

Strategic Trade Control System in Hong Kong, China

An Overview

Under the "One Country, Two Systems" principle enshrined in the Basic Law, our mini-constitution, the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China remains a separate customs territory and an autonomous trading entity. Under the Basic Law, we enjoy a high degree of autonomy, which means that we are able to maintain an autonomous and independent strategic trade control system.

2. As an active and responsible trading partner, the HKSAR Government is fully committed to upholding an effective system of control on strategic commodities. Our control system aims to prevent Hong Kong from being used as a conduit for the proliferation of weapons of mass destruction, and to ensure its continued access to high technology which is essential to Hong Kong's economic development.

3. We maintain stringent licensing control over the import and export of strategic commodities which is backed by legislation and vigorous enforcement. Our control system is law-based, comprehensive, transparent and in compliance with the highest international standards.

Fundamentals of our Control System - the Four Pillars

4. Hong Kong's strategic trade control system is built on four pillars: a comprehensive legal framework, an efficient licensing system, a rigorous enforcement system, and close international co-operation. Underlying these four pillars is a strong commitment of the HKSAR Government to upholding an effective control system. This is the foundation of Hong Kong's strategic trade control system which has been proven over the years to be effective in helping to combat against diversion of strategic commodities through Hong Kong while enabling Hong Kong to continue to thrive as a commercial, financial and trading centre. The following explains how the four pillars work.

A. Comprehensive Legal Framework

5. Our control system is law-based. The import and export of strategic commodities are regulated under the Import and Export Ordinance and its Strategic Commodities Regulations. They have been in place for almost five decades and have been refined and updated over the years following closely the world trend on strategic trade control. Persons who breach stipulations under the Ordinance are subject to heavy penalties. The maximum penalty is unlimited fine and imprisonment of seven years.

6. The Import and Export Ordinance imposes both import and export control on strategic commodities on individual consignment and pre-shipment basis. It is an offence if a person imports or exports strategic commodities without an import or export licence or not in accordance with the licence conditions imposed. This comprehensive licensing requirement enables us to monitor the trade movement and entry of sensitive goods into Hong Kong

7. The Ordinance also maintains stringent licensing control over transshipment and transit of strategic commodities. For goods which are imported into Hong Kong for subsequent re-export, they are required to be covered by import and export licences in accordance with the law. The import and export licensing control also applies to sensitive goods, such as military goods and nuclear related items, transiting Hong Kong whilst remaining at all times in or on the same carrier. This serves as an additional safeguard in our system to prevent illegal diversion of sensitive goods. Again, it is an offence if strategic commodities under transshipment or in transit are not covered by licences as required by the law.

8. The Ordinance also puts legal responsibility on carriers to ensure compliance. Carriers are prohibited from releasing goods in their custody to consignees until they are provided with valid import licences. Similarly, carriers are prohibited from accepting any goods for export until they are provided with valid export licences by exporters. They are also required to return licences together with carriers' manifest to the Trade and Industry Department for cross-checking. This in effect means that carriers themselves have to verify the destination, consignees, quantities, etc. of the goods concerned. Carriers therefore act as independent third parties which verify that the goods they accept or release have been licensed.

9. In fact, under our control system all parties involved in the import or export of controlled items are legally responsible for compliance with the law, be they “owners”, “agents”, “consignees”, “consignors”, “forwarders” or “carriers”.

10. While Hong Kong is not a member of any of the international non-proliferation regimes, we comply fully with their requirements. Items controlled by all the non-proliferation regimes, namely the Missile Technology Control Regime, Nuclear Suppliers Group, Australia Group, and Wassenaar Arrangement, are included in our control lists which are clearly spelt out in our legislation. The procedure to update our control lists is simple. This enables prompt updating to reflect changes in the control lists of the various regimes.

11. The import and export of chemicals controlled by the Chemical Weapons Convention is also subject to licensing control. The Chemical Weapons (Convention) Ordinance provides the legal basis for implementing the Convention fully. The Ordinance provides for a permit and notification system to control and monitor activities of facilities dealing with scheduled chemicals and unscheduled discrete organic chemicals, and the compilation of annual reports to fulfill the Convention's requirements. The Ordinance also gives the Customs and Excise Department with the necessary enforcement powers to carry out inspections, investigations and prosecutions, and to assist in international inspections under the Convention.

12. The Weapons of Mass Destruction (Control of Provision of Services) Ordinance is a dedicated piece of legislation governing brokering activities relating to weapons of mass destruction. Under the Ordinance, services knowingly provided to assist programmes of weapons of mass destruction are prohibited. Persons providing brokering services commit an offence under the Ordinance and are also liable to unlimited fine and imprisonment for seven years.

B. Licensing System

13. The second pillar of our control system is our stringent licensing system which is administered by the Trade and Industry Department of the HKSAR Government.

14. The licensing process involves first of all an assessment of the technical capabilities of a product covered by an application to ascertain whether it is subject to control. The application then goes through a risk assessment process. In this step, we assess the legitimacy of the end use of the product and determine whether its technical capabilities are suitable for the end use declared. Information on the licensing parties as well as the risk of diversion of the goods are carefully examined before we decide whether

the application could be approved. To facilitate our assessment, applicants are often required to provide detailed information in their applications, or to submit supporting documents, such as export licences issued by supplier countries.

15. Applications involving sensitive goods or involving dubious exporters or consignees are subject to closer scrutiny and more intensive vetting. If necessary, an application will have to be supported by an International Import Certificate and/or a condition on the export licence for providing a Delivery Verification Certificate will be imposed. With a view to complementing the control of our trading partners, for re-export of sensitive commodities, Hong Kong will not grant approval if the goods involved are authorised by the originating countries for use in Hong Kong only or the destination is subject to denial or sanction by the originating countries.

Industry Awareness Programme

16. Any type of trade control could not be successful without the support of the trade. We believe that a good understanding amongst the business community on the need to maintaining effective licensing control is conducive to compliance. We have therefore put in place an industry awareness programme to foster such awareness and understanding. Through seminars, publications and company visits, we explain to traders the rationale for imposing control, the control arrangements, changes to control lists and licensing requirements. We have also issued guidelines on internal compliance programme (ICP) and have encouraged companies to implement ICP.

C. Enforcement System

17. The strategic trade control system is enforced by the Customs and Excise Department of the HKSAR Government. The Department is provided with the following general powers in enforcing the system :

- (a) licensing inspection, including pre-shipment/post-shipment checks, post-importation checks and delivery verification checks;
- (b) physical inspection of goods;
- (c) monitoring of movement of goods suspected for diversion;

- (d) entry and search of premises;
- (e) stop, board and search of any vessels, vehicles or aircraft;
- (f) seizure of offending goods or evidence, arrest and prosecution of suspected offenders; and
- (g) application to court for forfeiture of seized goods.

18. Other than the above general powers, the Customs and Excise Department also has extensive powers in certain areas to enforce the control system. For example, they have the authority to direct the person in possession or control of an article which is intended to be exported, to store the article in a place specified by the Commissioner of Customs and Excise under such conditions as he may impose without any time limit. The Department is also empowered to enter and search any premises or place (except domestic premises) without the need to obtain a search warrant. These are powerful tools which enable the Department to take prompt actions and to effectively carry out their investigation on suspected cases with a view to preventing illegal diversion.

19. As empowered by the law, the Department can conduct different types of document and physical checks at various locations as appropriate. For example, they conduct pre-licence checks when suspicion is detected at the licence application stage, post-importation disposal checks to ascertain the proper end use of the goods after they are imported, and cargo inspections at the exit/entry checkpoints at the airport, container terminals and land boundary checkpoints etc. Detailed investigation will be conducted on unlicensed shipment of strategic commodities with a view to taking prosecution. Any person who breaches the relevant legal provisions will be subject to heavy penalties and is liable to an unlimited fine and imprisonment for seven years.

D. International Co-operation

20. Our success in maintaining an effective control system on strategic trade also relies on international co-operation. Over the years, we have developed various co-operative arrangements with our trading partners on information and intelligence sharing. We have regular inter-agency meetings with our major trading partners. We also maintain close liaison with our major trading partners who are members of the various

non-proliferation regimes for them to keep us up-to-date on the development and changes in scope of control agreed at such regimes. We have also secured bilateral arrangements with a number of key members of the regimes for sharing of information and intelligence in the respect of strategic trade. There are at present sixteen countries which have arrangements with Hong Kong to exchange denial information and licensing statistics on trade in strategic commodities. This helps ensure that Hong Kong does not undercut the control of the exporting countries. Besides, there are regular secondment arrangements of technical experts from our major trading partners to work in the HKSARG Government. Such arrangements have provided valuable opportunities for exchange of technical expertise and have fostered closer working relations between the relevant governments.

21. As part of our effort to promote our trading partners' understanding of and confidence in Hong Kong's control system and to maintain connection with international non-proliferation regimes, we have been actively participating in outreach seminars organised by control regimes and major supplier countries. We will continue to take part in such international forums where we could share with others our experience in maintaining a high standard of control and compliance despite our non-member status.

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