specified in the agreements (contracts) or associated documents, based on which a authorization, conclusion or international import certificate was obtained;

timely submission to state licensing authorities of reporting on the actual use of authorizations or conclusions obtained from it.

5.1.1.e. In order to make a well-grounded decision on the possibility of state certification of the company-established export control internal compliance system, state licensing authorities performs initial system effectiveness analysis, using the relevant company-submitted statement as the basis. The Checklist below will help compile such a statement.

STATEMENT

on the functioning level of the export control internal compliance system

(name of company)

(The basis for completing each item should be sourced from the Methodology recommendations on establishment of export control internal compliance systems by entities involved in international goods transfers, approved by SSECU Order dated 17.11.2006 № 412)

	<i>Written informa tion</i>
1. Organizational structure of the export control internal compliance system.	
1.1 Documents on establishment and functioning mechanism.	
<ul style="list-style-type: none">• Order on establishment of the export control department (attach a copy);	<input type="checkbox"/>
<ul style="list-style-type: none">• Terms of Reference for the export control department (attach a copy) specifying the purpose for establishment and functioning of the export control internal compliance system, tasks, functions, responsibilities and rights of the export control department, its structure and working arrangements.	<input type="checkbox"/>
1.2. Personnel of the export control department	<input type="checkbox"/>
<ul style="list-style-type: none">• subordination;	<input type="checkbox"/>
<ul style="list-style-type: none">• department manager (job instructions (attach a copy), powers, level of expertise in the export control area);	<input type="checkbox"/>
<ul style="list-style-type: none">• department employees (job instructions (attach copies), powers, responsibility, qualification requirements, level of expertise in the export control area)	<input type="checkbox"/>
1.3. Facilities	<input type="checkbox"/>

<ul style="list-style-type: none"> territorial location; 	<input type="checkbox"/>
<ul style="list-style-type: none"> premises where the department is located; 	<input type="checkbox"/>
<ul style="list-style-type: none"> provision with necessary office equipment. 	<input type="checkbox"/>
<p>2. Level of accomplishment of main tasks and functions by the company's export control department.</p>	<input type="checkbox"/>
<p>2.1. The procedure for preparation and transmission to company departments of manuals, guidance, and instructions on observance of export control requirements by specific departments:</p>	<input type="checkbox"/>
<ul style="list-style-type: none"> the list of departments associated with functions in the export control area and interaction mechanism (attach a copy of the document addressing this issues); 	<input type="checkbox"/>
<ul style="list-style-type: none"> functions of each department associated with observance of export control requirements; 	<input type="checkbox"/>
<ul style="list-style-type: none"> level of participation by the export control department in the drafting and concluding of each contract (attach a copy the company's standard on contracts (draft contracts) analysis and processing or another document identifying the mechanism for contracts (draft contracts) analysis; 	<input type="checkbox"/>
<ul style="list-style-type: none"> level of participation by the export control department in the process of goods dispatch and shipment, as well as during provision of services; 	<input type="checkbox"/>
<ul style="list-style-type: none"> Availability within the company of military representation and organization of its interaction with the export control department. 	<input type="checkbox"/>
<p>2.2. The procedure for determining the nature of operations associated with international goods transfers which may be subject to state export controls:</p>	<input type="checkbox"/>
<ul style="list-style-type: none"> availability of in-house recommendations (guidance) on the procedure for preparation and execution of documents necessary for obtaining relevant state 	<input type="checkbox"/>

licensing authorities documents on registration of the company and goods, as well as licensing (authorization) documents, as well as recommendations (guidance) on the procedure for preparation, execution and submission (obtaining) to SSECU of relevant guarantee documents	
<p>2.3. The procedure for providing export control rules by goods and countries:</p> <ul style="list-style-type: none"> • system of goods identification and availability of export control regulations of concern for goods lists 	<input type="checkbox"/>
<p>2.4. Control over the use of obtained licensing (authorization) documents:</p>	<input type="checkbox"/>
<ul style="list-style-type: none"> • availability of in-house recommendations (guidance) on control over the use of obtained licensing (authorization) documents, including the mechanism for preparation and execution of reports to be submitted to SSECU; 	<input type="checkbox"/>
<ul style="list-style-type: none"> • availability of statements on the current status of using licensing (authorization) documents obtained by the company (regularity of their submission to the company's manager). 	<input type="checkbox"/>
<p>2.5. System of verification of goods end-use, customers, and goods users:</p>	<input type="checkbox"/>
Availability of in-house recommendations (guidance) as regards providing mechanisms for:	<input type="checkbox"/>
<ul style="list-style-type: none"> • verification of potential goods use in the manufacture of weapons of mass destruction (nuclear, chemical, biological) or missile means of their delivery; 	<input type="checkbox"/>
<ul style="list-style-type: none"> • verification of the risk of illicit goods uses, i.e. uses that were not declared when signing the contract (“red flags” of significant risk of legal offences in the export control area); 	<input type="checkbox"/>
<ul style="list-style-type: none"> • verification and prevention of export operations to countries under restrictions (embargo) for supplies of such goods); availability of a chart of denials of state licensing authorities authorizations or conclusions); 	<input type="checkbox"/>
<ul style="list-style-type: none"> • organization of verifications of goods delivery to the 	<input type="checkbox"/>

end-user;	
• verification of goods end-use.	<input type="checkbox"/>
• a brief description of the database kept of partners, end-users, and brokers.	<input type="checkbox"/>
2.6. In-house programs for conducting audits (verifications, inspections) of adherence to the procedure for international goods transfers:	<input type="checkbox"/>
availability of audit plans;	<input type="checkbox"/>
execution of audit reports.	<input type="checkbox"/>
3. Documentation/record-keeping.	<input type="checkbox"/>
3.1. Availability of a directory for record-keeping on foreign trade agreements (contracts)	<input type="checkbox"/>
3.2. System of record-keeping and retention of the most important information.	<input type="checkbox"/>
4. Keeping the database of legislative and regulatory acts in the export control area and availability of reference literature.	<input type="checkbox"/>
4.1. System of keeping the database of legislative and regulatory acts in the export control area.	<input type="checkbox"/>
4.2. Availability of reference literature or other information materials on export control.	<input type="checkbox"/>
5. Vocational training.	<input type="checkbox"/>
5.1 Participation of the company's export control department personnel in training seminars and conferences on export control.	<input type="checkbox"/>
5.2 Availability of a plan for member training and retraining for departments dealing with export controls.	<input type="checkbox"/>

5.2. Procedure for reviewing applications for state certification of the export control internal compliance system. External audits

The above-listed documents, turned in by the company, are reviewed by the interdepartmental Commission for state certification of the export control internal compliance system, whose membership includes representatives of the Ministry of Foreign Affairs, Ministry of Industrial Policy, Ministry of Defense, National Space Agency, Security Service, Foreign Intelligence Service, and other interested central administrative authorities.

SSECU and other central administrative authorities could send their representatives on a visit to companies to identify the availability and level of functioning of the export control internal compliance system. Based on the

results of such verification, a relevant summary document is drawn up, in which shortcomings of the existing control system are identified and recommendations for its improvement are offered.

During such audits there are opportunities for face-to-face communication, exchange of opinions and suggestions. Specialists in various disciplines are included in the visiting Commission's membership, therefore once the company has been notified of a verification scheduled, it is advised to think over in advance of the meeting what essential issues it would make sense to address. The practice of such meetings has demonstrated their efficiency and effectiveness and will be carried on in the future.

Important aspects of proper organization of such verifications of export control internal compliance systems within companies include preliminary analysis of the company's performance by SSECUC experts. Such analysis helps identify weak spots in the functioning of the company's departments responsible for export control-related issues, and compile relevant comprehensive recommendations on addressing existing issues of concern.

Resulting from the review of documents submitted by the international trader, and audit on availability and level of functioning of the compliance system, the Commission by a majority vote adopts a conclusion to grant state certification of the control system or deny such certification, which is reflected in a protocol signed by the Commission members.

Based on the results of state certification, a relevant certificate is issued in the form shown below.


STATE SERVICE OF EXPORT CONTROL OF UKRAINE CERTIFICATE
№ _____
of state certification of the export control internal compliance system established by the international trader
<i>According to Article 14 of the Law of Ukraine <i>On State Control over International Transfers of Military and Dual-Use Goods</i>, an export control internal compliance system has been established by the international trader</i>
_____, (full title and location of the company)
registered with SSECU « ___ » ___ 200 under № _____, certified.
This Certificate is valid through « ___ » ___ 200
SSECU Chairman _____
(signature) (full name)
LS
Date of issue « ___ » ___ 200

5.3. State recertification of the export control internal compliance system

The Certificate on state certification of the export control internal compliance system established by the international trader is issued for a period of three years, whereupon the export control internal compliance system is subject to recertification.

To be attached to the application for recertification is a manager-signed and stamped document containing commitments and information on the functioning of the export control internal compliance system in the form of a relevant statement and on absence of modifications in the documents based on which the certificate was issued. Should these documents have been modified, updated and certified as appropriate copies of said documents shall be submitted to SSECU.

5.4. Grounds for denial of state certification (recertification) of the export control internal compliance system

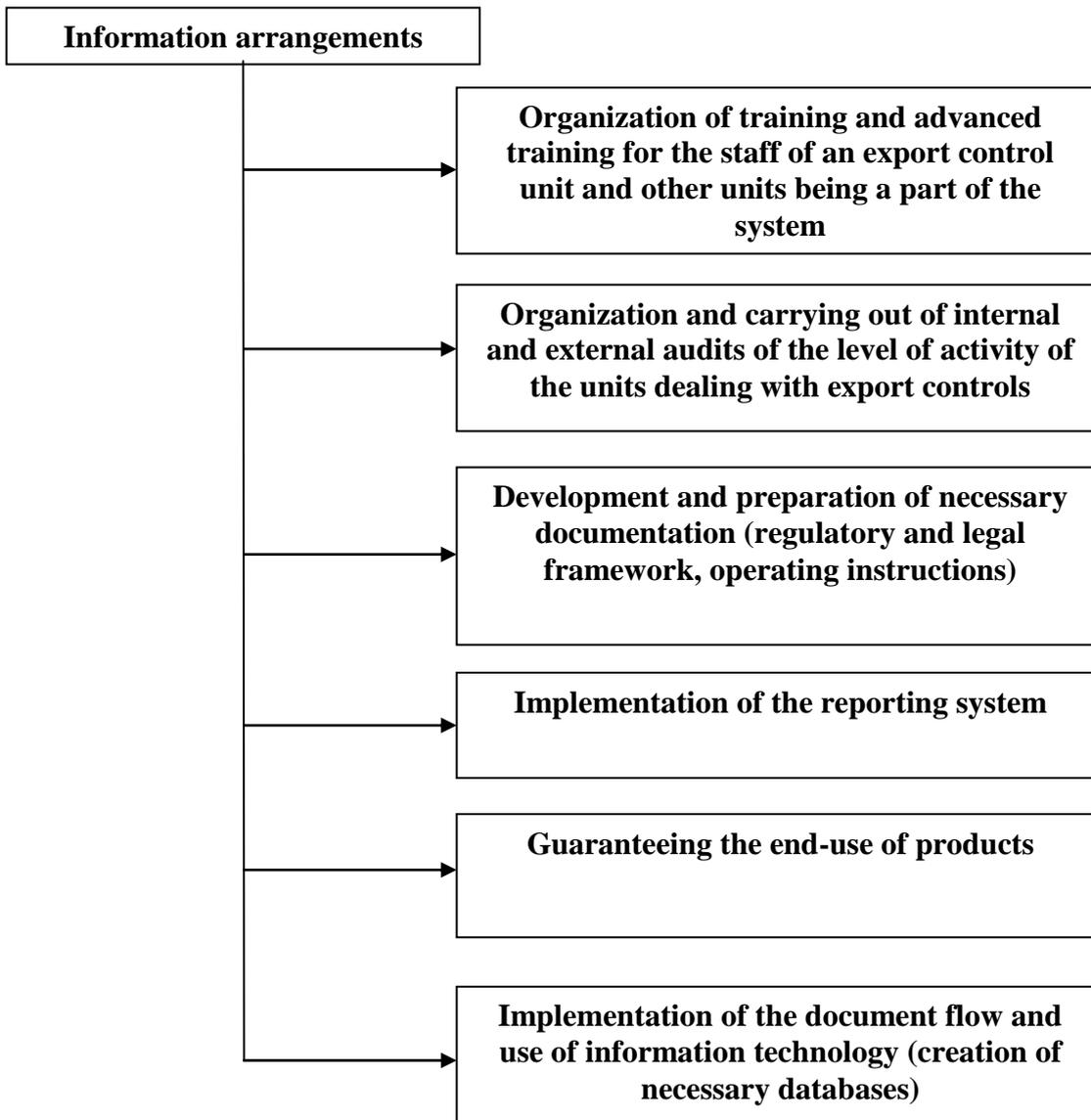
State certification and recertification of the export control internal compliance system can be denied if the company has provided invalid data in the documents and committed multiple violations of legal requirements in the area of state export control. Another ground for denial of state certification (recertification) may be a negative conclusion by the interdepartmental Commission for state certification of the export control internal compliance system, which may result from a negative verification of the system functioning within the company.

The decision on state certification of the control system can be revoked in case the company applies for this certification to be revoked, in case of reorganization or termination of the company, declaration of its bankruptcy or in case of failing to comply with legal requirements in the area of state export control. In such an event the certificate issued to the company ceases to be valid.

Findings and recommendations

Therefore the pilot project sets up the following basic measures, mechanisms and procedures for establishment and efficient functioning of internal export control compliance systems:





In the course of establishment of the internal export control compliance system and planning of organizational arrangements necessary for its proper functioning it is absolutely indispensable to take into account business activity profile of the enterprise, potentiality to use goods intended for international transfer in creation of weapons of mass destruction, means of their delivery, other types of weapons and military equipment, the prospects of export supply of these goods, and also the volume and geography of sales.

PART II. EXPORT CONTROL INTERNAL COMPLIANCE IN UKRAINE – INDUSTRY APPROACH (in terms of the ARTEM Company, Ukraine)

This case study has been made in order to represent real-life experience of the Ukrainian company in establishing and functioning of the export control compliance system as required by the law of Ukraine in the area of export controls and taking into consideration special features of the Company.

1. ABOUT THE COMPANY

The Company is a leading enterprise in the Ukrainian aviation industry, producing units, appliances and equipment for all types of aircraft manufactured in the CIS, and air launched weapons for military aircraft and helicopters.

The Company has highly qualified professionals, sophisticated technology equipment for precision engineering, and high production standards.

The Company has developed an extensive network of domestic and foreign suppliers of materials and components, and exports its products to more than 20 countries.

Cabinet of Ministers of Ukraine Decree No. 1228 dated 12.07.1999 granted the Company the Government of Ukraine authorisation to sell special products of its own manufacture under its own brand. The Company not only exports its own products but can also provide services related to warranty and post-warranty maintenance or repair of products on location thereby extending their service life, and conducting special training programmes for Customer (end-user) personnel. These training programmes cover rules of operation, inspection, repair etc. of products previously exported.

State-of-the-art technological equipment, advanced technology, highly qualified personnel, and an effective management strategy is the potential that allows the Company to meet the future with confidence, executing orders of any complexity.

The Company's Export Control Internal Compliance System (ICS) is the basic organization element which for compliance with Ukrainian export control law. The ICS establishes an appropriate inter-company model of the relationship between the Company's structural units in preparing international transfers of goods subject to national export controls. The system also implements measures as appropriate, for obtaining relevant authorisations, and ensures compliance with requirements of the Ukrainian state export control legislation.

2. ARRANGEMENTS MADE FOR ESTABLISHING AN ICS WITHIN THE COMPANY

The first step in putting the ICS in place was the Company management decision to establish an Export Control Office (ECO) within the Company to monitor and ensure Company compliance with state law.

The President of the Company issued an order establishing the Export Control Office, subordinated the Vice President in charge of foreign trade. Then a responsible Company staff member was designated as the ECO Director, making appropriate changes in the Company's organisational chart, and identifying the main ECO's tasks.

Pursuant to the Order, the ECO Director had the following institutional documents developed and agreed by the heads of other departments, and approved by President of the Company:

- Provisions on the Company's Export Control Office and Provisions on the Company's ICS;
- Job description for the ECO Director;
- Job descriptions for the Company's ECO personnel;
- Block diagram of the Company's export control unit;
- Regulations on the export control unit's interface with other departments whose functions are related to foreign trade activities of the Company;
- Functional chart for ICS operation in compliance with the Company's manufacturing standards governing foreign trade activities.

To ensure proper ICS functioning, ECO experts further developed institutional documents as follows:

- database of legal documents (laws of Ukraine, Presidential Decrees, Regulations of the Cabinet of Ministers of Ukraine etc.) on export controls;
- work programmes for personnel training for the ECO and other Company units dealing with export of controlled goods;
- procedures for auditing the ECO and other Company units dealing with export of controlled goods;

- A mechanism to penalise Company employees for non-compliance with state export control law.

2.1. Provisions for the Export Control Office

The Provisions apply to the Export Control Office (ECO), which is a structural unit of the Company reporting to the Vice President on foreign trade and part of the Company management system.

The purpose of ECO is to pursue a uniform policy on export controls within the Company; to ensure effective planning, preparation and implementation of international transfers of goods subject to national export controls; to organise comprehensive systemic analysis of the Company's activities in foreign markets, and to develop and improve the Company's foreign trade policy.

Another goal of ECO is to implement the Company Standard "Quality Guidelines concerning export controls which determine algorithms of the processes related to total cycle of international transfer of controlled goods starting from receiving an order for the transfer of goods, goods production, if necessary, and finishing with their export to the end-user.

The ECO Director position can be filled by a person with a higher education degree and expertise in the relevant field of study. This person's employment record with the Company shall be a minimum of 2 years.

In pursuing its activities, ECO is governed by:

- Ukrainian law;
- The Company President Orders;
- Instructions of the Vice President on foreign trade;
- Provisions on ICS;
- Provisions for ECO interactions with departments involved in the Company's international transfer of goods subject to export control;
- Design and engineering documentation for Company products;
- Requirements of the *Quality Guidelines* Standard and other applicable Standards of the Company;
- Provisions on the ECO and job descriptions of ECO staff.

ECO's organisational framework

To manage the tasks assigned to the Office, the ECO organisational framework includes the following official capacities:

- Director of the Export Control Office;
- Expert of the Export Control Office.

The ECO's organisational frame and staffing has to be approved by the President of the Company as advised by the ECO Director following concurrence by the Vice President on Foreign Trade.

Main ECO's tasks

- Ensuring the implementation of Company policies regarding compliance with state export control law;
- Organization and improvement of the internal export control system of the Company;
- Monitoring compliance with export control laws and regulations at all stages of foreign trade agreement (contract) completion;
- Ensuring interaction between Company units that prepare and implement international transfers of controlled goods;

The ECO performs the following key functions:

- Analysis of the Customer's commercial order for export of goods and requests filed by the Company's technical units for importing necessary components, and documenting this analysis;
- Analysis of a draft foreign trade contract and preparation of a conclusion (drawing up of a corresponding document)
- Checking the original agreement (contract) to provide an explanatory letter (a "goods examination card") on the classification and identification of products to be exported, and obtaining relevant evidence of the buyer's credentials and guarantee documents;
- Participation in pre-contract negotiations at the stage of commercial proposal and negotiations during the signing of contracts;

- Obtaining conclusions from authorised government agencies empowering the Company to negotiate foreign trade agreements (contracts) on the international transfer of goods subject to national export controls, as prescribed by law;
- Obtaining a SSECUC Conclusion authorising to negotiate a foreign trade contract on the international transfer of goods subject to national export controls in countries to which goods supply restrictions or embargoes apply;
- Obtaining positive conclusions of authorised government agencies to empower the Company's international transfer of goods subject to national export controls;
- Obtaining a SSECUC permit or conclusion for international transfer of goods subject to national export controls;
- Reporting to SSECUC on the use of the Company's permits and conclusions or guarantee documents on goods use for stated purposes;
- Participation in the drafting of Orders and other governing documents on the Company's foreign trade activities;
- Basic and advanced training in export controls procedures for Company personnel engaged in foreign trade activities;
- Developing guidelines and recommendations for procedures to obtain necessary authorisations from SSECUC and guarantee documents concerning products subject to national export controls as well as products to which national export control procedures may apply;
- Organization of case management, formation and execution of institutional and administrative documents, document management, record-keeping and storage of records in accordance with the Company Standards;
- Preparing for an internal audit in accordance with the Company Standards;

ECO's rights include those to:

- require the Company's relevant departments, shops and offices to provide timely information (report in the prescribed forms, certificates, etc.) necessary to perform the tasks and functions of the ECO;

- check and approve reports on the volume of international transfers of goods subject to export controls, compiled by the Company units involved;
- appeal to the Company Management to suspend any agreement for an international transfer of goods should circumstances arise that indicates a possible violation of the export control laws of Ukraine or could lead to Ukraine's non-compliance with its international commitments;
- participate in seminars and conferences on export controls;
- propose as appropriate to President of the Company to include in the job descriptions of Company employees relevant provisions to ensure compliance with national export control law;
- provide the Company units involved in international transfers of goods with guidance on regulations and requirements for these transfers as regards military and dual-use goods, hold meetings to that effect;
- represent the Company and maintain relationships with government organizations on aspects of military-technical cooperation which are under ECO jurisdiction.

ECO's relationships with other units

ECO is mandated to establish relationships with other departments of the Company in accordance with the *Provisions on ECO Interaction with Departments Involved in International Transfers of Goods subject to Export Controls*.

In performing its duties and exercising its rights ECO interacts with:

- representatives of the Company's Foreign Trade Department;
- representatives of the Company's Office of Strategic Marketing;
- representatives of the Company's Office of Security;
- representatives of the Company's Office of Production and Logistics Management;
- representatives of the Company's Chief Designer Office;
- representatives of the Company's Office of Transport Support;

- representatives of the Company's General Accounting Office;
- other structural units of the Company involved in international transfers of goods;
- representatives of public companies (subsidiaries).

Subject to the requirements of the Provisions for the Company's Export Control Office, ECO experts developed the Regulations) (set of Provisions) for the Company's Export Control Internal Compliance System.

2.2. Provisions for the Company's Internal Compliance System

The Company's Internal Compliance System (ICS) is an array of measures of organizational, legal, informational and technical nature. They set the stage for interaction and monitoring of compliance according to the requirements of state export control legislation, when the Company units and its subsidiaries prepare and execute international transfers of goods subject to state export controls.

The Company's export control policy is built on the following principles:

- ensuring observance of legal requirements in the area of state export controls;
- refraining from any international goods transfers which may result in a possible violation of Ukraine's law and international commitments or could inflict damage on Ukraine's national interests;
- refraining from international goods transfers without first obtaining relevant permits or conclusions if there is information on the intended or possible full or partial use of any goods which are intended for export or temporary exportation to other states for development, production, assembly, testing, repairs, maintenance, modification, upgrade, operation, management, storage, detection, identification or for proliferation of weapons of mass destruction or their delivery means, or for military end-use in states, on which UN Security Council resolutions, other international organizations of which Ukraine is a member, or national law have imposed a full or partial embargo for supplying military goods;
- refraining from foreign trade contracts on international transfers of any goods or from participating in their completion, if it has become

evident that such goods could be used by foreign states or foreign business entities in the manufacture of weapons of mass destruction or their delivery means;

- refraining from fulfilling foreign trade agreements (contracts) for international transfer of any item, if it has become known that the item (goods) will be used for other purposes or by a different end-user than was specified in the contracts or associated documents, based on which a permit, conclusion or international import certificate was obtained;
- timely submission to SSECU of reporting on the actual use of permits or conclusions obtained.

The Company will adhere to the above principles regardless of the commercial benefit prospects that an order may bid fair.

The Regulations determine the actions of Company personnel in the field of export controls in accordance with the Company Standard "**Procedure for Formation, Signing and Enforcement of Foreign Trade Contracts**" (according to EN ISO 9001-2001), to be strictly followed by employees with respect to controlled goods. Specific procedures for export controls are contained in in-house rules and instructions.

The Company's export control-related activities shall meet all the requirements of the Constitution of Ukraine, laws of Ukraine, decrees and orders of the President of Ukraine, Cabinet of Ministers of Ukraine, Orders and recommendations of SSECU and other governing documents; and ECO, in fact, is a coordinating unit tasked with creating proper conditions for implementation of and compliance with the export control law within the Company.

The Provisions on ICS is the main governing document that regulates ECO activities with ECO being a coordination unit tasked with creating proper conditions for implementation of and compliance with the export control law by the Company.

The Provisions on ICS consist of the following sections and subsections:

- General Provisions;
- The main tasks, functions, rights and commitments of the Export Control Office of the Company:
 - ECO's tasks and functions;
 - ECO's rights;

- Operational structure and principle of the Company's Internal Compliance System organization;
- The mechanism of export control enforcement:
 - General Provisions;
 - Verifying the credentials of the Company and the buyer for a specific international transfer of goods;
 - Checking availability of registered nomenclature of goods for International transfers;
 - Checking availability of a positive Conclusion on the right to conduct negotiations on a contract.
- Requirements on contracts.
- Organization of ECO's interaction with SSECU.
- Basic provisions and procedures for processing applications for permits/ conclusions:
 - General provisions;
 - Quality Control as regards processing applications and amending documents;
 - Making changes to permits or conclusions previously issued by SSECU;
 - Record keeping;
 - Payment for issued authorisations/conclusions;
 - Education and training of ECO employees.
 - Liability.

2.3. Company standards for international transfers of controlled goods

The in-house standards of the Company which manufactures and sells high-tech goods (services) to foreign trade world markets are guided by the ISO international production standards and, are in fact, designed to meet the requirements of these international standards.

One of the key Company standards is the "Quality Management System" for products manufactured. The "Quality Management System" is a sequence and interplay of processes (quality methodology) for the manufacture and sale of high quality and high-tech products.

The "Quality Management System" incorporates the below Company Standards which are important in terms of export control:

1. Company Standard "Procedure for Formation of a Corporate Order" (analysis of world markets for special equipment);
2. Company Standard "Strategic Planning" (methodology of end-customer search);
3. Company Standard "Marketing" (Methodology of sourcing materials and components);
4. Company Standard "Procedure for Evaluation, Selection and Approval of Suppliers (Intermediaries) of Goods and Services" (verifying credentials and reliability of suppliers);
5. Company Standard "Procedure for Formation, Signing and Enforcement of Foreign Trade Contracts" (development of contract requirements);
6. Company Standard "Sequence and Interplay of Processes related to Preparation and Implementation of International Transfers of Company Products" (mechanism of interaction between Company units on export control matters);
7. Company Standard "Procedure for Collecting and Analyzing Information on System Operation";
8. Requirements to negotiating a contract and to the contract contents are set by Company Standard "Procedure for Formation, Signing and Management of Foreign Trade Contracts".

COMPANY STANDARD "PROCEDURE FOR FORMATION, SIGNING AND MANAGEMENT OF FOREIGN TRADE CONTRACTS"

This standard identifies the procedure for contract formation, setting requirements to the contract contents, and analysis of possible non-compliance risks; the process of signing and monitoring of foreign trade contracts for international goods transfers.

The requirements of this standard are binding on the Company's management staff and employees of Company Offices, on the Foreign Trade Department which handles commercial offers, drafts and monitor foreign trade contracts, and the Export Control Office which is involved in the formation and management of contracts.

The overall responsibility for organizing contract formation and analysis of requirements to its contents, for signing and enforcement of foreign trade contracts lies with the heads of the Foreign Trade Department and the Export Control Office.

METHODOLOGY OF CONTRACT FORMATION

The purpose of the process is:

- adequate assessment, including for export control compliance purposes, of the requirements posed by the Customer, who is one of the Parties to enter into a foreign trade contract, as regards the quality, quantity, cost and terms of delivery of exported products, and of other terms and conditions laid down in the foreign trade contract, as well as ensuring compliance with the requirements set out in the foreign trade contract within the set timeframe; and
- timely response to changing Customer requirements to quality, quantity, cost of production, terms of delivery and other features, and adequate assessment and identification of these changes.

The process of "Formation, signing and monitoring of foreign trade contract" includes the following subprocesses:

- analysis of the information about the Customer;
- contract formation, setting requirements to the contract contents, and signing of foreign trade contracts;
- assigning the responsibility for implementation of foreign trade

contracts;

- monitoring of foreign trade contracts;
- Revising the terms of foreign trade contracts, introducing changes and obtaining Customer approval of the changes.

A block diagram of the process of "Formation, Signing and Monitoring of a Foreign Trade Contract" is given in Appendix A.

Analysis of Customer information

The purpose of the subprocess is to explore the possibility of signing a foreign trade contract with a Customer (a business entity of another country) in terms of current export control related international law and laws of Ukraine (Appendix B)

The subprocess input data include:

- Request on the part of the Customer (entity);
- Request for a commercial proposal from the Customer;
- Protocol of Intentions signed by the parties;
- Information about the Customer (business entity) from external (Internet, mass media) and internal (electronic database of potential customers, international and domestic electronic database of "black-listed" customers/brokers) resources.

The subprocess output data include:

- SSECUC Conclusion on the **right** to negotiate the export of a particular product to a specific foreign entity in a specific country;
- SSECUC Explanatory Letter for the **denial** of a Conclusion to negotiate with a Customer.

The process begins with analysis of the subject matter of an order, by the ECO experts as initially advised by the Foreign Trade Department. Based on the process input information, the subject matter of the order is classified and identified such as; civil products, military products, or dual-use products.

The applicable regulatory framework includes government acts on export

controls (Cabinet of Ministers of Ukraine Resolutions, CMURs) No. 86 of 28.01.2004, No. 1807 dated 20.11.2003, No. 500 dated 6.06.2012, No. 838 dated 8.06.1996, No. 41 dated 16.01.2003, and No. 1228 dated 12.07.1999 as amended.

An ordered commodity item that has not passed an ECO examination is assigned, depending on its intended purpose, a code under Ukrainian Classifier of Foreign Trade Items (UCFTI).

The commodity's technical specifications, purpose and scope of use, indicate whether it needs to be examined for its appearance on the Lists of products subject to government export controls, or on the list compiled of products classified and identified before in accordance with required permits or conclusions for export-import operations. The analysis results in producing an "item examination card" (see Appendix B). This function is performed by an ECO expert and a foreign trade expert.

The information from the item examination card will determine whether a conclusion is required to enter into negotiations with the Customer. The conclusion obtaining algorithm is based on the provisions and requirements of the Company's ICS and under the direct responsibility of the ECO Director.

When a Conclusion is necessary to proceed with negotiations, additional information on the Customer must be obtained. This includes a check whether the Customer is in the ECO database, by an ECO expert. If the Customer is not listed on the database, ECO can still make a decision to collect information about the Customer as necessary.

The next step is to check the Customer information for the presence of an embargo or trade sanctions that restrict or prohibit foreign trade in certain goods or with the country in which the Customer is registered. In case of an embargo or sanctions (restrictions), an unambiguous decision must be made not to enter into foreign trade transactions with this Customer. If there are no foreign trade restrictions present regarding the country where the Customer is registered the next step of data gathering and analysis begins. The responsibility for deciding on the possibility of cooperation with the Customer at this stage lies with the ECO Director.

Information about the Customer is sought in open sources (the Internet, mass media). In the absence of negative information, the next stage of the analysis subprocess begins. If there is any negative information, a detailed risk analysis is performed.

If the Customer information analysis prove to be positive, the Customer is requested to submit licensing and authorisation documents (documents

confirming Customer's authority to carry out activities related to international transfers of controlled goods).

Copies of the authorization documents can be received directly or by fax and must be scrutinized. If there are any comments, they should be discussed with the Customer. If the Customer does not respond to the comments or is unwilling to resolve them, a decision will be made to refrain from foreign trade relations with that entity. The responsibility for the decision to refrain from cooperating with a Customer lies with the ECO Director, subject to agreement with the Company Management.

When a decision is taken not to cooperate with a potential Customer, a comprehensive findings report/memorandum must be compiled by ECO, outlining in clear words the explicitly stated rationale for the ban on the foreign trade transactions with that Customer. This document is prepared by an ECO expert and will ultimately serve as the basis for a report to be transmitted to the Company President.

In case of positive result of the Customer information analysis and analysis of the Customer's registration documents, also obtaining positive information according to the above requests, positive conclusion the document package can be prepared for SSECU in order to obtain a permit for export of goods.

Procedure for Revising the Terms of a Foreign Trade Contract, Making Amendments and Getting Customer Approval

The purpose of the subprocess:

- Ensuring interaction with the Customer at the stages of foreign trade contract completion including adequate response to changed requirements of the parties and to the impact of foreign trade factors;
- Reaching agreement with the Customer on forced alterations to the foreign trade contract should it become impossible to abide by the Company's original commitments;
- Simplifying (whenever possible) the foreign trade contract terms.

The input data include:

- Text of the foreign trade contract;
- Letters from the parties initiating amendments to the terms of the foreign trade contract;

- Company Management resolutions concerning inability to fulfill certain terms and conditions of the contract (e.g. due dates of some stages of the contract etc.)

The output data include:

- Additional agreements with the Customer.

The reasons for revising the terms of a foreign trade contract can be:

- A Customer initiative;
- A Company Management resolution to that effect;
- Changed international or foreign economic situation (an embargo, international sanctions or restrictions imposed on the export of certain goods to certain Customer countries).

Amending the licensing documents to reflect contract changes is to follow the rules governing international transfers of controlled goods.

2.4. Procedure of interaction between Company departments

The procedure of ECO regular interaction with the Company's other units (departments) is determined by the Company's in-house standards and by the Provisions on Export Control Office Interface with Company Units Involved in International Transfers of Export-controlled Goods.

Interaction with the Office of Strategic Marketing

ECO is informed by the Office of Strategic Marketing on anticipated exhibitions of special equipment, receptions of foreign delegations, and precontract negotiations.

ECO informs the Office of Strategic Marketing of existing restrictions (embargoes) to the supply of specific items to specific customers and the requirement to obtain a SSECU conclusion to proceed with certain negotiations on.

Interaction with the Foreign Trade Department

Pursuant to a FTD official note, ECO is tasked with:

- carrying out examination (identification) of products against a foreign Customer's commercial request or a letter of enquiry from the Company's Office of Logistics;

- obtaining authorisation to negotiate a foreign trade agreement (contract);
- obtaining authorisation for international transfer of export-controlled goods;
- obtaining authorisation for air transportation of export-controlled goods;
- obtaining authorisation for the temporary export of export-controlled goods for guarantee repairs.

ECO transmits to FTD:

- a SSECUC positive Conclusion (or denial) to proceed with negotiations on a foreign trade agreement (contract);
- a product examination card associated with its identification (classification) and determination of compliance of the agreement (contract) with export control requirements following its pre-licensing examination;
- a cover letter of agreement to the contract following the final examination of the signed agreement (contract) for compliance with export control requirements;
- an authorisation (or denial) for the international transfer of a declared export-controlled commodity;

Interaction with the Chief Designer Office (CDO)

ECO submits to CDO an official request to:

- obtain technical information about properties and specifications of the products manufactured by the Company;
- obtain copies of design and technological documentation (as necessary) for products supplied by the Company;
- obtain technical information about exported goods.

CDO transmits to ECO:

- copies of design and technological documentation;

- technical assistance and information on the use of the goods supplied for export.

Interaction with the Planning and Economy Department

ECO submits to the Planning and Economy Department an official note requesting information on:

- projected pricing for export products;
- projected volumes of export/import operations.

Planning and economy department transmits to ECO: prices for exported products.

Interaction with the Finance Department

ECO submits to the Finance Department an official note requesting reports on export-import operations.

Interaction with the Accounting Department

ECO submits a corresponding request to and receives from the Accounting Department:

- summary reports (annual, quarterly) on the amount of exports/imports;
- bank documents for payments made for SSECU Authorisations.

Interaction with the Sales Department

An authorised ECO representative together with a contract manager from FTD may inspect the accuracy of product packaging and labelling in accordance with a specific agreement (contract) and shipping specifications.

Interaction with the Office of Security

ECO submits a corresponding request to and receives from the Office of Security:

- proprietary information regarding the list of products and procedures for considering applications from international traders, on specific importer countries (information from SSECU);
- information on the degree of secrecy for products planned for export/import.

Interaction with the Transport Department

ECO transmits to the Transport Department: documents confirming the credentials of the transporters (as necessary) for accompaniment and delivery of goods, issued by an authorised representative of the Company (given any special SSECU recommendations for transportation of a particular product).

Interaction with Technical Information Centre (Patent Office)

ECO submits to the Technical Information Centre (Patent Office) an official request to identify inherence of intellectual property in the goods supplied for export under a specific agreement (contract).

Interaction with Company subsidiaries

The Company subsidiaries submit to ECO applications for:

- examination (identification) of goods planned for export/import;
- complementary registration of goods (if necessary) with SSECU.

ECO provides to the subsidiaries:

- a copy of the product examination card re identification (classification) of the product (if necessary);
- copies of goods' complementary registration certificates (as necessary); consultations on the applicability of legal documents governing the international transfer of export-controlled goods.

In the event of irregularities in the preparation of goods for international transfers, ECO initiates an ad hoc meeting (collective discussion) with stakeholder departments (convened by decision of the Company Management) and the management of the subsidiaries.

2.5. Training for authorised representatives of Company departments

ECO provides training and advance training for authorised representatives of Company departments under specially developed programmes based on:

- amount and importance of changes to date in the current Ukrainian export control law;
- occurrence at the Company of non-standard (critical) situations with international transfers of export-controlled goods;
- cancellations of or bans/restrictions on transfers of specific goods to specific recipients in foreign states.

3. FUNCTIONS OF THE COMPANY'S EC INTERNAL COMPLIANCE SYSTEM

3.1. Consideration of commercial proposals.

Sources of information for proposal analysis

For proper and efficient performance of its functions the Company's ICS uses electronic means of export control document flow, regulatory (internal) and legislative (external) databases, search mechanisms for identification and classification of goods against current Control Lists, electronic guides on the types of products manufactured in different areas of production, technology and science and maintains an electronic version of the Company's Internal Compliance Programme (ICP). ICP ensures:

Company's internal document flow in areas as follows:

- nomenclature of goods;
- contracts (countries, customers/suppliers);
- applications for authorisation to proceed with negotiations and for permits/ conclusions regarding international transfers of goods;
- licences issued by government agencies (permits/conclusions);
- reports to the government agencies (SSECU, stakeholder ministry, etc.).

Company's external document flow in areas as follows:

- export control legislation;
- departmental regulations (National Security Council, Defence Ministry, Foreign Ministry, State Customs Service, Ministry of Economy and Trade);
- database of "blacklisted" countries and traders;
- database of risks and offences in terms of "red flags".

Search mechanism for identification (specially developed computer software) of goods listed on the national Control Lists in the following areas:

- Military goods;
- Dual-use goods;
- Controlled items not listed on the national Control Lists;
- Goods exempt from export controls.

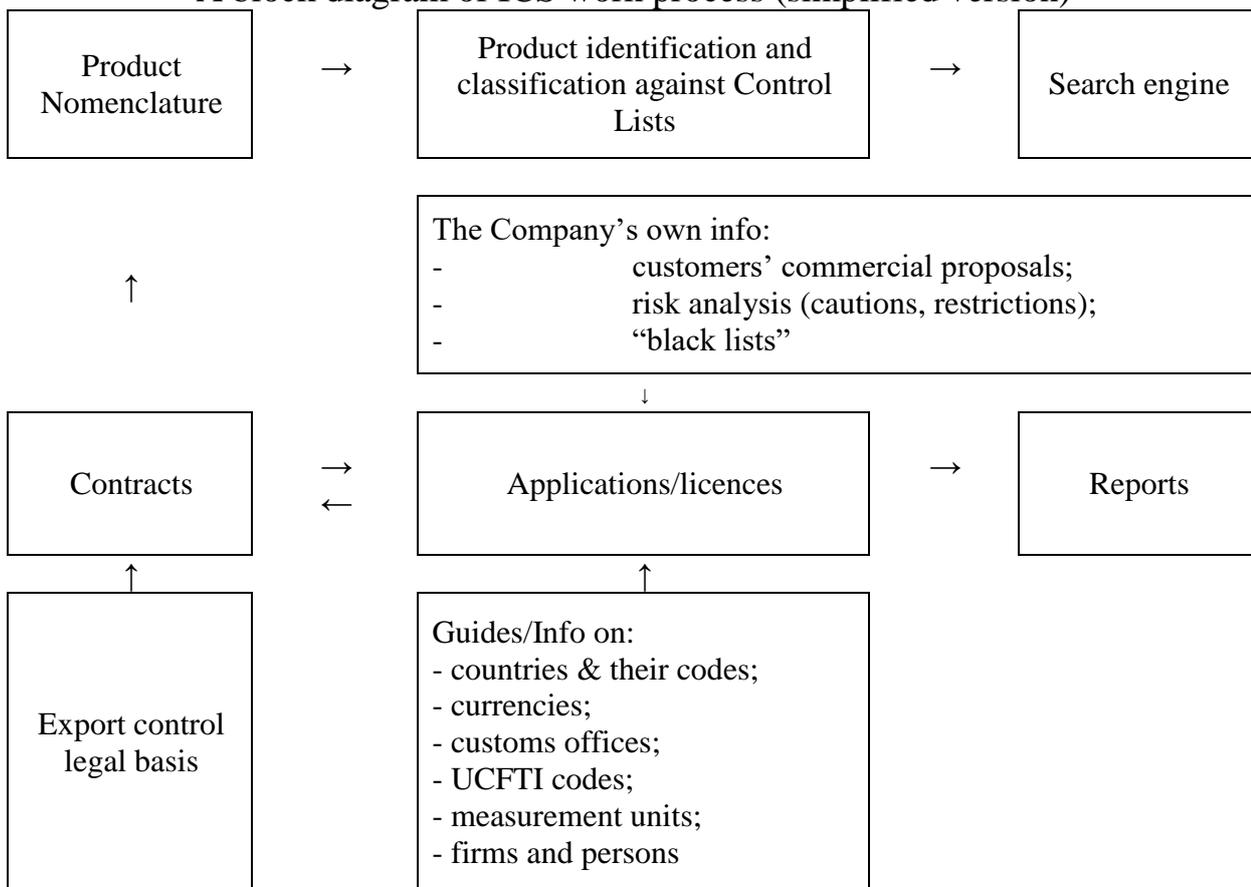
Electronic guides (special programmes) on materials, products and technologies;

Guides on nuclear materials and technologies;

Guides on goods subject to country-specific controls (Russia, USA, Armenia, Kazakhstan, etc.).

Guides on customs clearance.

A block diagram of ICS work process (simplified version)



Risk Analysis

One of the main ICS tasks is to prevent and eliminate offences in the area of export control. In this regard, preference is given to offense prevention based on an effective instrument of preliminary analysis of possible risks faced in conducting foreign trade activities and verification of the accuracy of customer-provided information required to obtain a license.

If a risk is present the ECO contract manager is to promptly notify the Company Management in writing on the potential for committing an export control offence.

The risk analysis follows a set pattern and is performed stepwise as shown below:

Step 1. Analysis of the Customer's commercial proposal

Risk Criteria:

- whether the ordered goods are products of the Company's own manufacture;
- whether the ordered product is in a condition satisfactory for the Customer or requires tuning (upgrade) for export;
- whether design documentation is available for the product, and whether it is listed on the Company's Certificate of Registration with SSECUC;
- what type (DUG, MG, etc.) the goods are and whether they require identification against the Control Lists;
- whether licensing documents are required for export;
- whether the Company is authorised to export the ordered goods.

Step 2. Analysis of the Customer's "export history"

Risk Criteria:

Information sourced from the Internet, the media, the UN Security Council and the "black list" of exporters on reported legal offences by the Customer in the country of registration and failure to abide by his contractual guarantee commitments.

Step 3. Analysis of Customer registration documents and credentials

Risk Criteria:

Customer lacks required registration documents.

Step 4. Verification (examination, confirmation) of Customer registration documents and credentials in consultation with relevant authorised government agencies

Risk Criteria:

Variations in Customer registration documents, found during document checks with the authorised government agencies (embassies, consulates, missions, etc.).

Step 5. Checking the absence or presence of an embargo or restrictions on exports of requested goods to the Customer

Risk Criteria:

Information from Ukrainian government agencies (NSDC, Ministry of Foreign Affairs, etc.) on the presence of embargoes or restrictions on exports of requested goods to the Customer's country.

Step 6. Identifying the requirement to apply to the government agencies for conclusion to proceed with negotiations on an international transfer of goods to the Customer

Risk Criteria:

Customer lacks required registration documents and authorisation (commission) to proceed with contract negotiations.

Step 7. Setting requirements to the contract at the stage of pre-contract preparations

Risk Criteria:

Customer has multiple comments on the content of the draft contract prepared by the Company (Seller).

Step 8. Control and adjustment of export control requirements with regard to the contract subject matter before its signing by the parties' authorised representatives

Risk Criteria:

Customer concerns and contentions in terms of the number of guarantee documents, Customer disagreement with additional requirements to specify the list of export products and transportation arrangements.

Step 9. Control and verification of Customer documents provided after signing the contract (registration, credentials, certificates, etc.)

Risk Criteria:

Poor quality of (errors found in) Customer registration and guarantee documents, existence of differences in the information and documents under the contract.

Step 10. Prompt notification of the Company Management and authorised government agencies (possibly after each of the above steps) on deviations from the prescribed rules and on appearance of "red flags"

The above actions constitute an express analysis to determine whether ordered products can be exported in compliance with the requirements of state law at various stages of a foreign trade contract.

These actions are aimed at identifying "risk areas" in the formation and implementation of a foreign trade contract and ensuring prompt notification of the Company Management on possible violations of current export control legislation and on the requirement to take expedite action to prevent penalties from being imposed on the Company.

3.2. Analysis of agreements (contracts) and documents of the Customer

An ECO expert compiles the requirements of state export control legislation and incorporates them in specific sections of the foreign trade contract. More exacting requirements are set to the format and content of a foreign trade contract for the international transfer of goods (services) to states on which a partial embargo (limitations) for such transfer has been imposed. Such contracts must contain additional information on product end-use and guarantee commitments.

The format and content of any foreign trade agreement (contract) is regulated by the Law of Ukraine "On Foreign Trade Activities" (Article 6) and by the Ministry of Economy and European Integration of Ukraine Order № 201 of 06.09.2001 "On Approval of the Format of Foreign Trade Agreements (Contracts)".

According to the requirements and recommendations of legislative documents on national export controls, individual sections of a typical foreign trade contract are advised to include additional information about broker/end-user credentials and their guarantee commitments regarding the use of the imported items.

Recommendations for the formation of individual sections of a foreign trade contract for international transfers of military and dual-use goods

Contract preamble

The preamble states the full names of the parties to a foreign trade operation, **under which they are officially registered**, indicating the country, a short definition of the parties as counterparties ("Seller" "Buyer", "Customer", "Provider", etc.), the person on whose behalf the foreign trade agreement (contract) is concluded, and the titles of documents used by the counterparties at the conclusion of the agreement (contract) (constituent documents).

***Nota bene!** The above information must necessarily be verified by SSECU employees (for consistency of the information stated in the Ukrainian Company's application with that stated in the foreign trader's documents) and during customs clearance for international transfers of goods (consistency of the information in the authorisation/conclusion, agreement/contract and customs declaration) and should have the same titles and references.*

Subject matter of the agreement (contract)

The section specifies which product (service) is to be supplied (provided) by the one counterparty to the other, specifying the exact name, brand, type and end result of the service to be provided.

If the product (service) requires a more detailed specification or the nomenclature of goods (services) is large enough, then all of this is stated in an annex (specification) to be an integral part of the agreement (contract), which is noted accordingly in the text of the agreement (contract). In this regard, it must be emphasized that the designation, grade, and type of a product or service must perfectly match the product designation as registered in the International Trader Registration Certificate issued by SSECU. Otherwise, the trader must first register this product and receive a relevant letter of explanation to the Registration Certificate.

***Nota bene!** Under the subject matter of the agreement (contract) it is advised to state the purpose of the goods use, the end-user (especially when the contract is being concluded with a broker), the consignee of the goods (a counterpart, an end-user and a consignee may be different traders from different countries). Availability of such information gives a clear picture of the parties to the specific international transfer and facilitates (expedites) the state examination.*

Goods quantity

Clearly, the quantity is one of the key features of international transfers.

This section identifies, depending on the nomenclature, the measuring unit for the subject commodity as conventionally adopted for goods of this particular type (in pieces, kilograms, etc.), its total quantity and quality specifications.

The text of the agreement (contract) for work to be performed (services provided) specifies the scope of work (services) and the timeframe for their implementation.

***Nota bene!** Information from this section of the agreement (contract) on the quantity of goods must be copied as is to the "End-user Certificate" and the "Delivery Confirmation Certificate "*

Basic terms of goods delivery

This section specifies the type of transport and basic goods delivery terms in accordance with current international rules of interpretation of commercial terms, which determine the responsibilities of counterparties as to goods delivery and set the moment of risk transition from one party to another, and the specific delivery term for the commodity (or individual shipments thereof). Currently, the terms are defined in accordance with the international rules of terms interpretation INCOTERMS as amended in 2010. It is advisable to note this in the agreement (contract), to ensure the same understanding of delivery terms by all parties to the international transfer and to prevent possible misunderstandings and violations of state law.

***Nota bene!** You may select multiple types of transport (based on the specifics of a particular agreement/contract) and specify options for goods delivery. This is especially relevant if there is a need to promptly ship military or dual-use goods by air. Such actions are subject to additional licensing and obtaining an air authorisation from the State Aviation Administration of the Ministry of Infrastructure of Ukraine.*

Practice shows that the lack of references in the text of the agreement (contract) on the use of air transport may delay goods shipment or even suspend it until it is formally fixed by an addendum to the relevant agreement (contract).

Location, postal and payment details of the parties

This mandatory section specifies the location, full mailing and billing details (account number, bank name and address) of the agreement (contract) parties.

In this section, it is important to be aware of the counterparty's location now that this information must be included in the application for a SSECU Conclusion/Permit. The location may include a mailing or a legal address. Both the former and the latter can be specified in the details.

Selected is that address at which the buyer (broker or end-user) can be easily located.

Additional Terms

As agreed to by the parties, the agreement (contract) may specify additional terms/conditions. This agreement section may contain a number of additional conditions (requirements) depending on the international transfer features, specific product features, differences in the requirements of the counterparties' foreign trade laws.

This section may typically include special requirements or information that SSECU recommends to include in the contract. These special requirements or data have peculiar features.

First of all, it concerns guarantee documents on product end-use (commitments assumed by foreign traders). These requirements need not appear in the text of the agreement, and, as practice shows, knowledgeable foreign traders from states parties to international export control regimes need little or no additional prompting to provide the relevant guarantee documents. But it does not happen in each and every case. Furthermore, the content of guarantee documents may vary because of differences in the laws of various countries on the subject. Given the potential risks, it is essential to state and consolidate the export control requirements in the "Additional Terms" section, which will be acknowledged in any international court.

Information on foreign trader commitments

The foreign trader undertakes to not re-export and not to re-transfer the received goods to anyone other than the end-user, or makes a commitment that such goods are intended for the end-user's own use unrelated to their subsequent re-export or re-transfer; while in case a foreign trader, importer or end-user intends to further re-export or re-transfer received goods to another end-user the agreement (contract) shall stipulate his commitments regarding such transfers subject to written consent of the exporter and SSECU.

Information on the goods End-user Certificate

This requirement is a prerequisite for international transfers of goods subject to state export controls. The form of such a certificate (recommended contents of the Certificate are available at the SSECU website) can be represented by a separate annex to the agreement (contract) with relevant commentary to facilitate understanding by the foreign trader of Ukrainian legal requirements to this document.

In practice it can occur that the form of End-user Certificate presented by the exporter in the annex to the agreement (contract) is ignored by the foreign trader

and he provides a certificate of his own form, referring to the legislation of his country.

***Nota bene!** An End-user Certificate should include key information and specific guarantee commitments on the proposed international transfer of goods (contract number, exporter/importer details, goods designation and quantity, place of use, guarantees against re-transferring or upgrading products to another trader).*

There are certificates where, in addition to key information, the foreign trader assumes additional guarantee commitments, such as: “not to use the above products for any purposes related to chemical, biological or nuclear weapons or missiles that can deliver such weapons, and not to re-transfer them to any third party, if there is suspicion or likelihood that they are meant for such a purpose”. Such a certificate is fully consistent with Ukrainian law.

Effective date of agreement (contract)

SSECU recommends including in the contract a clause that it takes effect only upon obtaining by the exporter and importer of appropriate authorisation (licenses) from the government agencies.

This reference to the entry into force is not always cost-effective and can put an exporter in a lot of trouble, because without the contract entry into force no financing (advance payment) will be possible. Inclusion of such a requirement is appropriate when only sparse information is available about the foreign trader and his legal basis, or the legislation of the importing country on this issue is known to differ from Ukrainian legislation, and obtaining necessary authorisation by the importer requires a special procedure and is very time-consuming.

If a partner is well known, if he consistently abides by his commitments and there is confidence that the necessary authorisation will be obtained by the counterparties, it is advisable to set the entry into force of the agreement (contract) upon signature by both parties so that financing can start.

Information on goods Delivery Confirmation Certificate

The current law sets the date of delivery certificate submission as 45 days from the shipment date as per the shipment customs declaration. As a rule, such a period is very difficult to meet. The reasons are plenty: lack of understanding of such a requirement by certain importing countries, transportation delays due to objective reasons, the importer having to follow a complicated procedure of goods receipt and confirmation thereof by the competent government authority of the importing country.

To prevent legal offences and for the vendor requirements to have legal effect,

one should include in the text of the contract a requirement to provide a document with proof of delivery under a two-step process:

- the counterparty submitting a transport document (copies of bills of lading, air waybill, etc.) to confirm the goods entry into the end-user country;
- submitting a certificate or other document on delivery or receipt of the goods.

Nota bene! In practice, the preliminary (transport) delivery document is normally submitted within up to 45 days. It is then followed by submitting to SSECU the original delivery confirmation document certified by the competent government agency of the importing country.

The section "Additional Terms" is also recommended to include information on Import Certificates issued, requirements to control the fact of delivery or inspect the exported goods for being used as intended, information about the credentials of the foreign trader and brokers, conferred upon them by the laws of the country where they are registered, requirements for the protection of intellectual property, trade secrets and privacy of correspondence, requirements for the vendor or manufacturer to check the exported goods' end use.

From experience we can say that for labour-consuming, long-term agreements (contracts) it is highly desirable to include in the contract a schedule of its implementation, outlining stages of preparation, production, acceptance and delivery of goods, substantiating and incorporating therein the efforts to obtain authorisations from Ukrainian government agencies (including SSECU Permits/Conclusions).

Nota bene! Such a systematic approach to the preparation of foreign trade agreements (contracts) for the export of military and dual-use goods notably reduces the risk of possible violations or penalties borne by the counterparties, simplifies the examination of Company applications by government agencies, optimizes (reduces) the work timing at certain stages and, consequently, improves the quality of contract implementation.

3.3. Mechanism of preparation for the export/import of controlled goods and accompaniment of their international transfers

The Company's Standard "Quality Guidelines" includes such sections, useful in terms of ICS, as "Strategic Planning", "Marketing", "Procedure of Forming a Corporate Order", "Procedure of Forming, Requirements Analysis and

Management of a Foreign Trade Contract. The Company's export control experts can promptly (from the existing databases) get the information they need and use it in their work.

In a simplified form, the scheme of goods examination, licensing and control in accordance with the "Procedure for Formation, Signing and Management of a Foreign Trade Contract" appears as shown below.

Stages of foreign trade contract completion / Type of Controls

1. Customer's commercial proposal / *Analysis of the product for being of own manufacture.*
2. Determination of the requirement to obtain authorisation for the international transfer of goods/ *Identification of the product and its classification under national goods Control Lists.*
3. Analysis of risks and possibilities of international goods transfer to the end-user (broker)/ *Analysing end-user (broker) credentials and "criminal history" (black lists), sourcing from international databases.*
4. Request of credentials and registration documents from the Customer/*Examining and verifying Customer credentials and registration documents.*
5. Applying to SSECU from the Company for a conclusion to proceed with negotiations /*Examining the applicant's documents and government agency agreement to enter into negotiations.*
6. Pre-contract and contract negotiations / Control of negotiations, of the content of the draft contract, a report on the negotiations.
7. Analysis of the signed foreign trade contract / *Analysis and verification of end-user (broker) commitments and guarantees.*
8. Applying for a SSECU Authorisation for international transfer/*Examining the applicant's documents and obtaining a SSECU Authorisation for international transfer of goods.*
9. Customs clearance of goods / Examination of documents after customs clearance
10. Shipment and transportation of goods / Control of the shipment (packaging) and transportation of goods (analysis of supporting and transportation documents).
11. Goods delivery confirmation / Accompaniment of the goods delivery by an authorised Company employee or obtaining from the Customer a document confirming the goods delivery.

12. Guarantee tracking of exported products / All possible means of controlling the goods end-use by the customer.

The Company developed and implemented in-house control programmes for export-import operations:

- a programme for monitoring preparation stages for the export of primary products and import of components in a "hot line" mode for the Company Management and managers of departments involved in export/import, beginning from applying for authorisations through to reporting on completed deliveries to SSECU (the programme monitors the process of licensing and obtaining authorisation documents for the import of components for military goods assembly production);
- a programme for licensing process optimization, which selects the optimal (in terms of saving time) path for agreeing the documents to be submitted for authorization by government agencies to import components and export primary products.

3.4. Arrangements for obtaining SSECU registration documents and authorisations /conclusions

The procedure of preparation and processing of documents for registration/re-registration with SSECU of the Company as an international trader in export-controlled goods

- I. Company registration, pre-licensing examination and registration of goods and services with SSECU is typically required in the following cases:
 - the Company needing and being able to export/import of military goods (MG) and dual-use goods (DUG), which are subject to export controls;
 - the Company gets at its disposal (capacity and readiness for the production of) special merchandise planned for export-controlled international transfers.

- II. Company re-registration with SSECU is typically required in the following cases:
 - Expiry of the previous certificate - **three years from the date of the previous certificate;**
 - Changed Company name;
 - Changed Company location;

- Changed Company Statute;
- Changed Company registration with state authorities;
- Changed Company credentials.

Company registration/re-registration is initiated by ECO.

Preparation and formation of the documentation package for registration/re-registration with SSECUC as an international trader and pre-licensing examination is done by ECO based on data provided by the Company's Foreign Trade Department (FTD).

ECO monitors the Certificate of Registration validity term. **No later than 1.5 months prior to expiry of the Company Registration certificate** the ECO shall forward to FTD an official note requesting to provide the current or updated nomenclature of goods to pass a pre-licensing examination and registration with SSECUC.

In response, FTD sends an official note to ECO with information about the products to be registered with SSECUC, indicating the product designation, number of technical specifications, filing number or other decimal number of the product or technical specifications, product code according to UC FTI, and the list of countries to which international transfers of goods are planned.

To prepare a documentation package to be submitted to SSECUC, ECO receives from FTD all relevant information about the products to be registered, in the following format:

- a) a brief specification and description of the product (purpose and applicability);
- b) for exports of services an appropriate annotation of these services is prepared.

The document is submitted to and signed by the Chief Designer or his deputy.

- c) The product code according to UC FTI is provided to ECO by FTD in coordination with the Company's customs brokers or the product manufacturer (in case of import) according to the product specifications.

For registration/re-registration with SSECUC, ECO prepares the following documents for submission to SSECUC:

- 1. A letter to the Head of SSECUC** with a brief statement of application purpose and attachments thereto (required documents). The letter is signed by the Company President.

2. A completed standard application form (SSECU-0800) for pre-licensing examination, which is filled out specifying the following:

- an outgoing reference number and date of the cover letter which forwarded the application;
- the serial number of the application (as registered in ECO) and date of the application;
- the form is filled out electronically in accordance with the above instructions (SSECU Order 31 dated 4/27/09) on the above pattern.

The application is signed by the Company President and ECO employee responsible for the application.

3. Statement on goods identification.

The statement is prepared following the SSECU-established form (SSECU Order 31 dated 4/27/09). The statement is signed by the Company President, the Company's Chief Designer and ECO Director.

4. Statement on the degree of secrecy.

The statement on the degree of secrecy is prepared following the SSECU-established form. The statement is signed by the Company President and Director of the Security Office of the Company.

5. Statement on goods origin.

The statement is prepared in any form and is signed by the Company President.

6. Statement on the list of importing countries.

7. Statement on the credentials of Company employees in the field of export control.

8. A copy of the Company Statute.

9. A copy of the special authorisation to conduct activities related to the State Secret.

10. The Company's Certificate of Registration in the Uniform State Register of Ukrainian Enterprises.

Upon submittal of the documentation package to SSECU, it is assigned a SSECU incoming number, by which the status of registration/re-registration certificate is tracked at the SSECU website.

Procedure of preparation and processing of documents for registration/complementary registration of goods (products) nomenclature of the Company as an international trader in controlled goods with SSECU

I. Pre-licensing examination and registration/complementary registration of Company goods (products) nomenclature with SSECU is typically required in the following cases:

- emergence of a new nomenclature of military (MG) and dual-use (DUG) goods which are subject to export controls;
- upgrade of existing products and special products planned for international transfers subject to export controls.

II. Registration/complementary registration of Company product nomenclature with SSECU is typically required in the following cases:

- Changed name of the product;
- Changed code (decimal number) of the product;
- Changed product modification line;
- Introducing a new equipment nomenclature and new services.

Company registration/complementary registration is initiated by the Company's Foreign Trade Department (FTD) based on information received from relevant departments on changes in the Company products nomenclature.

Preparation and formation of the documentation package for registration/complementary registration with SSECU as an international trader and pre-licensing examination is done by ECO based on data provided by FTD.

FTD sends an official note to ECO with information about the products to be registered with SSECU, indicating the product designation, number of technical specifications, filing number or other decimal number of the product or technical specifications, product code according to UC FTI, and the list of countries to which international transfers of goods are planned.

To prepare a documentation package to be submitted to SSECU, the Company's ECO receives from FTD all relevant information about the products to be registered, in the following format:

- a) a brief specification and description of the product (purpose and applicability);**
- b) for exports of services an appropriate annotation of these services is prepared.**

The document is submitted to and signed by the Chief Designer or his deputy.

- c) The product code according to UC FTI is provided to ECO by**

FTD in coordination with the Company's customs brokers or the product manufacturer (in case of import) according to the goods specifications.

For registration/complementary registration with SSECU, ECO prepares the following documents for submission to SSECU:

1. A letter to the Head of SSECU with a brief statement of application purpose and attachments thereto (required documents); The letter is signed by the Company President .

2. A completed standard application form (SSECU-0800) for pre-licensing examination, which is filled out specifying the following:

- an outgoing reference number and date of the cover letter which forwarded the application;
- the serial number of the application (as registered in ECO) and date of the application;
- the form is filled out in accordance with the above instructions (SSECU Order 31 dated 4/27/09).

The application is signed by the Company President and ECO employee responsible for the application.

3. Statement on goods identification.

The statement is prepared following the SSECU-established form (SSECU Order 31 dated 4/27/09).The statement is signed by the Company President, Chief Designer and ECO Director.

4. Statement on the degree of secrecy.

The statement on the degree of secrecy is prepared following the SSECU-established form.The statement is signed by the Company President and Director of the Security Office.

5. Statement on goods origin.

The statement is prepared in any form and is signed by the Company President.

6. Statement on the list of importing countries.

7. Statement on the credentials of Company employees in the field of export control.

8. A copy of the Company Statute.

9. A copy of the special authorisation to conduct activities related to the State Secret.

10. The Company's Certificate of Registration in the Uniform State Register of Ukrainian Enterprises.

Upon submittal of the documentation package to SSECUCU, it is assigned a SSECUCU incoming number, by which the status of registration/ complementary registration certificate is tracked at the SSECUCU website

Procedures for preparation and processing of application documents for SSECUCU Permits, Conclusions to proceed with negotiations and international transfers of goods subject to export controls

I. Procedure for processing of application documents for SSECUCU Conclusions (on the right) to proceed with negotiations related to international transfers of goods

Before obtaining an authorisation/conclusion on international transfers of controlled goods, one must obtain from SSECUCU a positive Conclusion to proceed with negotiations to enter into foreign trade agreements (contracts) on the international transfer of military and dual-use goods.

Submission of the application for authorisation to proceed with negotiations is initiated by the Company's FTD based on the Office of Strategic Marketing (OSM) plans.

An ECO employee in consultation with the FTD Director selects the type of authorisation document, based on the requirements of the future plans of working with foreign customers.

Conclusions authorising to proceed with negotiations can be of the following types:

- SSECUCU Individual Conclusion;
- SSECUCU General Conclusion;
- SSECUCU Open Conclusion.

Seeking to obtain a SSECUCU Conclusion to proceed with negotiations, ECO prepares and sends to SSECUCU the following documents:

1. A letter to the Head of SSECUCU with a brief statement of application purpose and required documents attached. **The letter is signed by the Company President.**

2. A completed standard application form (SSECUCU-0801) for a SSECUCU Conclusion to proceed with negotiations related to entering into foreign trade agreements, which is filled out specifying the following:

- an outgoing reference number and date of the cover letter which forwarded the application;

- the serial number of the application (as registered in ECO) and date of the application/

The form is filled out in accordance with the above instructions and on the above pattern. The application is signed by the Company President and ECO employee responsible for the application.

Upon submittal to SSECUC of the application package for a SSECUC Conclusion to proceed with negotiations, it is assigned a SSECUC incoming number and an application number, by which the status of the Conclusion to proceed with negotiations is tracked at the SSECUC website.

II. Procedure for obtaining SSECUC Permits/Conclusions to proceed with the international transfer of goods subject to export controls

Obtaining SSECUC Authorisations/Conclusions on the international transfer of goods subject to export controls is a prerequisite for the Company to carry out their export/import, temporary import/export or transit of goods under foreign trade agreements (contracts).

1. Pre-licensing examination of goods and obtaining a specific SSECUC Authorisation/Conclusion on the international transfer of Company goods (products) is required given a specific foreign trade agreement (contract) on the international transfer of the Company's military goods (MG) and dual-use goods (DUG) subject to export controls is available.

2. Pre-licensing examination of goods and obtaining a specific SSECUC Authorisation/Conclusion to proceed with the export/import, temporary import/export or transit of military goods (MG) and dual-use goods (DUG) is required in the following cases:

- Warranty and post-warranty maintenance of products of own manufacture at the foreign Customer's location;
- Warranty and post-warranty repair of products of own manufacture at the foreign Customer's location;
- Service life extension of products of own manufacture at the foreign Customer's location;
- Sending products (DUG and MG) of own manufacture to various international exhibitions.

3. An appropriate customs regime is selected for the international goods transfer to match the relevant nature of export-controlled international transfer, following the scheme below:

- Export is carried out upon a SSECUC Permit;
- Import is carried out upon a SSECUC Permit;
- Temporary export is carried out upon a SSECUC Conclusion;
- Temporary import is carried out upon a SSECUC Conclusion;
- Transit is carried out upon a SSECUC Conclusion;
- Re-export is carried out upon a SSECUC Permit.

4. An appropriate type of licensing document is selected based on the requirements of the foreign trade contract and the chosen strategy (future plans) of working with foreign customers:

- SSECUC Individual Permitter Conclusion;
- SSECUC General Permit or Conclusion;
- SSECUC Open Permit or Conclusion.

Preparation and formation of the documentation package for the application of a SSECUC permit or conclusion for the products of the Company as an international trader and pre-licensing examination is done by ECO based on data provided by FTD.

The data submitted to the ECO by the FTD includes information about the specific product under the specific contract, indicating the product designation, number of technical specifications, filing number or other decimal number of the product or technical specifications, product code according to UC FTI, and two copies of the contract under which the international transfer of goods is planned. The data is submitted to the ECO in the following format:

- a) **a brief specification and description of the product (purpose and applicability);**
- b) **for exports of services an appropriate annotation of these services is prepared.**

The document is submitted to and signed by the Chief Designer or his deputy.

- c) **The product code according to UC FTI is provided to ECO by FTD in coordination with the Company's customs brokers or the product**

manufacturer (in case of import) according to the goods specifications.

In preparing an application for a SSECUCONCLUSION/AUTHORISATION, ECO prepares the following documents for submission to SSECUCONCLUSION:

1. A letter to the Head of SSECUCONCLUSION with a brief statement of application purpose and attachments thereto (required documents).

The letter is signed by the Company President. **A completed standard application form (SSECUCONCLUSION-0800)** for pre-licensing examination, which is filled out specifying the following:

- an outgoing reference number and date of the cover letter which forwarded the application;
- the serial number of the application (as registered in ECO) and date of the application;
- the form is filled out in accordance with the above instructions (SSECUCONCLUSION Order 31 dated 4/27/09) on the above pattern.

The application is signed by the Company President and ECO employee responsible for the application.

3. Statement on goods identification

The statement is prepared following the SSECUCONCLUSION-established form (SSECUCONCLUSION Order 31 dated 4/27/09).

The statement is signed by the Company President, Chief Designer and ECO Director.

4. Statement on the degree of secrecy.

The statement on the degree of secrecy is prepared following the SSECUCONCLUSION-established form.

The statement is signed by the Company President and head of the Security Office.

5. Statement on goods origin.

The statement is prepared in any form and is signed by the Company President.

6. End-user Certificate.

7. Statement on the credentials of Company employees in the field of export control.

8. A negotiations report.

9. A copy of the authorisation to proceed with negotiations for specific products.

10. In case brokers are involved, appropriate documents on broker registration and credentials granted by the end-user are to be submitted.

Upon submittal of the documentation package to SSECU, it is assigned a SSECU incoming number and application number, by which the status of the Conclusion/Authorisation for the declared product is tracked at the SSECU website

3.5. Keeping records

The Export Control Office maintains:

- an archive of foreign trade agreements (contracts);
- a library of agreements (contracts) in electronic form (scanned texts of contracts) and in hard copy;

In electronic form the contracts are divided in three groups:

- cooperation contracts pursuant to intergovernmental agreements for the export/import of goods;
- export//import contracts with regular customers of the Company;
- Other agreements.

In hard copy, the three types of contracts are also respective yearly registry books.

A library of licensing documents (permits, conclusions) is maintained in hard copy (with an archive) and includes:

- a book of records on submitting applications to SSECU;
- an inventory book of SSECU Individual Permits/Conclusions;
- an inventory book of SSECU Open and General Permits/Conclusions;
- an inventory book of SSECU Open, General and Individual Permits/Conclusions to proceed with contract negotiations;
- an inventory book of applications to and conclusions of relevant Ministries providing their concurrent views on negotiations of agreements (contracts) for goods export/import;
- an inventory book of applications to and conclusions of authorised agencies providing their concurrent views on sales market and international pricing;

- an inventory book of applications to and authorisations (permits and conclusions) of State Aviation Service of Ukraine to fly military goods.

A library of register and storage of the most important information, including:

- an inventory book of SSECU requests, responses and explanations;
- an inventory book of requests (official notes) for the supply of goods (services) signed by the Company customer departments;
- copies of contracts with customer details, lists of goods and their value, special terms of supply and other data that is recommended to include in contracts;
- an inventory book of copies of broker and end-user credentials and registration as well as legalisation of provided copies of documents at the embassies of other countries;
- an inventory book of documents on commitments and guarantees (power of attorney, broker documents);
- an inventory book of shipment documents (documents on transporters, routes and methods of delivery, bills of lading, air waybills);
- documents (copies of statements) on the degree of goods secrecy;
- an inventory book of technical information and annotations for technical services, whereby a product can be uniquely identified against the relevant entry in the Control Lists;
- copies of written evidence of goods transportation and of goods transportation contracts;
- documents issued by airlines for goods transportation overseas, which contain the relevant requirements to these airlines;
- an inventory book of copies of end-user and delivery confirmation certificates;
- an inventory book of reports to SSECU on the use of authorisations or guarantee documents;

- an inventory book of payments for SSECU permits and conclusions;
- an inventory book of applications to government agencies for cooperative defence supplies;
- a book of records on goods examination (copies of examination cards to contracts);
- an inventory book of memorandums on export control issues to the Company Management;
- an inventory book of documents (statements, conclusions of government agencies, etc.) granting and extending the Company credentials/powers for the international transfer of goods;
- a book of records on the SSECU Public Council activities.

3.6. Internal audit within the Company

The internal audit within the Company with regard to ECO is performed by the Quality Department, on the other hand the audit of units cooperating with the OEC in the process of international transfers of controlled goods is performed by the Export Control Office. These two kinds of internal audits are performed according to the Procedure for Inspection of Export Control Compliance by Company Departments.

The Procedure applies to all Company employees and departments involved in international transfers of goods subject to state export controls.

The basic principle of inspections (audits) is their planning, compiling audit programmes, organization and follow-up, and reporting on the findings of such inspections.

Institutional documents for the audit include:

- Order on conducting the audit and approval of authorised auditors (register of auditors);
- Order on enforcement of the institutional documents for the audit;
- audit programme for ECO;
- audit programme for Company departments involved in international transfers of goods;
- measures preparatory to the internal audit of Company departments;
- Report to President of the Company on the findings of the internal

audit of Company departments.

The Company departments to be inspected (audited):

- Office of Strategic Marketing;
- Foreign Trade Department;
- General Accounting Office;
- Sales Department;
- Company subsidiaries - yearly (unless their activities require otherwise);
- Export Control Office.

The programme of inspections (audits) of the Company departments

Inspections of Company departments are conducted as follows.

The Export Control Office inspects within its competence the performance of the following Company departments:

- *Office of Strategic Marketing (OSM) is checked once a quarter*

The system element to be checked - Check if OSM has available information on countries and firms that have international restrictions or embargo on imports of military and dual-use goods imposed on them;

- *Foreign Trade Department is checked monthly*

The system elements to be checked

- Check if FTD has available information on countries and firms that have international restrictions or embargo on imports of military and dual-use goods imposed on them,
- check the content of FTD agreements (contracts) for presence of export control requirements as to customer (end-user, broker) commitments (credentials) and guarantees, provision by FTD of original end-user and delivery certificates for military and dual-use goods, copies of customs declarations for customs clearance of military and dual-use goods.

General Accounting Office is checked once a quarter.

The system element to be checked – Check the accuracy of quarterly reporting (lists of products) on export/import of military and dual-use goods, accuracy of

payment to the state budget for SSECU Authorisations/Conclusions.

Sales Department is checked once a quarter.

The system element to be checked – check the accuracy of packaging and preparation for shipment of military and dual-use goods.

Subsidiaries of the Company are checked yearly (unless their activities require otherwise).

The system element to be checked – check if the Company subsidiaries have available information on the requirements of state regulations on the export/import of military and dual-use goods.

Export Control Office (ECO) is checked yearly.

The system element to be checked – the Company's Quality Department quality check of ECO's performance in ensuring The Company compliance with requirements of state export control legislation and obtaining SSECU Authorisations/Conclusions for Company foreign trade activities.

The Company's Quality Department within its competence inspects the Export Control Office (supervisory audit) according to the Company standard STP 14.301.699 (STP 14301699.144-2008).

Measures preparatory to the audit

1. Approval as appropriate of the Company's export control policy for the current year.
2. Preparation of effective laws issued by the state export control authorities, as amended at the time of the audit To be put in corresponding database of the Company.
3. Checking availability, completeness and validity of all institutional documents for adequate functioning of the Company's Internal Compliance System.

Audit checklist

An audit checklist is developed taking into consideration the production profile and scope of the Company.

Audit checklist elements

Status of the Company's ECO	<input type="checkbox"/>
Availability and consistency of in-house instructions	<input type="checkbox"/>
Analysis of special issues related to Company activities (development and manufacture of military goods)	<input type="checkbox"/>
Contacts with government agencies and specifics of export control enforcement within the Company	<input type="checkbox"/>
Use of licensing (authorisation) documents (according to their types)	<input type="checkbox"/>
Determination of completion of a training programme	<input type="checkbox"/>
Determination of completion of an audit programme	<input type="checkbox"/>
Documenting relevant export control processes	<input type="checkbox"/>
Availability and use of information technology processes and related tools	<input type="checkbox"/>
• Database and classification of products	
• Database of customers/partners	<input type="checkbox"/>
• Methods of processing customer applications	<input type="checkbox"/>
• "Black lists" of potential customers	<input type="checkbox"/>
• Mechanism to adjust export controls to reflect legislative changes	<input type="checkbox"/>
Process logistics	<input type="checkbox"/>
Follow-up and conducting typical inspections (<i>examples</i>)	<input type="checkbox"/>
• Product classification and identification	
• End-use control, determining the scope of use and partner verification	<input type="checkbox"/>
• Mechanism for obtaining and use of licensing documents	<input type="checkbox"/>
Transfer of technology (including software) and provision of services (technical assistance)	<input type="checkbox"/>
Standard contract clauses related to export controls (list of contract sections, their contents)	<input type="checkbox"/>
Involvement of subsidiaries, their tasks and requirements	<input type="checkbox"/>

Audit Findings Report

Based on the audit findings, a separate report is compiled for each audited department, providing comments or recommendations. The report is submitted to President of the Company for appropriate action in response to the audit findings.

3.7. Training and advanced training of experts

ECO staff constantly improve their skills and regularly attend training seminars and conferences on export controls, make presentations at international seminars, ECO officials act as technical experts and members of the SSECU Public Council.

ECO staff constantly enhances the Company personnel's awareness of export control issues by holding meetings on legislative changes with the Company Management and by technical training of Company employees with the analysis of current legislation, international risks, atypical situations and problems that might occur in their work.

Advanced training for ECO staff and staff of other departments is provided following quarterly plans as approved by the ECO Director.

ECO experts train Company employees in export controls according to the schedule approved by the ECO Director.

Classes are held for three groups of trainees:

- Company Management;
- Heads of Company departments involved in international transfers of controlled goods;
- experts of Company departments involved in international transfers of controlled goods.

The main study topics include:

- changes in the export control legal framework and licensing procedure for international transfers of goods;
- requirements of and changes in export control laws of partner customers;
- typical errors made by ECO experts when applying to the State Export Control;

- typical errors made by Company departments involved in international transfers of controlled goods;
- analysis of non-standard situations and controversial issues of international transfers of goods.

A typical plan (subjects) of training in export controls for the Company employees, which is related to international transfers of goods subject to export controls

Main topics

1. Changes in export control legislation. Participation in seminars (quarterly).
2. Typical errors made by Company departments in the area of export controls (working sessions every month).
3. Analysis of unconventional and controversial situations in international transfers of controlled goods.

Typical plan (subjects) of training in export controls for Company Management

1. Changes in export control legislation. Ukraine's MTC and EC policies.
2. Changes in international relations in the area of export controls.
3. Typical errors made by Company departments in the area of export controls (summarised report).
4. Mechanisms for preventing legal offences in the field of export control when carrying out international transfers of goods by the Company.

***Nota bene!** Awareness and continuous training in export controls for foreign trade personnel, who, according to their job descriptions, directly work with Customer representatives and participate in the signing of contracts is a key factor of Company's compliance with the law in the area of export control.*

All Company foreign trade experts, without exception, should be familiar with both export control fundamentals effective in Ukraine and international guidelines on this matter. The training is conducted by the Company's ECO experts.

The person responsible for a contract forms the contents of the contract to include requirements on export controls, drafts samples of end-user and goods delivery certificates, obtains documents certifying buyer credentials and registration, and completes internal reports on actual international transfers under general and open authorisations. The enforcement process of the agreement (contract) in terms of export controls involves not only ECO experts but 10-12 persons from FTD as well.

Such a scheme of interdepartmental interaction allows to handle vast amounts of information within a short period of time without reducing the quality of export control, to project Company foreign trade activities, and to prevent possible legal offences at early stages of these activities.

3.8. Mechanism to penalise Company employees for non-compliance with state export control law

The mechanism of punishment is applicable according to the Procedure for Holding Company Personnel (Officials) Liable for Non-Compliance with Procedures of International Transfers of Goods Subject to Export Controls.

The Procedure applies to all employees of the Company whose job descriptions include export control-related activities.

I. The procedure of holding Company personnel liable for non-compliance with the regulations on international transfers of export-controlled goods is based on:

1. Law of Ukraine "On State Export Control over International Transfers of Military and Dual-Use Goods", Articles 24-27;
2. Job descriptions of the Company ECO employees: Office Director and experts;
3. In-house labour regulations at the Company dated 03.03. 2010 (Clause 6, Disciplinary liability for breach of labour discipline).

II. The following officials can be held liable for non-compliance with the regulations on international transfers of export-controlled goods:

- Company Vice President for foreign trade, who is responsible for Company export control-related activities;
- ECO staff, whose job descriptions include the responsibility for Company compliance with the export control regulations and procedures;

- Heads (deputy heads) of the Company's departments involved in international transfers of goods subject to national export controls;
- authorised experts of the Company's departments involved in international transfers of goods subject to state export controls.

III. The main penalties for non-compliance with the regulations on international transfers of export-controlled goods include:

- a reprimand as applicable to an official;
- a severe reprimand as applicable to an official,
- pecuniary liability (withdrawal of personal allowances etc.) as applicable to an official;
- dismissal from office and transfer to another office, as applicable to an official;
- termination of employment as applicable to an official.

IV. Types of legal offences in the area of export controls, incurring penalties under Article 24 of the Law)

Legal offences in the area of state export controls include:

- 1) Pursuing activities related to international goods transfers without obtaining the appropriate authorisation, conclusion or guarantee document or carrying out international goods transfers based on authorisations, conclusions or guarantee documents obtained by submitting counterfeit documents or documents that contain unreliable data;
- 2) Concluding foreign trade agreements (contracts) for international transfers of Company products or participation in their implementation in any manner other than provided for by the Law, if the Company has become aware that such goods can be used by a foreign country or a foreign business entity to create weapons of mass destruction or means of their delivery;
- 3) Proceeding with an international transfer of goods in spite of information made available to the Company that respective goods will be used for purposes other than declared, or by another end-user than it was declared in the foreign trade agreement (contract) or related documents, based on which the authorisation, conclusion or international import certificate was issued;
- 4) Deliberate concealment of data relevant for the decision to issue an authorisation, conclusion or international import certificate;
- 5) Carrying out international goods transfers in violation of the terms specified in the authorisation, conclusion or international import certificate,

including after modifying without the consent of the specially authorised administrative authority the foreign trade contract as regards the titles and references of exporters, importers and end-users, as well as goods descriptions, end-use commitments and provision of relevant guarantee documents;

6) Conducting negotiations on foreign trade contracts for export of military goods and dual-use goods to a country of destination subject to a partial embargo for supplying these goods, without obtaining a positive conclusion to that effect by the specially authorised state export control authority;

7) Failure to submit or untimely submission to the specially authorised state export control authority of reports and related documents on the negotiation outcomes, as specified in par. 8 of this Article, as well as on actual international transfers of military and dual-use goods based on obtained authorisations or conclusions, and on the use of these goods for the purposes declared;

8) Obstructing the performance of official duties by officials of the authorised state export control body and other state bodies exercising state export control within the limits of their credentials as well as non-compliance with their legitimate demands;

9) Ungrounded refusal of information and documents requested by the authorised state export control body or another state body exercising state export control within the limits of its credentials, their intentional distortion or concealment;

10) Deliberate destruction of documents related to concluding and implementing foreign economic agreements (contracts) for international transfers of goods, based on which authorisations, conclusions or international import certificates were issued, before expiry of their retention period.

V. Liability of officials for non-compliance with export control legislation

The Company Director holds Company officials liable as follows:

- an offence under 1) of the above Section IV incurs dismissal from office and transfer to another office;
- Given findings by SSECU and other government agencies that the violation has inflicted damage to Ukraine's national interests (political, economic, or military) or Ukraine's compliance with its international commitments, it incurs termination of employment and levying 1,000 non-taxable personal income minimums in damage payment;

- Given findings by SSECU and other government agencies that the violation has not inflicted damage to Ukraine's national interests (political, economic, or military) or Ukraine's compliance with its international commitments, it incurs levying 1,000 non-taxable personal income minimums in damage payment.
- an offense under 2) incurs termination of employment and levying 1,000 non-taxable personal income minimums in damage payment;
- an offense under 3) incurs transfer to another office and levying 100 non-taxable personal income minimums in damage payment;
- an offense under 4) and 5) incurs a reprimand and withdrawal of personal salary increments;
- an offense under 6) incurs a severe reprimand and caution of official incompetence;
- an offence under 7) incurs withdrawal of personal salary increments;
- an offence under 8) and 9) incurs a reprimand and a qualifying remark;
- an offence under 10) incurs a severe reprimand and withdrawal of personal salary increments.

Penalties for officials' non-compliance with state export control legislation are imposed with due account for the Company by-laws.

4. Analysis of the Company's ICS Performance

Monitoring changes in legislation and in present-day international relations points to the need to carefully analyze and monitor the following stages of foreign trade activities involving international transfers of controlled goods:

- a customer's commercial proposal to purchase dual-use goods (technology), analysis of these goods (technology) for possible use for purposes other than intended;
- preparations (development of requirements) for negotiations with countries/business entities to which a partial embargo on certain goods applies;
- thorough analysis of agreements (contracts) to incorporate requirements as to credentials and guarantee documents;
- checking the products' end-use, drawing on various information

sources.

ECO experts should seek to improve and upgrade the Company's ICS. To this effect, ICS performance criteria have been defined, against which, after a comprehensive analysis of the Company's overall performance, the following findings could be made:

- the ICS is effective and the Company has a long-standing record of successfully carrying out its foreign trade in goods subject to state controls;
- the ICS is not effective enough, there are delays and hold-ups in foreign trade activities involving controlled goods, certain Company provisions or instructions are in want of revision, remedial action is warranted, etc.;
- the ICS does not work in practice, fundamental errors are being made in the international transfer of goods and serious SSECU concerns (penalties) are the case, which makes the Company operate erratically, with significant delays in obtaining conclusions/authorisations, etc. (not to mention the implications of such poor performance at the international level involving foreign partners).

Effectiveness criteria:

- No sanctions have been imposed on the Company by the state regulatory authorities to limit or suspend its foreign trade activities for having inflicted damage to Ukraine's national interests.
- No penalties (fines) have been levied on the Company by SSECU for non-compliance with export control legislation.
- No written comments have been received (no errors found) from SSECU as to the amount and composition of documents the Company shall submit with their applications for conclusions/authorisations on the international transfer of goods.
- The Company's foreign trade activities have been a success (a large enough number of foreign trade contracts, participation in international cooperation and intergovernmental agreements) a long-term record of securing due profits without violating the law.
- High gravitas (rating) of the Company and its brands in international markets resulting from its being a reliable business partner, meeting its international commitments, agreements, contract terms and deadlines.

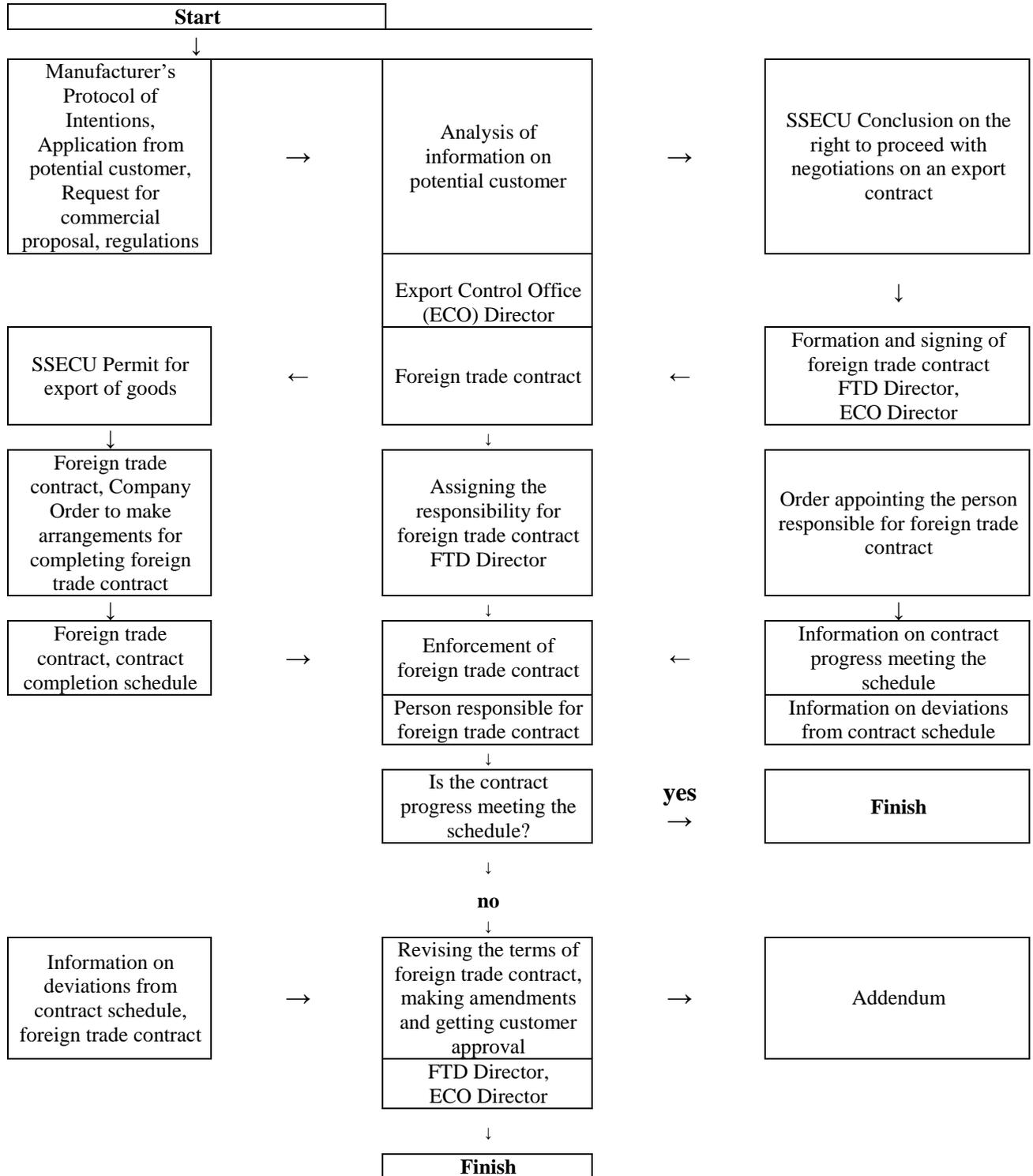
Experience shows that a properly organized ICS should be intimately responsive to the Company's nature and objectives, and the volumes of its foreign trade,

enabling a thorough insight into all aspects of international transfers of controlled goods. The ICS must be serviceable and understandable for the Company Management and experts.

With an ICS in place, the Company is easier and safer to operate, it is possible to avoid many mistakes and sidestep the risks incident to implementing international goods transfers.

Appendix A

Block diagram of the process of "Formation, Signing and Monitoring of a Foreign Trade Contract"



**Appendix B. Export control.
Product examination card**

ECO expert		<i>ECO expert name, position, date of contract (draft contract) examination</i>	
Product designation, № of contract (agreement)		<i>Contract details, product designation</i>	
Product identification		Pre-licensing examination by ECO	Military goods (MG) <input type="checkbox"/>
		<i>Product identification and classification against Control Lists</i>	Dual-use goods (DUG) <input type="checkbox"/>
			Goods exempt from export controls <input type="checkbox"/>
			Goods requiring a SSECU explanation (for customs authorities) re their international transfer <input type="checkbox"/>
SSECU Conclusion /Authorisation, № of document		<i>Information on availability/lack of Individual, General or Open Authorisation/Conclusion for the product in question.</i>	
Customer	Country	Requirement to obtain authorisation for negotiations	<i>Analysis of customer information, risk analysis</i>
	Business entity	Customer credentials and registration	
Availability of EUC		No, date	<i>Conclusion on requirement to obtain End-user Certificate</i>
Availability of DCC		No, date	<i>Conclusion on requirement to obtain product Delivery Confirmation Certificate</i>
Verification of product delivery (information on product shipment)		Air waybill	<i>Details of document confirming product delivery by air</i>
		Consignment	<i>Details of document confirming product delivery by sea</i>
		CMR	<i>Details of document confirming product delivery by road</i>
		SMGS	<i>Details of document confirming product delivery by rail</i>
		Customer FCD	<i>Customer freight customs declaration</i>
		DCC	<i>Details of product Delivery Confirmation Certificate</i>
End-user/broker verification (information on transfer or receipt of product)		Broker	<i>Conclusion on requirement of broker verification</i>
		End-user	<i>Conclusion on requirement of end-user verification</i>

Part III. Complying with Export Control - Lessons learned from three different companies

Export control procedures are becoming a legal requirement in an increasing number of national jurisdictions. A company that wants to operate on an international scale often needs to take into account not only the national legislation where it is based, but also other countries' requirements depending on where the company is operational or where its subsidiaries reside. A company's commitment to follow existing export control legislation is equally important regardless of where in the world the company is based or has operations.

The following brief review of the different components of a general Internal Compliance Program takes into account the study that the Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC) has made of a Ukrainian company in the defense and avionics industry, and uses as a reference point two additional examples of companies that operate internationally in the defense sector. The purpose of this brief review is to see what kind of similarities and differences in export control compliance exist in the three cases when measured against the general characteristics of an ICP and what common lessons learned can be drawn.

A little about the reference companies

The two international company examples are headquartered in Sweden and the United Kingdom respectively, but have various local offices worldwide. The reference material has been gathered primarily from two presentations made of the two respective companies' ICPs. The Swedish company has over 75 years of existence in the defense sector and works primarily with air, land and naval solutions as well as with civil security systems. The company employs approximately 14,000 people and is established in 32 markets, but sells to about 100 markets.¹ The UK based company works primarily with civil and defense aerospace, the civil nuclear field, energy and the marine sector. The company employs approximately 40,000 people worldwide. It operates in 50 different countries, but has customers in over 120 countries.²

General components of an internal compliance program (ICP)

Commitment to compliance

This is often the first step a company takes when building its ICP. In a majority of cases the management level of the company issues a policy statement or a company decision at the highest level outlining the company's commitment to solid export control compliance. This commitment will have to be disseminated

¹The SAAB Group website: <<http://www.saabgroup.com/en/about-saab/company-profile/for-suppliers/export-control/>>

²Rolls-Royce Holdings plc Annual Report 2011: <http://www.rolls-royce.com/about/publications/annual_report/index.jsp>

throughout the company and can also be made available to the public through the company's website.

All three cases have taken this step. The Ukrainian company's President has issued an order establishing an Export Control Office subordinated to the Vice President of Foreign Trade. According to the provisions of the ECO its purpose is to pursue a uniform policy on export controls within the company and to implement the company's Standard Quality Guidelines for Export Control.³ In the Swedish case a similar commitment is clearly outlined by the company's CEO stating that since the company is acting in a highly regulated field of business it is imperative to conduct its operation in strict accordance with the required authorizations and licenses.⁴ That way the company can continue to operate as a world class company. This commitment, and the philosophy behind it, is also clearly described on the company's website.⁵ The Swedish company has also made efforts to build a policy that is business orientated and that the employees can understand and relate to.⁶ The UK based company has at the moment placed its commitment to export control under its general ethics program called the Global Code of Business Ethics. This code is endorsed by the highest management level within the company and incorporates the company's Global Export Control Policy. The rationale behind the general policy is that conducting business in a responsible way has played a key role in bringing the company to where it is today.⁷

Identification of key personnel

Someone – either an individual or a team - needs to be assigned the authority to act within the company with regards to export control in order to implement an ICP and to fulfill the mandate that the company's statement of export control compliance stipulate. Companies choose various methods from assigning special export control officers at each business level to establishing an independent export control unit.

The company in the Ukrainian case has chosen, as earlier indicated, to establish an Export Control Office under its Foreign Trade Department. The ECO's main tasks are to ensure the implementation of the company's export control policies, organize and improve the internal compliance program, monitor the export control compliance at all stages of a foreign trade agreement, and finally ensure interaction between the different company units that are involved in the international transfers of the company's goods.⁸ In the Swedish case a slightly

³STC Report on the Artem ICP program.

⁴Presentation on SAAB ICP at SMi Defence Export Conference in Amsterdam October 2012

⁵"Export Control", information available at the SAAB Group website: <<http://www.saabgroup.com/en/about-saab/company-profile/for-suppliers/export-control/>>

⁶Presentation on SAAB ICP at SMi Defence Export Conference in Amsterdam October 2012

⁷Rolls-Royce Global Code of Business Ethics 201, available at: <http://www.rolls-royce.com/about/sustainability/vision_strategy/ethics.jsp>

⁸STC's Report on the Artem ICP Program

different approach has been taken. The Swedish based company has established an Export Control Council that meets every month. In addition the company strives to build one corporate culture for compliance, integrating the policy at all different business section down to a local level. The company also underlines that adequate resources need to be assigned. In the UK based case the company has a centralized Corporate Export Control Team that reports to the company's General Exports Committee. In addition the company has established a network of Export Control Points of Contact to further disseminate the company's export control policy. The network engages export control specialists in the different businesses, functions and regions.

Information and training

To keep an ICP efficient and up to date the employees need to be kept informed of the necessary legal requirements and trained in how to implement export control. One way to disseminate this type of information is to arrange regular training sessions for personnel. A rigorous training program will have to provide the employee with basic entry level training that includes regular updates, but also specific training based on possible cases of prior violations to provide real-life lessons learned.

The three cases all put emphasis on the need to train employees in export control management. In the Ukrainian case the ECO is mandated to train authorized representatives from the different company departments, from management, to heads of the company departments as well as the experts of international trade within each department. The training is carried out through seminars and conferences. Checking that this training has taken place is also part of the company's auditing check list. In the Swedish case training is described as the most important area to create a corporate culture of compliance. The trainers have to be trained themselves and the training program has to be continuous and not a one-time event. The company also provides different types of training like web-based training and training sessions with a teacher. It also has to be targeted toward different skill sets like marketing or procurement and it has to be locally anchored, i.e. taking into account the immediate environment of the employee. The UK based company example has taken a similar approach focusing at providing intensive export control training through its network of export control points of contacts. As the network covers different business branches, functions and regions the training is tailored to fit each specific target. The company also provides annual computer based training throughout the company.

Integration of best practices into the business

To further guarantee an ICP's success is to make it an integral part of other normal business procedures. This can be done through for instance integrating export control policies in the standard quality assurance program. Another way is to establish standard operating procedures for the daily operations that

incorporate the necessary export control component. A key factor in many different company ICPs is to integrate export control requirement in the existing technical or business process determination processes. Such best practices should cover all critical types of processes. For instance the company can establish an order screening process for controlled items and technologies, but also the customer, destinations and the end-use/user. These types of systems can either be manual, electronic or a combination of both. Each such process should also give the person that carries it out the authority to act, for instance by stopping a suspicious shipment.

The three cases display different ways how companies can put in place standard operating procedures dedicated towards export control or how the concept can be integrated into already existing standards. The Ukrainian case display a detailed list of the different company standards for forming contracts and carry out trade and describes how and where the export control component is integrated. Product classification for control purposes or how to test the export control requirements toward a potential new customer are only two standard processes described. The Swedish case stresses the need for a process-orientated thinking where the compliance handbook is operationalized to a point where the compliance processes is integrated and naturally supports the business environment whilst securing compliance. The internal control system needs to work together with other processes such as marketing and contracts supporting their functions. The UK based case provides a compliance philosophy where the ICP serves to help the employee know the rules with regards to licensing requirements or classification of controlled goods for instance. Furthermore the ICP is supposed to provide the tools for the employee to show the rules through a tech control plan, the different company standards and the audit process. Finally the ICP can also provide a way of changing the rules. This latter component shows how the importance of a good dialogue between the company and government so as to provide information to the government on the impact of export control on the company.

Recordkeeping and audits

Many countries require companies to maintain records of business or trade transactions for a given period. Comprehensive recordkeeping allows the companies to more easily cooperate with the government functions reaching the general recordkeeping requirements. It also enables the company to detect an accidental violation and can demonstrate that they have performed due diligence.

An Auditing System enables the company to identify the ICP's strengths and weaknesses. In addition it facilitates continuous improvements and upgrades to its compliance efforts. Audits need to be periodic, but also random and they can be conducted either by internal staff or an independent actor.

All three cases discuss the need for good recordkeeping procedures and an

auditing process. In the Ukrainian case the audit process is described as targeted not only towards the units that process international trade, but also for the ECO itself. In the report the company's audit check list is described in detail. Record keeping is also part of the company's Internal Compliance System and in parts of the STC report various types of reports on trade procedures are mentioned. The Swedish case describes the regular audits as a way of taking the temperature of the organization, and in cases where an audit reveals a mistake the problem is investigated, concluded, reported and learned from. In the UK based case audits are a requirement under the ICP and carried out regularly. Both the Swedish and UK cases underline the importance of transparency toward the government in terms of how the company conducts its business, this include regular record keeping. The UK based company underlines the importance of good relations in a trusted partnership with the government wherever it operates.

Procedures covering all aspects of the company's business

There are different technical instruments that can be used to facilitate the implementation of an ICP. Databases can provide relevant legal data from the government, check lists, information about suspicious customers or risk analysis tools such as red flag indicators. Another technical factor that can make the ICP more efficient is to designate a special person for interaction with the government.

The Ukrainian case mentions the presence of legal databases as one of the tools that the ECO has at its disposition as an aid in export control compliance. There are also lists of the different procedures, check lists and standards an employee needs to be aware of for the daily operations and for export control purposes. But there are fewer details available on how this data is accessed, whether through electronic or manual means. In the case of the Swedish based company the importance of adequate resources dedicated to the export control compliance is underlined repeatedly. In addition the support tools have to be generally available and able to handle large volumes of compliance relevant data. The UK based example is putting in place a comprehensive electronic system to manage export control compliance relevant data and thereby amplifying the efforts taken in the different business, functions and regions. In both the Swedish and UK based cases, transparency toward the governments and good relations with the relevant export control authorities is marked as important. In addition good relations with the different business communities where the company operates are also considered as of value.

Conclusion

The Ukrainian case and the two reference examples share many similarities, despite the natural differences in size, global presence and technological outlook. They all have taken the necessary steps toward creating a viable ICP within their own system and environment. Due to the availability of the detailed STC report

of the Ukrainian case much more information has been made available for this review in case of Ukraine. The information available in the two other cases is not as detailed, but at the same time more available through open source data. The various websites dedicated to the two companies' various locations all have references to the export control policy of the company as a whole. However the detailed procedures, standards and necessary compliance data are available only to employees. Nonetheless, representatives from both companies often participate in export control events worldwide, so there are presentations and statements of their activities available in the public domain.

One difference between the three companies is the various degree of global presence. A company with a wider international reach naturally has to adapt its ICP towards local requirements and it can be seen as a natural progression of any company with a global outlook. However there appears to be an interesting difference in the ICP philosophy between the three. It all relates to the two questions on what are the necessary components of an ICP and how to make it work. There is ample information available on what the different procedures and standards the Ukrainian company has put in place to implement and enforce its ICP. However it would be interesting to know more about how the different components interact with each other. In the other two cases stronger emphasis has been put on the need for integrated process that are a natural part of the company's daily operations, where export control compliance is part of the daily business. At the same time little information is available on the detail of these procedures. In a future international industry exchange it will be interesting to hear how various companies answer the two questions mentioned earlier; What do you need in an ICP?; and How do you make it work in an efficient way? It is likely that the answers will be as unique as the companies the questions are put to. Good lessons can be learned from each solution.

GENERAL CONCLUSIONS

In the view of foregoing materials on the Pilot model for internal compliance system it is fair to say that, regardless of the company profile, the internal export control compliance system must include the following key elements:

1. Commitment to Compliance
2. Identification of Key Personnel
3. Information and Training
4. Integration into the Business
5. Record Keeping and Audits
6. Incorporating “Best Practices”
7. Procedures Covering All Aspects of the Company’s Business

The establishment of the internal export control compliance system is a strategic imperative when a company seeks to expand global presence and market share in the trade in goods, technologies and services subject to export control.

Such system can provide a comparative advantage for the exporter through facilitated trade or be a mitigating factor in case of a violation. Internal compliance system also helps the government to dedicate more time to controlling uncertified trade. Besides, internal compliance systems help structure company transactions, and institutionalize the process of maintaining compliance without undue burden on efficiency and profits.

While establishing an internal compliance system it is necessary to take into consideration right sizing of this system, preplanning of its activities, workable procedures and incorporating best practices.

Products, customers, markets, business plans, and operations are relevant actors and factors into designing a robust ICP.

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