

Classification and identification of dual-use goods and technologies in the Kyrgyz Republic

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Abstract. This article examines the procedure for classification and identification of goods according to the control lists of dual-use items in the Kyrgyz Republic. It elucidates the goals and objectives of identification expertise and describes the stages of dual-use goods identification.

keywords: identification, export control, controlled goods, dual-use items, prohibitions and restrictions, control list, participant of foreign economic activity, identification expertise.

Introduction

At the present stage of development of the Kyrgyz Republic in the conditions of integration transformations and quality control in the field of foreign economic activity and trade in goods and services on the international market, the issue of regulating export-import relations is an urgent need. Goods and technologies can be classified as dual-use and, according to international trade law, must be subject to export controls by the state to ensure its safety.

In accordance with the Law of the Kyrgyz Republic “On Export Control”, one of the methods for exercising export control is to establish compliance or identify specific types of raw materials and materials, equipment and technologies, scientific and technical information, works and services, dual-use products and results of intellectual activity that are objects of foreign economic operations, types of products included in the national control list of the Kyrgyz Republic [1].

In accordance with this Law, products included in the national control list of the Kyrgyz Republic are subject to export control and identification, regardless of the form of ownership, place of origin and time of production. An important component of the export control system is the identification examination of goods and technologies.

Relevance

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With the recent increase in the development of new innovative technologies, goods in the world, the flows of export, import and transit of controlled goods have increased, and the Ministry of Economy and Commerce of the Kyrgyz Republic receives many requests to identify goods and determine their status as an object of export control, as well as on the application of restrictive or prohibitive measures to them, or refusal to apply such measures.

Carrying out identification is a very time-consuming process and requires high qualifications and training both in technical aspects and on issues of foreign economic activity, export control, special economic measures, and other prohibitions and restrictions.

According to the Law of the Kyrgyz Republic "On Export Control", controlled products included in the National Control List of the Kyrgyz Republic are subject to export control and identification, regardless of the form of ownership, place of origin and time of production.

Identification is the responsibility of participants in foreign economic activity, who, in turn, have the right to entrust the identification of controlled goods and technologies to an organization that has received, in accordance with the procedure established by law, permission to carry out activities for the identification of controlled goods and technologies, by concluding an appropriate agreement with such an expert organization.

Thus, the relevance of the implementation of export control and identification of dual-use goods is significant from the point of view of national and international security.

Export control method and its implementation

Identification of controlled goods and technologies is one of the methods of export control and consists in establishing the conformity of specific goods and technologies that are objects of foreign economic operations with goods and technologies included in the lists of controlled goods and technologies.(2) .Determination of existing prohibitions and restrictions is also included in the task of identification in the implementation of foreign economic activity.

Thus, the main tasks of the examination of goods and technologies for the purpose of export control are:

- analysis of the technical characteristics of products planned for export.
- search for an identical description in the national control list.
- determination of the conformity of a particular product and technology with the technical description given in a specific list.

The main objectives of the identification examination are:

- Identification of goods and technologies potentially suitable for use in the creation of weapons of mass destruction and missile delivery vehicles and others, and included in the national control list of goods.
- compliance with signed international agreements and existing national legislation in the field of non-proliferation of weapons of mass destruction and goods related to them.
- prevention of violations in the field of export control, entailing administrative and/or criminal liability.

According to the above laws, participants in foreign economic activity are required to undergo identification of dual-use goods. At the same time, the participant in foreign economic activity has the right to entrust the identification of controlled products to an organization that has received, in accordance with the procedure established by the Cabinet of Ministers of the Kyrgyz Republic, permission to carry out activities to identify controlled products by concluding an appropriate agreement. In this case, the expert organization is responsible for the correctness of the results of identification of controlled products, and the participant in foreign economic activity - for the data provided by him.

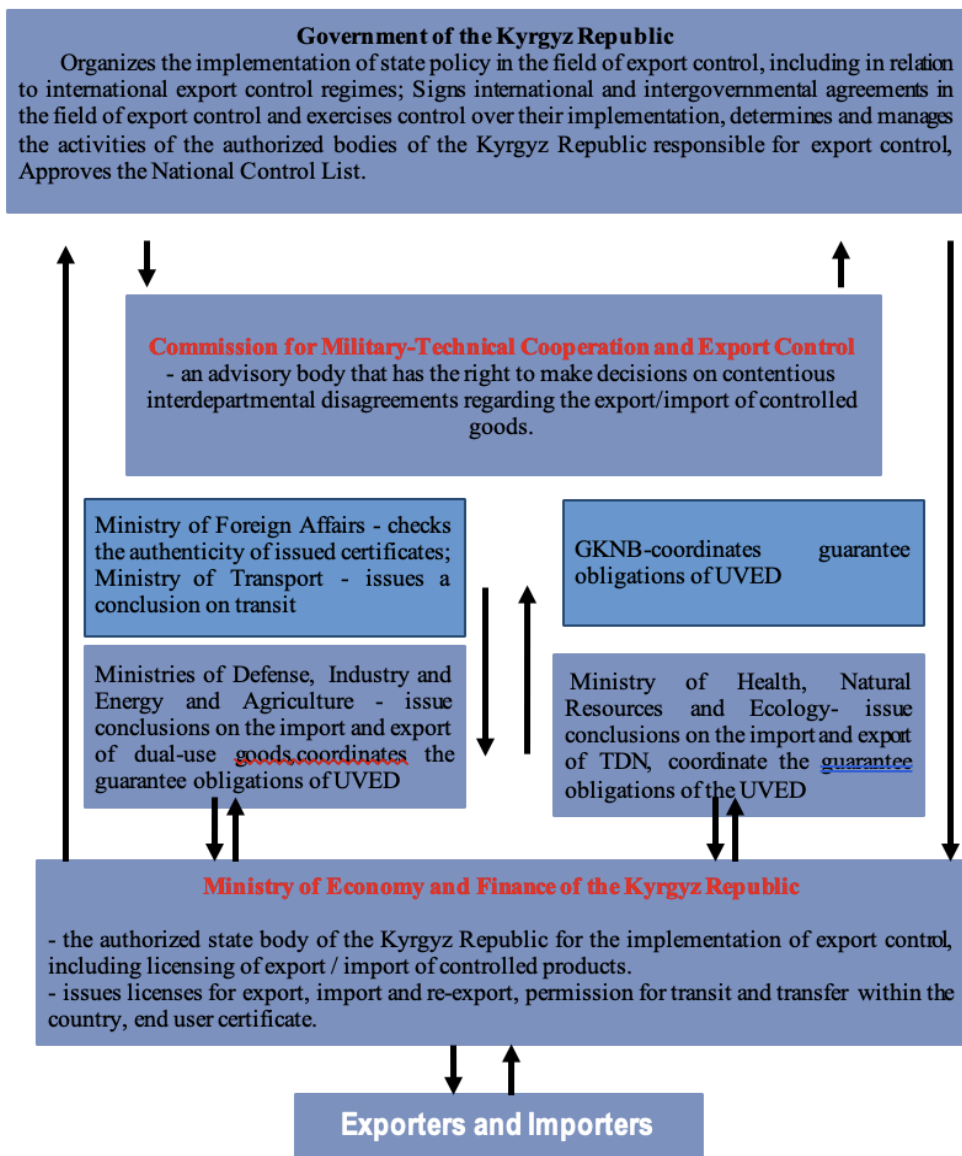


Fig.1 Algorithm of the export control system in the Kyrgyz Republic

In accordance with the Law, as well as the Regulation on the procedure for exercising export control over controlled products in the Kyrgyz Republic, approved by the Decree of the Government of the Kyrgyz Republic dated October 27, 2010 No. 257, the executive authority implementing state policy, organizing interagency coordination and interaction, functions in the export control is the Ministry of Economy and Commerce of the Kyrgyz Republic. This ministry issues all types of permits for foreign economic activity - for import, export, re-export and transit of controlled products included in the national control list, approved back in 2014 [3].

It should be noted that the objects of export control are not only materials, equipment and technologies that can be used to create weapons of mass destruction, their delivery vehicles, other types of weapons and military equipment, but also works, services and results of intellectual activity. There is also a practice of applying the “comprehensive control” provision, when goods and technologies that are not included in the national control list, but for which the exporter has reliable information that the buyer will use them for the purposes of creating weapons of mass destruction, fall under export control. .

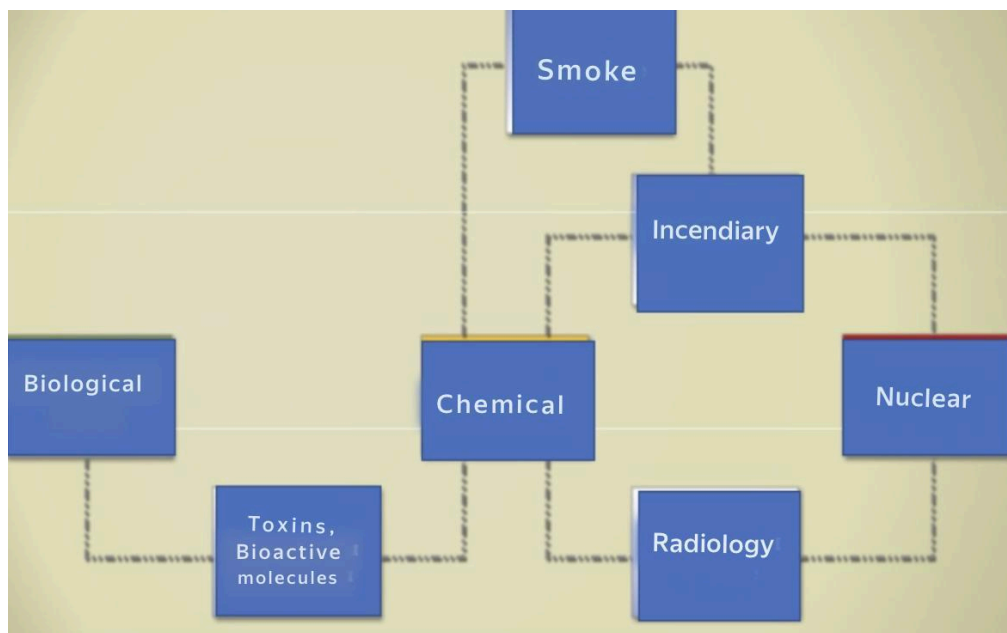


Fig.2 Elements for creating weapons of mass destruction

The trade in chemical, biological, radiation and nuclear weapons (CBRN) is now practically non-existent, as it is extremely dangerous for the lives of people on the planet. Also, this "Weapon" is bulky (ammo; storage containers) and therefore difficult to move. Requires specialized equipment. In some cases, it will be necessary to transport large volumes, which require complex and highly specialized networks. Thus, proliferation is mainly related to the technologies underlying CBRN weapons, as well as materials: poisonous agents and their precursors, pathogens, radioactive sources, people: scientists, engineers, technicians... (education, experience and knowledge), research: equipment, software, methods and results and production: equipment and processes. The concept of technology includes: the ability to recognize technological problems, the ability to develop new concepts and real solutions to technical problems, concepts and tangible values developed to solve technical problems, and the ability to effectively use concepts and tangible values. Dual-use technologies - a design, production, operational or other technological chain that can be used for both civilian and military purposes.

Dual-use or dual-use goods are certain types of products, equipment, materials, software and technologies not specifically intended for military use, as well as services (technical assistance) related to them, which, in addition to civilian purposes, can be used in military or terrorist

activities, purposes or for the development, production, use of military goods, weapons of mass destruction, means of delivery of the said weapons or nuclear explosive devices, including certain types of nuclear materials, chemicals, bacteriological, biological and toxin preparations, the list determined by the relevant government agency.

Most of the goods included in the checklist have complex scientific and technical characteristics that can only be understood by specialists in the fields of physics, chemistry, microbiology and other professional fields. The identification of goods subject to export control is most effective when using the experience and knowledge of technical experts. These experts are narrow specialists in their fields, but also have experience in the field of export control and are able to objectively assess the technical characteristics of goods.

Currently, there are no Identification Centers or Expert Commissions in the Kyrgyz Republic as in other neighboring countries. For example, in Ukraine there is the following implementation of export control and identification of dual-use goods:

1. State expertise is carried out:

- State Export Control Service of Ukraine
- other state bodies within their competence

legal entities on behalf of state bodies

2. Non-state examination (independent preliminary identification of goods) is carried out:

- legal entities that have the appropriate authority to do so
- at the initiative of the customer of the examination, interested in obtaining expert

opinions

The conclusion of the non-state expertise is advisory in nature and can be taken into account by the executive authorities along with the conclusions of the state expertise to make appropriate decisions.

Identification of dual-use goods in the Republic of Armenia:

- The lists of controlled goods and controlled intangible assets are approved by the Government of the Republic of Armenia
- On the product belonging to the lists of controlled goods and controlled intangible assets, an expert opinion is provided by private accredited organizations

In the Kyrgyz Republic:

Identification is carried out by the authorized body for export control and experts from relevant state bodies, and, if necessary, with the involvement of independent experts from the outside. Legal entities and individuals intending to import, export or intermediary activities in relation to goods, information, works, services, results of intellectual activity are required to independently identify them in accordance with the Law of the Kyrgyz Republic "On Export Control".

The identification of goods subject to export control requires high qualification and training in various aspects, including the technical characteristics of goods, foreign trade issues, export controls and other restrictions and measures. Due to the complexity of this process, participants in foreign economic activity and customs officers are not always able to independently correctly identify and accurately evaluate goods subject to export control.

If unambiguous identification is not possible, participants in foreign economic activity apply to the authorized state body for export control - the Ministry of Economy and Commerce of the Kyrgyz Republic, which independently organizes the identification or issues an opinion on the results of the examination, but only in those cases:

- when a participant in foreign economic activity provides complete information about the product necessary for identification, including chemical, physical and other parameters, formulas, technical data sheets of the product, design and technological documentation, technical description indicating the parameters;
- when a participant in foreign economic activity has repeatedly received opinions from state bodies or permits for the implementation of foreign economic activity on dual-use goods;

- when the experience and professional knowledge, knowledge of the export control rules for the identification of the goods of the expert allows you to independently establish the conformity of the goods to the goods subject to export control.

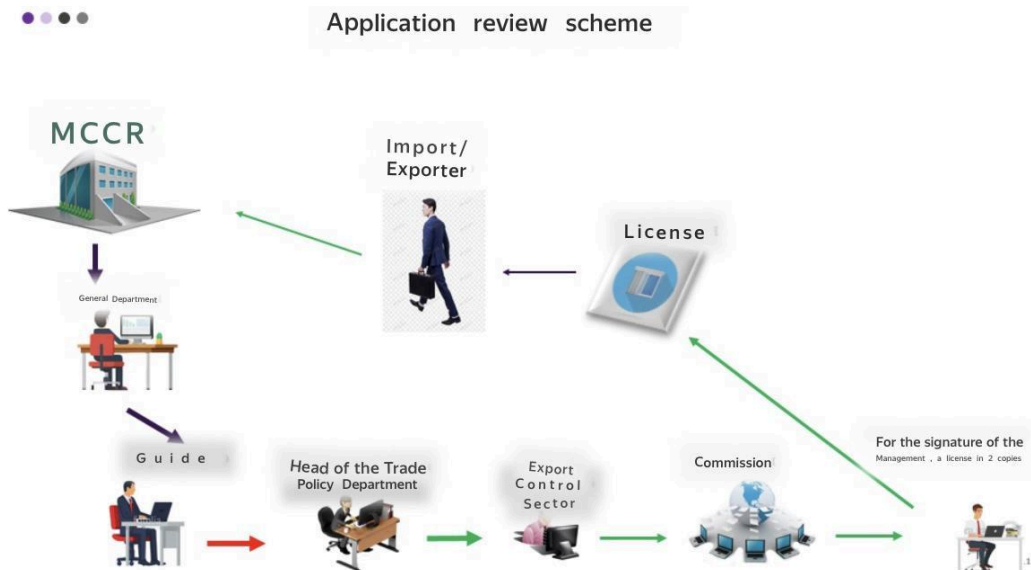


Fig. 3 Scheme of consideration of applications during the identification and licensing procedure for dual-use goods

- A participant in foreign economic activity applies to the Ministry of Economy and Commerce of the Kyrgyz Republic with a request for identification.
- An expert of the Ministry of Economy and Commerce of the Kyrgyz Republic, in the presence of all the necessary information and materials for identification, through a comparative analysis of the technical characteristics of the goods with the description of the goods, determines whether the goods belong to the objects of control. As part of the product identification, its name and technical characteristics are determined, the corresponding TNVED code is clarified, and materials are analyzed according to the checklist. It also determines the areas where the product can be used or actually used, checking the compliance of the technical characteristics of the goods with the positions of the checklist, as well as comparing the characteristics of the materials with the description of the positions of similar products in the checklist.

When carrying out identification, various general technical Reference books, State standards of countries (GOST), Interstate standards, Standards of the International Organization for Standardization (ISO) can be used.

Based on the results of the identification, the Ministry of Economy and Commerce of the Kyrgyz Republic issues a conclusion to the participant of foreign economic activity on the compliance or non-compliance of the object with the requirements of the control list and the need to apply export control procedures. The conclusion itself is drawn up in any form on the letterhead of the Ministry and sent to the applicant signed by an official authorized to sign the relevant conclusions.

If the applicant does not provide sufficient information and materials for the identification of goods, or the information provided is insufficient for a full analysis, the applicant is sent a written notification about the impossibility of issuing an appropriate identification conclusion.

If it is impossible to determine the compliance of the declared goods with the goods included in the national control list, the materials for identification are transferred to specialized state bodies or the National Academy of Sciences of the Kyrgyz Republic. This is done in order to make a decision on whether or not to classify objects as controlled goods.

In the event that a participant in foreign economic activity does not know that the goods that he exports or imports are subject to licensing and control by the state, the primary identification is carried out by the customs authorities of the Kyrgyz Republic through the risk management system (RMS).

Purpose of RMS application in t/o KR

1. Ensuring the effectiveness of customs control;
Focusing on high-risk areas and ensuring efficient use of customs resources;
3. Creation of conditions for accelerating and simplifying the movement of goods across the customs border of the Union, for which the need to apply measures to minimize risks has not been identified



Fig.4 Algorithm of the risk management system in the customs authorities of the Kyrgyz Republic

Discussion

It should be noted that most of the Checklist items are a complex scientific and technical description of the characteristics of the goods and, therefore, are focused on narrow specialists: physicists, chemists, microbiologists. Therefore, the ongoing examination of dual-use goods by customs specialists and employees of ministries is not always effective in improving the quality of goods identification. It is more rational to use the qualifications of technical experts who are narrow specialists in their field, but have experience and knowledge in the field of export control to conduct an objective assessment of the technical characteristics of goods. Therefore, there is a need to create identification centers for goods included in the dual-use control lists,

This will enhance national security and improve efficiencyimproving the quality of product identification.

Conclusions

Currently, in accordance with the legislation in the field of export control, licenses for the export / import of controlled products are issued by the licensor on the basis of expert opinions of state bodies ("for the purpose of and consent in the implementation of the above operations, subject to the applicant's compliance with and fulfilling the requirements of these authorities in powers).

Thus, expert agencies are not officially responsible for the identification of goods, and can only provide expert opinions regarding the expediency of exporting/importing the proposed goods.

In addition, the functions of experts assigned to departments are not basic, but additional. In this regard, one can assume a not always qualitative approach to expert opinions, including product identification.

It should also be taken into account that the customs authority is limited by the time allotted to it for customs clearance, and also does not have qualified technical specialists with knowledge and experience in evaluating goods with signs of export control objects.

Based on the foregoing, there is a need to create a legal framework for the examination of goods, on the basis of which identification centers will be created with highly specialized experts who will distinguish ordinary goods from goods subject to export control.

In this regard, it is necessary for the Ministries involved in export control to carry out work to optimize export control procedures in the Kyrgyz Republic.

In particular, develop and modify procedures for the identification of controlled goods and update control lists for dual-use goods.

This practice of involving expert organizations is generally accepted in many countries of the European Union and neighboring countries, where export control issues are given special attention.

At present, in order to create an effective system of export control, as well as the introduction and operation of identification centers to conduct appropriate expertise for the identification of exported, imported and transit goods included inNational watchlistof the Kyrgyz Republic of controlled products, documents have been developed for their dual use:

- obtaining permission by independent organizations of the Kyrgyz Republic to carry out activities to conduct an independent identification examination of goods and technologies for the purpose of export control;
- on conducting an independent identification examination of goods and technologies for the purpose of export control;

These measures, after their approval at the state level, will strengthen the national capacity to prevent unauthorized transactions of controlled goods, as well as comply with the country's obligations under international treaties in the field of export control.

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