

**Legal Authorities
for an Effective Export Control System**

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¹ This document is based, in significant measure, on a template of legal authorities drafted by the Bureau of Industry and Security as part of its world-wide technical assistance programs.

Legal Authorities for an Effective Export Control System²

Introduction

Over the last several years, the international community has seen governments make more formal commitments to adopt and implement effective export controls to counter the proliferation of weapons of mass destruction.³ United Nations Security Council Resolution 1540 stands as the most important of these commitments. The resolution binds all members of the United Nations to:

3. ...take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall: ...

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations...⁴

Many UN members already have export control laws and regulations in place to prevent the proliferation of weapons of mass destruction. Many members also participate in a variety of formal and informal international arrangements to coordinate their export control efforts.⁵ Nonetheless, each of these countries has its own unique legal framework for export controls. This generates considerable diversity in the construction of the specific national legal authorities.

Over the last few years, however, a consensus over what constitutes the key elements of effective legal authorities for export controls has begun to emerge. Evidence for this development comes in the identification of best legal authorities or principles at several

² Prepared for the Department of State, Bureau of Nonproliferation, Office of Export Control Cooperation on behalf of the Center for International Trade and Security, University of Georgia, by Dr. Richard T. Cupitt, School of International Service, American University. October 23, 2004.

³ See Section 2 of the 2003 APEC Leaders Declaration “Bangkok Declaration on Partnership for the Future,” October 28, 2004; Section 5 of the “ASEAN Regional Forum Statement on Non-Proliferation,” July 2, 2004; and item 3 in the Statement on Interdiction Principles of the Proliferation Security Initiative.

⁴ United Nations Security Council Resolution 1540 (2004), April 28, 2004.

⁵ See, for example, the Zangger Committee, the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Regime, the Australia Group, and the common policy among European Union members on dual-use exports.

multilateral conferences on export controls.⁶ Most recently, representatives from seventeen countries met in Malta and reached agreement on critical legal elements of an effective export control law.⁷

Drawing heavily from that agreement, this report identifies nine key elements of the legislative authorities necessary for an effective system to control the export of items to assist in the efforts to prevent the proliferation of weapons of mass destruction to terrorists and programs of proliferation concern. These nine elements do not constitute a menu of elements from which a government might choose some and disregard others, but a set of necessary ingredients for an effective legal framework. At the same time, effective export control legislation must reflect the unique legal, political, security, and foreign policy requirements of each nation. Although the report includes some sample text, each nation needs to translate these elements into its own legal forms that will make them most effective as national law.

Nine Elements for Effective Legal Authorities for Strategic Trade Controls

A consensus has begun to emerge that every effective legal framework for export controls on strategic trade items, particularly those related to weapons of mass destruction or their means of delivery, includes at least nine elements:

- I. Legislative purpose or intent;
- II. Establishment of jurisdiction over territory, transactions, and people;
- III. Establishment of jurisdiction over items;
- IV. Authority to implement export control processes;
- V. Assurances of transparency;
- VI. Responsibilities of the parties;
- VII. Requirements for documentation;
- VIII. Confidentiality and procedures for information sharing;
- IX. Authority to enforce the law and the penalties for violations.

Each of these elements reflects a significant individual principle necessary to create and maintain an effective system of export controls compatible with emerging international standards. Countries with effective export control systems can integrate these elements into their overall system of laws in a variety of ways. Some have a separate law specifically designed for strategic trade controls. Others incorporate these elements into a larger law on foreign trade or customs authorities. No matter in which legal foundation a country sets these elements, however, the emerging consensus suggests that effective legal authorities for controls on strategic trade must find a way to encompass each of the

⁶ See items 1-3 in the “Best Practices for Effective Export, Re-export, Transit, and Transshipment Controls,” prepared by representatives from thirteen countries and economies at the Transshipment Enforcement Conference, San Diego, November, 2000, and the “Statement of Principles” agreed to by government representatives from twenty-two countries and economies at the Global Transshipment Enforcement Conference, Sydney, July 2003.

⁷ “Report of the Legal Workshop to the Plenary,” Malta, May 2004.

nine elements.

Element I - Legal Purpose(s)

The law should state its purpose, namely to protect national security, to further national foreign policy interests, to fulfill international commitments nonproliferation of weapons of mass destruction and other strategic items, and to participate in international efforts to control trade in strategic items.

Government officials, citizens, and corporations implementing, enforcing, and subject to the law should know what the society seeks to achieve through the law, and that the main objectives of the law relate to the security, foreign policy, and international commitments related to strategic trade controls, such as including nonproliferation of weapons of mass destruction and their means of delivery to terrorists or other end-users of concern. This statement of purpose demonstrates the commitment of the society to these objectives. It also indicates that the government will use the law for these purposes rather than other objectives, such as revenue enhancement or protection or commercial advantage.

Examples:

“The objectives of export control are: 1) Defending the interests of the Republic; 2) Fulfilling the commitments of the Republic undertaken through international treaties regarding weapons of mass destruction, the non-proliferation of means of delivering them, as well as the export of controlled commodities; 3) Creation of favorable conditions for the integration of the economy of the Republic into the global economy.” (Source: Law on Control Over Export of Dual-Use Commodities and Technologies and Their Transit Through the Republic, 2003. Republic of Armenia.)

“To make dual-use goods, including software and technology, subject to effective control when exported outside the Community, in order to ensure compliance with the international commitments of the EU and the Member States on non-proliferation. The efficient control of Community exports makes it possible to allow the free movement of dual-use goods within the Community.” (Source: Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.)

Element II – Jurisdiction over Territory, People, and Transactions

A strategic trade control law should give the government authority to control the export, re-export, import, transit or transshipment of strategic items, as well as handling, forwarding, brokering and financing of such trade, by individuals, firms, or other organizations in its territory. A strategic trade

control law should also give the government authority to control specific activities related to trade in strategic items by its subjects wherever they or their transactions are located.

With the increasing globalization of production, distribution, and financing of goods and services, those seeking weapons of mass destruction can undermine strong national export controls by disguising an illicit export as a complex legitimate transaction. Consequently, governments need broad authority to control strategic trade into, through, or out of the physical territory of the country, including special economic, free trade, or similar government-designated zones. For the same reasons, governments should extend their authority over strategic trade-related activities of their subjects, including individuals, commercial enterprises, or other organizations, even if those subjects operate outside of national territorial boundaries.

Example:

“To provide for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, the handling and carriage of articles within Hong Kong which have been imported into Hong Kong or which may be exported from Hong Kong, and any matter incidental to or connected with the foregoing.” (Source: Import and Export Ordinance of 1991. Hong Kong Special Administrative Region.)

Element III – Jurisdiction over Items

A strategic trade control law should authorize the government to list any items subject to strategic trade controls, and also empower the government to prohibit or restrict trade in any item, if any of the participants in the transaction intend or may intend for the items to go to end-users or for end-uses related to the proliferation of weapons of mass destruction or terrorism, consistent with international non-proliferation obligations and norms.

Trade in many legitimate commercial items, unfortunately, can contribute to the proliferation of weapons of mass destruction or their means of delivery. Historically, nations have relied on lists of these “dual-use” items, as well lists of more purely military items, to focus their control systems and not unduly burden lawful commercial endeavors. Currently, many countries integrate the lists of dual-use and military items coordinated through the Australia Group, Chemical Weapons Convention, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement, and Zangger Committee into their national control list(s). More recently, countries have concentrated their controls on transactions involving specific end-users and end-uses of concern. Through these “catch-all” controls, the government can curtail trade in unlisted items. At the same time, the emphasis on end-users allows the government to avoid broader trade prohibitions that may unduly burden legitimate commerce. Finally, the law should

authorize the government to implement broad trade prohibitions, such as those consistent with United Nations or other international sanctions.

Example:

“[T]he President may....prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.” (Source: Export Administration Act of 1979. United States of America.)

Element IV – Authority to Implement Export Control Processes

A strategic trade law should designate an agency or agencies, or otherwise empower the government to identify an appropriate agency or interagency body, to implement controls through a licensing process to approve, deny, or condition strategic trade transactions.

At their core, modern national control systems invariably have a licensing process for strategic trade. Although the specific processes differ considerably from country to country, most governments designate a single agency, with input from other agencies, or an interagency body to approve (usually with conditions) or deny licenses. The government needs the authority to issue regulations and such regulations should outline the type of license to be granted, the information required for submitting the license, the submission procedures, the time-line for review and decision on a license application, and the license validity period.

Examples:

“The Governor-General may make regulations prescribing matters: (a) required or permitted by this Act to be prescribed; or (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.” (Source: Weapons of Mass Destruction (Prevention of Proliferation) Act of 1995. Australia.)

“The exportation and importation of controlled goods shall be based on permits issued by the agency authorized by the Government, on a case-by-case basis, within the time frames and in the manner prescribed by the Regulation on the Procedures for the Control of the Export, Re-Export, Import, and Transit of Strategic Goods. The agency authorized by the Government shall be created within the Ministry for Economics and Reforms.” (Source: Law on Export, Re-Export, Import, and Transit Control of Strategic Goods of 2000. Republic of Moldova.)

Element V – Transparency

A strategic trade control law should require the government to make regularly updated strategic trade control regulations available to the general public. These regulations should make the regulatory and licensing procedures and processes clear, make license applications readily available to the public, and establish open and routine opportunities for public input into the regulatory and licensing process.

Opaque regulatory and licensing procedures increase uncertainty for legitimate commercial activity. Insufficient transparency in the system will increase the number of unintentional violations of the law. It hampers the ability of officials to implement the law consistently. It also will undermine public support for strategic trade controls, as a lack of transparency may give or perceive to give, at worst, the government opportunities for unlawful bias and corruption or, at best, an unfair advantage to those companies with exceptional access to official information.

Example:

“A copy of any guidance shall be laid before Parliament and published in such manner as the Secretary of State may think fit.” (Source: Export Control Act, 2002. United Kingdom.⁸)

“(1) The Inter-Departmental Committee for the Trade in Armaments for Defence (CISD) shall be instituted at the Prime Minister's Office.

(2) The Committee shall be chaired by the Prime Minister, and shall comprise the Ministers of Foreign Affairs, the Interior, Finance, Treasury, Defence, Trade and Industry, State Shareholdings and Foreign Trade. Other interested Ministers may be invited to attend the meetings of the Committee.

(3) In respect of the principles referred to in s.1 and the treaties and international commitments by which Italy is bound, and in implementation of the Government's foreign and defence policies, after having appraised the technological and industrial development needs connected with the defence policy and the policy for arms production, CISD shall lay down the general guidelines for trading policies in the defence field, and issue general instructions governing the import, export and transit of armaments, and in the cases provided by this Law, shall supervise all the activities of the bodies created for the purposes of implementing this Law.

(4) The guidelines and instructions laid down by the Committee shall be tabled before Parliament.”

⁸ “Changes to UK export controls are announced promptly in the *Fairplay* magazine. This is published every Thursday by Lloyd's Register *Fairplay* and can be bought from major newsagents.” Source: Export Control Organisation's note on current strategic export control legislation

Source: Law No. 185/90, 9 July 1990, New Rules for the Control of Export, Import and Transit of Conventional Weapons. Italy.)

“(1) The Prime Minister shall report to Parliament by 31st March each year on the operations authorized and performed up to 31st December of the previous year.

(2) The Ministers of Foreign Affairs, the Interior, Defence, Finance, Industry and Trade, State Shareholdings and Foreign Trade, each within their respective sphere of jurisdiction, shall issue annual reports on the activities under this Law to the Prime Minister, who shall annex them to his report to Parliament referred to in subsection (1).

(3) The reports referred to in subsection (1) shall contain an analytical breakdown by type, quantity and cash values, of all the objects relating to contractually defined operations, together with an annual progress report on exports, imports and the transit of armaments and on the export of services subject to control and authorization provided by this Law. This report shall contain the list of the countries indicated in the final authorization, the list of any permits that have been withdrawn as being in breach of the final destination clause and of the prohibitions set forth in s.1 and 15, together with the list of any registrations, suspensions or removals from the National Register referred to in s.3.”

(Source: Law No. 185/90, 9 July 1990, New Rules for the Control of Export, Import and Transit of Conventional Weapons. Italy.)

Element VI – Responsibilities of the Parties

Representatives at the Malta conference noted that strategic trade controls “**should authorize a Government agency to adopt regulatory measures with regard to responsibilities and liabilities of each party to a transaction subject to the law.**”⁹

As with the principle of transparency, this provision creates greater certainty for industry and government. Parties can include the government, exporters, re-exporters, importers, and other individuals and entities involved in the transaction. The responsibilities for parties should cover documentary requirements (see the next element), license requirements, compliance with inspection requests and related matters. The government also may create a registration requirement for some or all parties. The law may also identify restrictions (or lack thereof) placed on the government.

Examples:

⁹ “Report of the Legal Workshop to the Plenary,” Malta Transshipment Conference, May 2004.

“A corporate body of a natural person having their line of mediatory activity entered in the companies register or other corresponding register and carrying on, or intending to carry on, such activity shall be obliged to apply for a mediatory license.” (Source: Law on Export and Import Control of 1991. Slovak Republic.)

“The Secretary of State may not make a control order which has the effect of prohibiting or regulating any of the following activities-(a) the communication of information in the ordinary course of scientific research; (b) the making of information generally available to the public; or (c) the communication of information that is generally available to the public, unless the interference by the order in the freedom to carry on the activity in question is necessary (and no more than is necessary).” (Source: Export Control Act of 2002. United Kingdom.)

Element VII - Requirements for Documentation

Strategic trade control laws should require that a government agency issue regulations to specify the records parties must maintain and the length of time to retain documents and other appropriate records.

Both government and industry need to maintain accurate documentation to process licenses, resolve licensing issues, conduct effective training, audits, and outreach efforts, and take appropriate and effective remedial or enforcement actions. While most governments require the maintenance of commercial and government records for several years for many regulatory areas, the complexity of the transactions and the possibility that such transactions may contribute to weapons of mass destruction proliferation and terrorism indicate that governments should pay special attention to this element.

Example:

“All records required to be kept by the Export Administration Regulations must be retained for five years from the latest of the following times: [export, known re-export or termination of the transaction].” (Source: Export Administration Regulations, 1979. United States of America.)

Element VIII – Business Confidentiality and Information Sharing

Strategic trade control laws should require a government to keep business proprietary information confidential, unless and until it determines that disclosing such data meets the national security or foreign policy interests of the country or unless an investigation into violations of strategic trade control laws make it necessary. In addition, the law should have provisions that allow or direct the government to provide information obtained in implementing the law to

international institutions or other governments pursuant to obligations under international treaties or agreements.

To obtain a license for strategic trade or participate in an investigation, companies must supply the government with information about their product, their customers, and other data that, if disclosed to the general public, to other companies, or to other governments, could be used by business competitors to gain a market advantage. If companies do not have assurances that the government will treat such information with confidentiality, they will be less inclined to comply fully and otherwise cooperate with the government on strategic export controls. At the same time, the government agencies responsible for implementing and enforcing strategic trade controls may need, when appropriate, to share critical data with other agencies, with other governments, and with international bodies to meet its strategic trade control obligations and prevent weapons of mass destruction proliferation and terrorism.

Example:

“No information or document given under this Part shall [be disclosed] except where necessary (i) for the purposes of an investigation into or prosecution of an offence under this Act or any other written law; or (ii) to enable a foreign government authority to investigate or prosecute a person for an offence committed in a foreign country, in the conditions specified in subsection (2) are satisfied [relating to sovereignty of Singapore, and further conditions imposed by Singapore on release].” (Source: Strategic Goods (Control) Act of 2002. Singapore.)

Element IX – Enforcement Authorities and Penalties

A strategic trade control law should empower the government to designate an enforcement agency with authority to carry out investigations of possible violations of the export control laws or regulations, and the agency responsible for prosecuting suspected violations. The law should also identify the applicable civil and criminal penalties for violations.

Effective export control systems require enforcement actions, including prosecution and punishment, where appropriate. The law should permit the enforcement agency to exercise its authority within the physical territory of the country, including free trade zones or any other specially designated areas controlled by the government where strategic trade or related activities may take place.

Examples:

“All officers, as defined in the *Customs Act*, have, with respect to any goods to which this Act applies, all the powers they have under the *Customs Act* with respect to the importation and exportation of goods, and

all the provisions of that Act and the regulations thereunder respecting search, detention, seizure, forfeiture and condemnation apply, with such modifications as the circumstances require, to any goods that are tendered for export or import or exported or imported or otherwise dealt with contrary to this Act and the regulations and to all documents relating to those goods.” (Source: Export and Import Permits Act (R.S. 1985). Canada.)

“Any persons who contravene subsection (1) or (2) [relating to munitions items] shall be guilty of an offence and shall be liable – (a) on a first conviction, to a fine not exceeding \$100,000 or 3 times the value of the goods or technology in respect of which the offence was committed, whichever is the greater, or to imprisonment for a term not exceeding 2 years or both...” (Source: Strategic Goods (Control) Act of 2002. Singapore.)

Conclusion

These nine elements constitute the core of an emerging multilateral consensus on the fundamental concepts that the legal authorities for an effective system of strategic trade controls must address. Without incorporating these necessary elements, national legal authorities will create weaknesses that terrorists and others seeking weapons of mass destruction will exploit. At the same time, integrating these elements into national legal authorities will not prove sufficient to create an effective legal framework if that framework remains static. This report, for example, only reflects the emerging consensus on the necessary elements for effective legal authorities. Several of the concepts behind these elements, such as “catch-all” controls or controls on intermediate trade services, evolved in response to changes in the commercial environment and the tactics of those seeking weapons of mass destruction. Just as these concepts have become international standards, we can expect that new or additional standards will emerge in the future, such as the treatment of intangible technology transfers. As the global strategic, commercial, and technological environment changes, a legal framework must adjust to remain effective.

Consequently, the more detailed and specific the overarching legal authorities, the more likely that it will require change regularly. Typically, governments can more easily undertake changes in regulations than changes in legislation. This argues that a strategic trade control law should create broad fundamental authorities as described in these nine elements and permit the regulatory process to generate the details of the legal authorities.

Each nation needs to address the nine elements listed here in a manner that meets the needs of their own legal system, which often entails considerable peculiarities. To facilitate that effort, the attached appendices include a “model” export control law, and a “guidebook” covering definitions to terminology included therein.

Appendix A

Sample Text for a Model Strategic Trade Control Law

I. PURPOSE

Sample text:

This Act grants authority to the [Executive Branch] to control the export, reexport, transit and transshipment of strategic items through the territory of [XX]. The purpose of this Act is to further the national security and foreign policy interests of {XX}, to fulfill international commitments and agreements with regard to the nonproliferation of weapons of mass destruction and other strategic items used for military purposes, and to participate in international efforts to control the exports of strategic items.

II. SCOPE OF LEGAL AUTHORITY

Sample text:

The [Executive Branch] may, by regulation or prohibition, control the re-export, transit and transshipment of strategic items through the territory of [XX], and for related intermediary activities.

Sample text:

This Act shall apply to:

- (1) all persons, natural or physical, in the territory of [XX]; and
- (2) citizens of [XX], wherever located, who engage in export, import or related intermediary activities.

III. IMPLEMENTING AUTHORITY

Sample text:

1. The [Executive Branch] shall issue regulations implementing this Act and furthering the purposes of this Act. Such regulations may prohibit or otherwise control the transit, transshipment or re-export of strategic items to all or certain destinations or parties, including by requiring an exporter to obtain a license or other authorization prior to such transit, transshipment, or re-export.

2. For any item, such regulations shall, at a minimum, outline the type of license to be granted, the information required to be submitted for a license, the procedure for submission of a license application, the time-line for review and decision on a license application, and the license validity period. Such regulations will provide that a license

may be issued with such conditions as may be necessary to ensure that all parties comply with the terms of the license or that the transit, transshipment or re-export otherwise complies with the purposes of this Act. [May delegate responsibility for munitions and dual-use to different ministries]

3. The [Executive Branch] shall issue a National Control List that conforms to international standards and meets the international obligations and agreements of [XX]. [May, as an alternative, adopt and incorporate by reference multilateral control list(s) as the National Control List.] Strategic items may be added to or deleted from the National Control List by the [Executive Branch] as appropriate.

4. A Commission on Export Control, comprising the [Minister of T, the Minister of Y, and the Minister of Z], will review license applications, make final decisions on license applications, and issue licenses pursuant to the regulations implementing this Act and procedures established by the Commission. The Ministers may delegate their responsibilities to officials under their direction.

IV. RESPONSIBILITIES OF PARTIES IN A TRANSACTION

Sample text:

Responsibilities of traders –

1. No person may transit, transship or re-export a strategic item without first obtaining a license [to engage in trade] required by the regulations implementing this Act.
2. No person may place any strategic item in or on any vessel located in the territory of the [XX] without the consent of the owner [or operator] of such vessel.

Responsibilities of Owners and Operators of Vessels –

1. The owner [or operator] of a vessel shall not release any strategic item into the territory of [XX] to any person until the person to whom an import license has been issued presents the license to such owner [or operator]. The owner [or operator] of a vessel shall submit to the Government of [XX] a copy of the license and a copy or extract of the manifest of the vessel in or on which the strategic item arrived, duly certified by him as a true copy or extract of the manifest.
2. The owner [or operator] of a vessel shall not accept any strategic item for export, transit, transshipment, or re-export on such vessel, until there is produced to him an export license or he has obtained a notification sent by him by the Government of [XX] that an export license has been issued. The owner [or operator] of the vessel in or on which such strategic item is exported shall submit to the Government of [XX] a copy or extract of the manifest of the vessel in or on

which the strategic item has been exported, as prescribed in regulations implementing this Act, stating on the copy or extract the export license number.

3. All strategic items which are imported, exported, transited, transhipped, or re-exported shall be recorded in a manifest which shall contain such particulars as the regulations implementing this Act may prescribe.

4. The owner or operator of a vessel, on entering or leaving the territory of [XX], shall, upon request:

(a) furnish any member of the [Customs Service] a manifest identifying any strategic item being imported or exported in or on the vessel;

(b) allow any member of the [Customs Service] to board the vessel, inspect the cargo for strategic items and/or search the vessel for strategic items; and

(c) furnish a written list of every port or place at which such vessel has called during the period of [3] months immediately preceding the date of its arrival in the territory of [XX] [NOTE -- this is a general requirement that may already exist in [Customs] statutes or regulations or may be placed there].

Responsibilities of persons engaged in intermediary activities

1. No person subject to the Act may engage in intermediary activities without a license, if a license to engage in such activities is required under regulations implementing this Act, including intermediary activities involving items that would be defined as “strategic items” under this Act, even they are not transited or transhipped through, or exported or re-exported from, the territory of [XX].

V. DOCUMENTATION AND RECORD-KEEPING REQUIREMENTS

Sample text:

Any person subject to the requirements of this Act shall keep records of the transit, transshipment or re-export of a strategic item for a period of [X] years, including any such information as is required by the regulations implementing this Act.

VI. CONFIDENTIALITY OF BUSINESS PROPRIETARY INFORMATION

Sample text:

The [Executive Branch] shall not disclose information obtained as part of a license application to any non-governmental entities, unless the [Minister of T] determines that such disclosure is in the national security or foreign policy interest of [XX].

VII. INFORMATION SHARING

Sample text:

The [Executive Branch] shall provide information obtained in the implementation of this Act: (a) to international institutions to which [XX] is a party or which are recognized by [XX]; (b) to governments of countries of origin of strategic items and to governments of countries that are final destinations for strategic items, if such governments have laws in force that are equivalent to the provisions of Section X of this Act; or (c) pursuant to obligations under international treaty or agreement to exchange information, with the governments of countries of origin of strategic items and with governments of countries that are final destinations for strategic items, on the transit, transshipment and re-export of strategic items through the territory of [XX]

VIII. INVESTIGATIVE AUTHORITY

Sample text:

The [Customs Service] shall carry out investigations of possible violations of this Act and the regulations implementing this Act, using its full investigative and police powers.

IX. PENALTIES

Sample text:

1. Criminal penalties – Any person who knowingly or willfully violates, or conspires to or attempts to violate, any provision of this Act, regulations implementing this Act, or any license issued thereunder, shall be fined up to \$XXXXX per violation, or imprisoned not more than X years, or both.
2. Civil Penalties – Any person who violates any provision of this Act, regulations implementing this Act, or any license issued thereunder, shall be fined up to \$XXXXX per violation, or denied export privileges, or both.

Appendix B

DEFINITIONS

Sample text:

“Export” – the shipment or transmission by any means of an item from the territory of the Country [or] – for purposes of this Act, the shipment or transmission by any means of a strategic items from the territory of the Country.

“Exporter” – any natural or legal person who ships or transmits a [strategic] item out of the territory of the Country.

“Intermediary activities” – brokering, forwarding, servicing or financing export transactions involving strategic items.

“License” - a written authorization or permit issued by the Government for the import, export, transit or transshipment of strategic items into, out of, or through the territory of the Country.

“National Control List” - a list of strategic items.

“Strategic item” – any military or dual-use good, service or technology that requires special controls in the interest of national security or foreign policy of the Country, including items on the National Control List and items that, in whole or in part, can be used in the development, production, use, maintenance, stockpiling, detection, identification or dissemination of weapons of mass destruction (nuclear, chemical or biological weapons) or their delivery systems.

“Transshipment” – the import into, and subsequent export from, the territory of the Country, of a strategic item, such that the item does not enter the commerce of the Country, but is consigned on a “through bill of lading” or a “through air waybill” from a location outside the territory of the Country to another location outside the territory of the Country, and such that the item is or is to be removed from the vessel in which it was imported and either returned to the same vessel, or transferred to another vessel before being exported, whether it is or is to be transferred directly between such vessels or whether it is to be landed in the Country after its importation and stored or otherwise handled, pending export.

“Transit” – the import into, and subsequent export from, the territory of the Country, of a strategic item, such that item does not enter the commerce of the Country, but is consigned on a “through bill of lading” or a “through air waybill” from a location outside the territory of the Country to another

location outside the territory of the Country, and such that the item remains at all times in or on the vessel on which it is imported into the Country.

“Vessel” – ship, aircraft, automobile, truck, train or other means of transporting items imported into or exported from the territory of the Country.