



EXPORT CONTROL DEVELOPMENTS

Malaysia Prepares to Implement Control of Strategic Trade

Malaysia has long been considered a “loophole” for export control in Asia, representing a high risk of diversion of strategic items to Iran and Libya. To reflect Malaysia’s commitment to the United Nations Security Council Resolution 1540 and to prevent design, development and production of weapons of mass destruction (“WMD”) and their delivery systems, in early April 2010, Malaysia’s House of Representatives passed the Strategic Trade Bill 2010 (“the Bill”). The Bill is slated for another round of debate and approval by the Senate before being presented to the King for consent.

Although the Bill has yet to be gazetted, exporters should examine their internal procedures and expend the necessary resources for prompt implementation once the Bill takes effect.

Key points of the Bill passed by the House are highlighted below:

- The scope of strategic items is still unclear as the list will only be published subsequently by the Minister in the Gazette. Therefore, it is not certain whether the list will include items from all international export control regimes, such as dual-use items under the Wassenaar Arrangement.
- The scope of control includes transactions not only for export but also transshipment, transit, brokering and intangible technology transfer. In addition, the Bill allows the Minister to designate end-users to which all export, transshipment or transit of strategic items or unlisted items under this Act are restricted or prohibited.
- The Bill prescribes severe penalties for any violations. For worst cases of violations that are intentional, arms-related and where death is the result of the act, the responsible party will be sentenced to death or life imprisonment, and in the case of a corporate body, the penalty is a minimum fine of RM 30 million (approximately USD 9.2 million). For violations involving other strategic items and unlisted items without unlawful intent, the penalty is imprisonment of not less than 5 years or a fine of not less than RM 5 million (approximately USD 1.5 million) or with both, and in the case of a corporate body, the penalty is a minimum fine of RM 10 million (approximately USD 3 million).

Strategic Business Planning
Supply Chain Planning
Customs Advisory
Export Control
Tax & Transfer Pricing
WTO & FTA Advisory
Labor & Employment
Anti-Illicit Trade

Cambodia
China
India
Indonesia
Japan
Lao PDR
Malaysia
Philippines
Singapore
South Korea
Taiwan
Thailand
Vietnam

www.bryancavetrade.com

- The Ministry of International Trade and Industry (“MITI”) is likely to be the responsible ministry.
- The Bill has extra-territorial application but contains little detail on it. Further clarification of such application will be needed subsequently.



BRYAN CAVE INTERNATIONAL TRADE

Bryan Cave International Trade (“BCIT”) is a strategic operations consultancy that provides clients with the strategic and operational advice they need to anticipate, react to and benefit from the diverse and constantly evolving regulatory and competitive landscape of the global business environment. Whether clients are planning their entry into a specific market or exploring options for locating various business functions, whether they want to take a proactive approach towards ensuring compliance with customs and regulatory requirements or seek to defend and resolve a matter with the authorities, whether they want to capitalize on cost-savings opportunities under trade agreements or design effective countermeasures against illicit trade, Bryan Cave International Trade is dedicated to assisting clients achieve their goals.

BCIT operates in Bangkok, Beijing, Jakarta, Kuala Lumpur, Manila, Shanghai, Singapore and Tokyo, and covers Australia, Cambodia, India, Korea, New Zealand, Taiwan, Vietnam, and other markets in the region. Our consultants include former senior customs and trade officials, and customs, tax and trade practitioners with years of experience and broad contacts in their respective countries and in the region. These specialists have years of experience advising clients on customs compliance audit, including classification, valuation, transfer pricing, duty drawback, country of origin, free trade agreements and other preferential tariff schemes, as well as other international trade subjects, such as export control and anti-illicit trade.

BCIT is a subsidiary of the law firm Bryan Cave LLP, an international law firm headquartered in the United States. Benefiting from the Firm’s “one firm” philosophy which has eliminated internal economic and geographic boundaries, Bryan Cave International Trade also brings to our clients the extensive expertise and resources of Bryan Cave lawyers and professional staff worldwide.

If you have any comments or questions with regard to this Bulletin or any matters discussed herein, or if you are interested in finding out more about BCIT’s services, please contact any of the persons listed below:

Cecil Leong
 cecil.leong@bryancavetrade.com
 +65 6403 6388

Wong Chian Voen
 chianvoen.wong@bryancavetrade.com
 +86 21 2308 3000

Stephanie Wong
 stephanie.wong@bryancavetrade.com
 +65 6403 6391

Tatsuya Kanemitsu
 tatsuya.kanemitsu@bryancavetrade.com
 +813 5532 7413

Ashley Yean
 ashley.yean@bryancavetrade.com
 +65 6403 6385