
Commentary

Building A Resilient Strategic Trade Control System in the Kyrgyz Republic

BAKYT KAKCHEKEEV¹

Abstract

This article discusses the development and current state of strategic trade controls in the Kyrgyz Republic. It demonstrates the importance of bringing national legislation into compliance with international norms. Strategic goods, technologies, manufacturing, sales, transit, and possession are of primary concern for the Central Asian region. Although it is difficult to assess the degree to which the region or a particular country has a problem with regard to violations of strategic trade controls, the article identifies a lack of appropriate policies and practices as a significant issue. This is relevant for Central Asian countries to different degrees due to the specific characteristics of each country, including the Kyrgyz Republic. The article will also discuss how relevant international strategic trade control instruments are implemented in the Kyrgyz Republic, including United Nations Security Council resolution 1540 as well as policy instruments of the Organization for Security and Cooperation in Europe (OSCE), World Trade Organization (WTO), and United Nations Office of Drugs and Crime (UNDOC). The Kyrgyz Republic and other countries in Central Asia must take into account new risks and the spread of emerging technologies such as cyber technology and products, intangible transfers, Unmanned Aerial Vehicles (UAVs), Artificial Intelligence (AI), robotic systems, cryptocurrencies, new materials, and others, in order for their implementation of strategic trade controls to be effective. The article concludes with specific recommendations to strengthen strategic trade controls in the Kyrgyz Republic.

1 Bakyt Kakchekeev has 20 years of development experience in Central Asia and has worked with many government and private sector actors. He conducts research and teaches about arms control, international relations, and regional security studies. Kakchekeev also has over 10 years of experience providing capacity building support in the areas of monitoring and evaluation tools, development and utilization, and policy reform to the Kyrgyz Government as well as projects and programs implemented in the Central Asia region. Kakchekeev holds a B.A. in International Relations and Oriental Studies, an LL.M in Law, a Ph.D. in Political Science, and is fluent in English, Kyrgyz, Turkish, Arabic and Russian. In addition, he chairs the International Relations Program at the Kyrgyz-Russian Slavonic University.

Keywords:

Strategic trade controls, Kyrgyz Republic, export controls, U.S.-Kyrgyz Relations, United Nations Security Council Resolution 1540, Central Asia, emerging technologies, national legislation

Introduction

The strategic trade control system in the Kyrgyz Republic is divided into control over Weapons of Mass Destruction (WMD) materials and technologies, and control over weapons and military equipment. The coordinating body for export controls is the State Commission for Military-Technical Cooperation (MTC) and Export Control under the Government of the Kyrgyz Republic (EC Commission). Certain decisions on the export and import of weapons and military equipment, as well as controlled goods, are carried out without a license in accordance with the decisions of the MTC and the EC Commission.

Export controls in the Kyrgyz Republic are based on the permitting procedure for carrying out foreign economic transactions with controlled goods and technologies. The export control mechanism enshrined in current legislation provides for the following procedures:

- a) Identification of controlled goods and technologies;
- b) Authorization procedure for the implementation of foreign economic operations;
- c) Customs control and customs clearance of the export of controlled goods and technologies;
- d) Foreign exchange control over the implementation of foreign economic transactions; and
- e) Application of measures of state coercion (sanctions) against persons who have violated or tried to violate export control legislation.

The Current Status of Strategic Trade Controls in the Kyrgyz Republic

The Kyrgyz Republic's strategic trade control system is at an early stage of development. In 2003, the Export Control Law of the Kyrgyz Republic was adopted.¹ It was developed on the basis of a model law commissioned by the Threat Reduction Agency of the United States Department of Defense in 1994 as part of the Nunn-Lugar program.² In 1999, this law

1 "On Export Control," Law of the Kyrgyz Republic, No. 30. Electronic Database of Legal Acts of the Ministry of Justice of the Kyrgyz Republic, January 23, 2003, <<http://cbd.minjust.gov.kg/act/view/ru-ru/1154>>.

2 Lawyers Alliance for World Security, "Model NIS Export Control Legislation," *The Nonproliferation Review* (Spring-Summer 1995), pp. 58-63.

was adopted with revisions in the Russian Federation, and in 2001 by the Interparliamentary Assembly of the Commonwealth of Independent States (CIS), where a model draft export control law was recommended to CIS countries. Despite the experience of the Kyrgyz Republic in non-tariff regulation of trade, systematic work on strategic trade requires further development. The U.S. funds experts to help on this through the OSCE since 2016.

The adoption of the Kyrgyz Export Control Law and national control lists was an important step, but only the first step. It should be noted that arms trade deals transactions carried out by the Defense Department are classified. Activities of the state enterprise “*Kyrgyz Kural*” (Kyrgyz Arms) are the subject of frequent scandals related to violations of international and national legal norms in arms deals. The development of the defense industry is a matter of private production or public-private partnerships, which, in turn, complicates studies into their conduct and obtaining quantitative data on arms and military equipment transactions due to the state regime of secrecy and commercial secrets. However, there is a steady stream of reports on attempts to violate arms trade rules by actors from the Kyrgyz Republic.³

The development of national control lists and their subsequent approval requires complex multistage coordination and consideration, which often means that timely responses to ongoing changes and challenges are hindered. One feature of the efficiency of export controls is the ability to both promptly respond to changes in the political situation and respond to specific events, as well as the ability to introduce, change, or cancel elements of control lists quickly. Nevertheless, the methodology for analyzing and responding to violations in the field of strategic trade has not been fully developed. Thus, violations that take place during the sale of weapons and military equipment, special purpose products, as well as attempts to use Kyrgyz companies for illegal supplies, does not affect control lists or lists of persons and companies subject to sanctions in the Kyrgyz Republic. The existing control lists with violators are limited to information about individuals and organizations involved in terrorist activities in the Republic. As a rule, individuals and organizations are included in the Financial Intelligence list by a verdict or decision of a court or as part of a criminal case and related operational assignment and mostly from Interpol lists. However, the multiple risk assessment factors adopted by the Financial Action Task Force (FATF) on Money Laundering (FATF) are not considered.

The national control lists themselves have a certain dualism since the lists for which the Ministry of Economy are responsible have a partial nomenclature of weapons, military equipment, and components for which the Ministry of Defense and the General Staff of the Kyrgyz Republic are also responsible.⁴ The control lists are not inclusive of the actual activities of the government bodies of the Kyrgyz Republic, or what would represent the political interests of the country. This, to a certain extent, indicates the artificiality and superficiality of the strategic trade control system in arms export control and the underdevelopment of this type of control.

Furthermore, the constitutional structure of modern Kyrgyzstan complicates work on national control lists. In the context of the existing dualism, there is uncertainty in terms of the functions

3 Mostly attempts to use Kyrgyz companies for the transit of controlled items.

4 “On State Regulation of Foreign Trade Activities in the Kyrgyz Republic,” No. 41, July 2, 1997, <<http://cbd.minjust.gov.kg/act/view/ru-ru/541>>.

of the Prime Minister and the President to impose sanctions and special export control regimes, which means that there is no departmental responsibility for making a decision and its implementation. There is no legal basis for such activities. In contrast, for example, in the U.S. there is the law “On the Special Economic Rights of the President of the United States,” and a similar law exists in the Russian Federation. These laws give authority to the heads of state to introduce such measures.

In Kyrgyzstan, tariff and non-tariff policies are the responsibility of the government, that is, the Prime Minister, but the approval of the national control lists falls to the President. Although export controls are a non-tariff regulation measure, probably, according to the intention of the drafters of the Law of the Kyrgyz Republic “On Export Control,” the political decision to introduce special types of controls directly related to export controls will be assigned to the President of the country. The newly adopted Constitution of 2021 still has this flaw.

The Kyrgyz State Customs Service Republic and the State Border Service does not play a role in suppressing violations of strategic trade controls. As noted above, the law enforcement services of foreign countries has revealed number of cases export control violations involving Kyrgyz citizens, firms, and infrastructure.⁵

When it comes to licensing, the weakest points in the system for regulated exports in the Kyrgyz Republic is the procedure for determining the end-user and identifying goods. The issues of identifying all the components in the transaction the supply chains and the reliability of buyers and brokers in material transfers have not been resolved. Intangible transfers are not considered a priority issue. The issues of financial supervision of transactions have not been resolved either.

A further structural problem of the national export control system is that, in fact, in the Kyrgyz Republic, export control is conditionally divided into at least four groups of goods:

- Goods regulated by the Export Control Law;
- Goods and commodity groups regulated by normative acts on military-technical cooperation;
- Goods regulated by the Kyrgyz Republic of Law “On Weapons;” and
- Goods that are not included in the above groups (for example, goods in the field of computer technology and ICT communications) –

Regarding the fourth group, the sphere of responsibility from their control is the National Communications Agency and partially the State Security Committee, or the State Defense Committee. Drilling rigs are the realm of the State Geology Agency. For the goods and technologies in the fourth group, there is a need for certified experts in these technologies to

5 Such as attempts to transit Northrop Grumman F-5 engines to Iran in early 2000 via Kyrgyzstan. See “International Arms Dealer Arrested for Conspiracy to Supply U.S. Fighter Jet Engines to Iran,” Department of Justice Office of Public Affairs, <<http://www.justice.gov/opa/pr/international-arms-dealer-arrested-conspiracy-supply-us-fighter-jet-engines-iran>>.

control goods regulated by weapons or aviation laws, pharmacology, and others.

The fourth zone is also a risk from the perspective of strategic trade because these products contained in this group do not fall under existing classifiers due to their technological novelty, layout, or unlicensed reproduction of advanced technologies or material. There is no system for assessing the security risk of these technologies. The work of the export control system is narrowed in the civilian industry to the issuance of licenses for the supply of cyanide for the needs of mining companies, and in the military industry - to the sale of used weapons and military equipment through the state intermediary State Enterprise “*Kyrgyz Kural*” (Kyrgyz Arms), as well as support for the supply of products for some defense enterprises. Operations for the export, import, and transit of weapons are opaque and inaccessible to the public and are supervised by the Ministry of Defense of the Kyrgyz Republic, which, as in the past, leaves room for abuse in the issuance of licenses, as well as the sale of both surplus and other categories of weapons and ammunition.

The government of the Kyrgyz Republic has a tendency to delegate finding solutions for existing problems in the field of strategic trade development to other countries and organizations. The following lists areas where specific countries and programs helped build capacity:

- Legislative issues: Interparliamentary Assembly of CIS;
- Composing national control lists: U.S. Defense Threat Reduction Agency (DTRA);
- In-house certification, identification of goods, training and supply of equipment: U.S. State Department;
- Strengthening of border and customs controls: U.S. Export Control and Related Border Security (EXBS) program, the European Union BOMCA program, Russia;
- Supplying WMD detection equipment: U.S. Department of Energy’s National Nuclear Security Agency;
- Regular border routine equipment: U.S., Russia, Turkey, the People’s Republic of China, and Kazakhstan;
- Control over conventional weapons (MANPADS and ammunition): NATO (USA, Germany, and Finland) implemented through the OSCE as the service contractor.

Some U.S. funding comes via service providers such as the World Customs Organization (WCO) and the UNODC, such as the U.S. Container Security Initiative.⁶ Some of the problems have to be solved within the framework of the Collective Security Treaty Organization (CSTO) since the government cannot transfer these issues to third parties. Thus, the agreement between the Russian Federation and the Kyrgyz Republic on the protection of information includes elements of control over non-material transfers. Kyrgyz-Russian military-technical cooperation

6 “United States: Direct Assistance,” United Nations Security Council Resolution 1540 Committee,” Offers of Assistance, <https://www.un.org/en/sc/1540/assistance/offers-of-assistance/offers-from-member-states/united_states.shtml>.

agreement exempts all activities from any type of control such as export controls.⁷

The Kyrgyz Republic has willingly signed onto international instruments in the field of arms and military equipment and WMD control. However, Kyrgyzstan is not a member of the recognized international export control regimes (the Wassenaar Arrangements in the field of conventional arms control, the Australian Group on the Control of Chemical and Bacteriological (Biological) Weapons, the Missile Technology Control Regime, the Nuclear Suppliers Group, and Zangger Committee). It is within the framework of these regimes that information and experience is exchanged on existing and new practices of bypassing national export control systems by various actors and measures are being developed to prevent as well as to coherently counteract such crimes.

Overall, the Kyrgyz national strategic trade control system has a logical structure and legal framework. However, there are a number of issues that hinder its effectiveness. One is the lack of a clear division of responsibilities between government ministries. A second is having a clear policy and system for assessing risks and determining the reliability of the end-users of controlled products when issuing licenses for their export. A third is the lack of an independent expert analytical laboratory. Finally, there should be more Kyrgyz Government commitment in the form of increasing the budgets to finance strategic trade controls.

Addressing these issues requires, in addition to political will and transactional interest, a certain consistency, programmability, and a forward-thinking vision for reform. One way to achieve this could be to develop a program that overcomes the problems facing the Kyrgyz strategic trade control system. This program should overlap and complement government initiatives aimed at re-industrializing the country. The government and parliament, in the adopted plans, as a domestic and foreign policy, need to determine the country's attitude to the priority of the defense sector, development of trade and economy, the acquisition of advanced technologies in the chemical, biological, information industries, as well as political instruments used in organizing or the termination of military supplies, technical transfers, as well as the transit of goods, services and technologies. It is necessary to develop both political instruments and the criteria contained in them for the application of unilateral sanctions against individuals and countries on the basis of a strategic trade system.

Conclusion

The development of the Kyrgyz strategic trade control system took place in a unipolar world on the basis of model legislation developed by U.S. initiatives. The Kyrgyz political elite was and continues to be guided by the philosophy of extreme neoliberalism in general, and with regard to issues of arms export controls in particular, does not make decisions based on logical planning but uses external funding programs to find solutions. The current foreign policy goal is not ensuring the future of the country's security and stability but rather reducing transaction

7 "On the Ratification of the Treaty Between the Kyrgyz Republic and the Russian Federation on the Development of Military-Technical Cooperation," signed on June 20, 2017 in Moscow," <<http://cbd.minjust.gov.kg/act/view/ru-ru/111741?cl=ru-ru#unknown>>.

value. This means that if a more advantageous offer appears, Kyrgyzstan can, and most likely, will easily leave many regimes and agreements if it sees in this a large transactional benefit for itself in the economic sphere, or in receiving other more significant dividends. This was proven in 2014 when Kyrgyzstan closed the Manas U.S. airbase under Russian pressure.⁸

The issue of conventional weapons proliferation is not a priority for the country's leadership, which is reflected in the dualism regarding who has authority for decisions in this regard. The overwhelming majority of contracts on controlled and military supplies were concluded within the framework of military-technical cooperation with CIS countries and are practically regulated in parallel with the law of the Kyrgyz Republic "On Export Control."

The participation of the Kyrgyz Republic in the main international regimes for export control over arms such as UN Security Council resolution 1540 is controversial and demonstrates the need to continue developing technical capabilities in tracking and reporting implementation. This is being done by the U.S. directly via contractors such as the OSCE.⁹

To build a resilient system and make Kyrgyz strategic trade controls more effective, a program to strengthen state capacity is needed. This program should achieve the following:

- Improve the system for issuing licenses;
- Develop and put into operation a pilot version of the in-house export control system (in the companies "Dastan," "BMZ," "Nur," SE "Kyrgyz Kural," the Ministry of Internal Affairs of the Kyrgyz Republic);
- Develop the potential for identifying critical technologies (creating an independent expert laboratory with international accreditation, introducing export controls to universities and research institutes of various types of property with the leading role of the National Academy of Sciences of the Kyrgyz Republic, the Council for Science under the Government of the Kyrgyz Republic, training and motivation of personnel);
- Contribute to the system of law enforcement and law enforcement practice (to clarify the concepts of "general control," "public domain," "critical technology," "criticality assessment," "ICT export control," etc., development and training in new methods of investigation of violations of export control over arms);
- Strengthen the standardization of the control system over intangible transfers and adopt security standards, primarily for electronic means of information transmission, as well as the protection of critical infrastructure from cybercrimes, possibly based on the Russian GOST system, EU standards, or the American National Standards Institute (ANSI);

8 "Russia Tightens Control over Kyrgyzstan," The Guardian, September 18, 2014, <<https://www.theguardian.com/world/2014/sep/18/russia-tightens-control-over-kyrgyzstan>>.

9 "Preventing the Proliferation of Weapons of Mass Destruction: The Role of the OSCE in Support of UNSCR 1540," OSCE, February 7, 2020, <<https://www.osce.org/secretariat/444844>>.

- Regarding financial monitoring, the Kyrgyz Republic should introduce control over cryptocurrencies, electronic wallets, and other impersonal electronic means of payment;
- Introduce passports of transactions of export-import operations. At least once a year, the national control list should be updated to reflect the goods, the lists of countries, and companies that can supply weapons and military equipment.
- Work should be carried out to clarify the functional responsibility of the departments of the Ministry of Defense of the Kyrgyz Republic and the General Staff of the Kyrgyz Republic in the field of export control and weapons and military equipment. The activity of the state intermediary “*Kyrgyz Kural*” requires special attention, since it is the only intermediary agency in the republic that does not manufacture products or scientific developments but is a “legalized” monopolized intermediary in all transactions with weapons and military equipment. This should include the creation of an effective risk control and risk management system that prevents U-turns with sanctioned jurisdictions such as Iran, China, Russia or others. Secondary sanctions threats should be considered as well.
- To effectively use strategic trade controls in the arsenal of the country’s political tools, it is necessary to adopt the Law on the Exclusive Economic Rights of the Head of State. Such a law should eliminate the dualism in the management of the export control system, legitimize political decision-making by the President of the country, and give the Prime Minister the right to approve and amend the “National Control Lists”. However, this initiative may be at risk due to the looming next constitutional reform and low political interest.

As a general recommendation, the structure of the government should change every one and a half to two years in order to abandon the practice of nepotism and political appointments down to the lowest level of civil servants. This practice is a demoralizing and destructive factor, harms continuity, and erodes an already small layer of professionally trained specialists.