

FIFTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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OFFICE OF THE SECRETARY

10 AUG 23 P5:22

SENATE
S.B. No. 2449

RECEIVED BY: 

INTRODUCED BY SEN. MANNY VILLAR

EXPLANATORY NOTE

The 1987 Philippine Constitution under Section 2 of Article II Declaration of Principles and State Policies provides that the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Moreover, the Constitution under Section 8 of State Policies of Article II Declaration of Principles and State Policies explicitly provides that the country, consistent with its national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

The Philippines is likewise committed to the maintenance and enhancement of national security, promotion of foreign policy interests particularly the fulfillment of international commitments and agreements. As a member of the United Nations, the Philippines therefore recognizes and binds itself to the principles of international law. As such, having been Vice-chairman of the UN 1540 Committee which passed the UN Security Council Resolution 1540 last April 28, 2004 calling on all UN member-states to adhere to the Weapons of Mass Destruction Conventions, the Philippines thereby commits itself to prevent the proliferation of nuclear, radiological, biological, chemical, and other weapons of mass destruction for the promotion of global peace and security.

The proliferation of weapons of mass destruction as well as the non-regulation of munitions, strategic or dual-use items/goods and related technologies largely contributes to the carrying out of acts of terrorism. The transfer, diversion, import, export, re-export, transit and transship of such items/goods, technology or even services dealing with nuclear, radiological, biological and chemical weapons, mostly in parts, which when assembled together could serve as a weapon of mass destruction that would cause great threat to lives and properties, if not immense devastation. Thus, the trade of such items/goods, which are being used both for military and non-military or restricted purposes, should be strictly monitored and controlled.

Significantly, it could be noted that the recently enacted Republic Act No. 9372 otherwise known as the Human Security Act of 2007 or the Anti-Terrorism Law of the

Philippines, which I have principally authored and sponsored, does not particularly cover the aspect of non-proliferation of weapons of mass destruction and the non-regulation of munitions, strategic or dual-use item/goods and related technologies including their means of delivery.

As it is at present, there is an absence of an integrated Philippine legislation that would prevent the unauthorized trade of strategic or dual-use items/goods and related technologies which would certainly contribute to the proliferation of weapons of mass destruction throughout the islands. With the apparent lax in security control and the lack of strong regulatory mechanism in the area of law enforcement, intelligence and inter-government agency cooperation, those people who would like to sow terror in the country would have their grand time carrying out their evil plans in just a snap.

While our neighboring countries have already been able to put in place their own legislation against the proliferation of these weapons of mass destruction, the Philippines has yet to come up with a legislative measure that would address the grim scenario wherein our country would become a terrorist haven for the manufacture and assembly of such weapons.

Hence, this bill seeks to prevent the proliferation of weapons of mass destruction in the country through the enforcement of a stringent strategic items/goods trade control system by regulating and monitoring the transfer of such items/goods. This bill therefore intends to establish an effective regulatory and organizational structure that would both address the Philippines' obligation to its international commitments as well as pursue its economic end in the area of free trade with other countries without compromising the internal security of the nation and the safety of the Filipino people.

The immediate passage of this bill is hereby earnestly sought



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**AN ACT TO PREVENT THE PROLIFERATION OF WEAPONS OF MASS
DESTRUCTION BY REGULATING THE TRANSFER OF STRATEGIC ITEMS/GOODS
WHICH ARE BEING USED TO CARRY OUT ACTS OF TERRORISM, AND FOR
OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

TITLE I - GENERAL PROVISIONS

SECTION 1. Short Title. - This Act shall be known as the "Weapons of Mass
Destruction Non-Proliferation and Strategic Items/Goods Regulation Act".

SECTION 2. Declaration of Policy. - It is declared a policy of the state to be
free from nuclear, chemical and biological weapons in its territory, to abide by its
international commitments in the areas of non-proliferation and strategic trade
regulation, and to promote international peace and stability, while also promoting
economic growth through responsible trade and management of strategic items. Toward
this end, the unregulated flow of goods, technologies, information, equipment and
services that are capable of being used to acquire, develop, produce, operate, stockpile,
maintain, detect, identify or deliver weapons of mass destruction and other strategic
items shall be considered dangerous and inimical to the security of the country and to
the Filipino people, and the global community. Foreign trade activity involving such
items, including cross-border transfer, facilitation or investment shall be regulated by the
Government.

SECTION 3. Scope and Coverage. - This Act shall apply to any person,
whether natural or juridical, engaged in trade of strategic items, technologies,
equipment and services, and operating within the territorial and economic boundaries of
the Philippines, including designated free trade zones, and to all Filipino citizens
whether residing in the country or abroad.

Without impeding the normal course of trade activities, provisions of this Act shall involve the regulation, import, export, re-export, transit, transshipment and retransfer of strategic goods and items, technologies, equipment and services which are herein defined as regulated items under the National Control List.

SECTION 4. Definition of Terms. - For purposes of this Act, the following terms are hereby defined:

- a) **Conveyance** refers to any vessel, train, vehicle, aircraft or other modes of transportation.
- b) **Device** refers to any tangible medium wherein information, visual images, sound or other data is recorded, stored, or embodied in any form so as to be capable of being retrieved or produced with or without the aid of any equipment.
- c) **Document** refers to any records on paper; in electronic form, kept on any magnetic, optical, chemical or other medium; photograph map, plan, graph, picture or drawing or device.
- d) **Dual-Use Items/Goods** refer to items or goods capable of being used for both non-military and military purposes or related activity which include software or technology relating to the production or use of such items/goods.
- e) **Dual-Use Technology** refers to technology necessary for the development, production or use of any dual-use items/goods.
- f) **Export** refers to the shipment or transmission by any means of any strategic items/goods from the territory of the Philippines.
- g) **Exporter** refers to any natural or juridical person who ships or transmits any strategic items/goods out of the territory of the Philippines.
- h) **Intermediary activity** refers to brokering, forwarding, servicing or financing export transactions involving any strategic items/goods.
- i) **Import** refers to commodities, which may either be items/goods or services that are bought from a foreign country.
- j) **License or Permit** refers to a written authorization issued by the Government for the import, export, transit or transshipment of any strategic item into, out of, or through the territory of the Philippines, which also includes the provision of services pertinent to the trade of strategic item/goods, technology and equipment.
- k) **Military Goods or Munition Items/Goods** refers to any item/goods, solely or predominantly designed or modified for military purposes which includes the entire products as well as specifically-designed parts, accessories, components and related software and technology such as firearms, warships, lasers designated for military application, biological agents and sophisticated night-vision equipment.
- l) **National Control List** refers to a list of strategic items subject to special controls pursuant to this Act.
- m) **Premises** refer to any land, place or building, whether open or enclosed, and whether built-in or not, and includes any free trade zones.
- n) **Re-export or Re-transfer** refers to any shipment, transmission or release by any means of any item/goods from one foreign country to another which may also

include a transfer of an exported item to a new end-user within the recipient country.

- o) **Registration** refers to an application for registration to carry out an act such as to arrange, negotiate or do any act to facilitate the arrangement or negotiation of a contract for the acquisition or disposal of strategic items/goods, technology, equipment and services, to include transmission of any technology or document.
- p) **Services** refer to, without limiting the generality of the expression, any reference to doing anything, other than supplying or exporting of goods that confers a benefit on, grants a right or privilege to, provides a facility for, or otherwise assists someone, including work of a professional nature with or without the supply or export of goods, or a contract for and in relation to the lending of money or other provision of financial assistance.
- q) **Software** refers to a collection of one or more programs or microprograms recorded, stored or embodied in a device.
- r) **Strategic Items/Goods** refer to any weapon of mass destruction, military or dual-use items/goods, service or technology.
- s) **Strategic Items/Goods Trade Control** refers to a system of laws and regulations designed to regulate the trade and transfer of weapons of mass destruction and related materials, components and technologies as well as conventional weapons.
- t) **Technology** refers to information, including information in such documents or software as specification, blueprints, plans, manuals, models, diagrams, formulae, tables and design, that is necessary for the development, production or use of any items/goods.
- u) **“Through bill of lading”** or **“Through air waybill”** refers to a bill of lading, air waybill and manifest, respectively, for the consignment of items/goods from a place outside the Philippines to a destination which is also outside the Philippines without a consignee in the Philippines.
- v) **Transit** refers to the import into, and subsequent export from, the territory of the Philippines of a strategic item that does not enter the commerce of the Philippines but is consigned on a "through bill lading" or a "through air waybill" from a location outside the territory of the Philippines to another location outside the territory of the Philippines, such that the item remains at all times in or on the vessel on which it is imported in the Philippines.
- w) **Transshipment** refers to the import into, and subsequent export from, the territory of the Philippines, of a strategic item that does not enter the commerce of the Philippines but is consigned on a "through bill lading", a "through air waybill", or "through manifest" from a location outside the territory of the Philippines to another location outside the territory of the Philippines, and such that the item is removed 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 to be transferred directly between such vessels or whether it is to be landed in the Philippines after its importation, and stored, or otherwise handled, pending export.

- x) **Vessel** refers to any ship, aircraft, automobile, truck train or other means of transporting items/goods imported into or exported from the territory of the Philippines.
- y) **Weapons of Mass Destruction** refer to weapons that are capable of a high order of destruction and/or being used in such a manner as to create large numbers of casualties during a single event or incident.
- z) **Weapons of Mass Destruction Program** refers to a plan or program for the development, production, acquisition, or stockpiling of nuclear, biological or chemical weapon or missiles capable of delivering such weapons.

TITLE II - IMPLEMENTING AUTHORITIES

SECTION 5. Creation of Strategic Item/Goods Trade Control Council. - There is hereby created a Strategic Items/Goods Trade Control Council, hereinafter referred to as the "Council" to serve as the governing and policymaking body for the formulation, development, implementation, coordination, monitoring and evaluation of policies, programs, plans and activities relative to the establishment and institutionalization of the strategic items/goods trade control system. It shall be composed of the heads or permanently designated representatives of the following offices:

- a) Office of the Special Envoy on Transnational Crime (OSETC), Office of the President (OP);
- b) Department of Trade and Industry (DTI);
- c) Department of Finance (DOF);
- d) Department of National Defense (DND);
- e) Department of the Interior and Local Government (DILG)
- f) Department of Transportation and Communication (DOTC)
- g) Department of Environment and Natural Resources (DENR);
- h) Department of Health (DOH);
- i) Department of Science and Technology (DOST);

The OSETC, as an oversight body on transnational crime, shall chair the Council. It shall coordinate the overall programs and provide the daily operational, administrative and staff support to the Council.

The Vice-chairman shall be elected by the members of the Council from among themselves.

SECTION 6. Powers and Functions of the Strategic Items/Goods Trade Control Council. - The Council shall have the following powers and functions:

- a) Formulate strategies and policies for the effective implementation of this Act;
- b) Coordinate, implement, monitor and evaluate policies and measures, programs, plans and activities that will establish the country's strategic items/goods trade control system;
- c) Create specific working groups by enlisting the assistance and support of government agencies, bureaus, boards, instrumentalities of government owned and/or controlled corporations; the academe; as well as private institutions,

- corporations, firms, associations or persons to carry out its functions, including the use of its personnel, facilities and resources for research, developmental and promotional activities necessary in support of the provisions of this Act;
- d) Formulate policies and recommendations, regulate programs and advise government agencies and private organizations engaged or involved in activities allied to or affecting the country's importation, exportation and re-exporting, transiting and transshipping such as forwarding, brokering, shipping, insurance, warehousing, financing; and recommend measures that will enhance effective monitoring of strategic items/goods;
 - e) Develop common end-users' certification standards in strategic items/goods control for purpose of transparency and accountability;
 - f) Develop, maintain, update and publish the National Control List;
 - g) Strengthen capability-building through technical assistance and training on various measures to detect, monitor, investigate and/or seize inadvertent or illicit import, export, re-export, transit, transshipment of strategic items/goods;
 - h) Identify stakeholders both from the public and private sector, particularly business and other civil entities, and define their roles and responsibilities in the strategic item/goods trade control system;
 - i) Strengthen and enhance bilateral/multilateral cooperation and recommend amendments, as appropriate, to existing agreements where the State signatories are the point of origin, destinations or transit of strategic items/goods;
 - j) Come up with policy recommendations to maintain the confidentiality of the disclosure of information, unless and until it meets the national security or foreign policy interests of the country; and
 - k) Perform such other tasks and functions necessary to effectively carry out the provisions of the Act.

TITLE III - RESPONSIBILITIES AND RESTRICTIONS OF PARTIES IN STRATEGIC ITEMS/GOODS TRADE TRANSACTIONS

SECTION 7. Responsibilities of Traders. - Any person who intends to export, import, transit, transship or re-export any strategic item/goods herein defined shall be required to obtain a license from the duly designated government authority provided in this Act. No person shall be allowed to place any strategic item/goods in or on any vessel located within the territorial and economic jurisdiction of the Philippines without the consent of the owner or operator.

SECTION 8. Responsibilities of Owners and Operators of Vessels. - Owners and operators of a vessel shall be prohibited from releasing any strategic items/goods within the territory of the Philippines unless the person to whom an import license has been issued presents a license to such owner or operator. The owner or operator of a vessel shall submit to the Bureau of Customs and other duly designated offices, a duly certified copy of the license and a copy of the extract of the manifest of the vessel in or on which the strategic items/goods arrived.

All strategic items/goods which are imported, exported, transited, transshipped, or re-exported shall be recorded in a manifest that shall contain such particulars which the Implementing Rules and Regulations of this Act may prescribed.

The owner or operator of a vessel, on entering or leaving the territory of the Philippines shall, upon request:

- a) Furnish the Bureau of Customs a manifest identifying any strategic items/goods being imported or exported in the vessel;
- b) Allow any member of the Bureau of Customs to board a vessel, inspect the cargo for strategic items/goods and/or search the vessel for strategic items/goods; and
- c) Furnish a written list of every port or place at which such vessel has docked during the period of three (3) months immediately preceding the date of its arrival in Philippine territory.

SECTION 9. Responsibilities of Persons Engaged in Any Intermediary Activity. - No person, subject to this Act, may engage in any intermediary activity without a license, including intermediary activities that involve strategic items/goods as herein defined, even if the same is not transited or transshipped through, or exported or re-exported from the territory of the Philippines.

SECTION 10. Responsibilities of Parties. - It shall be the responsibility of any person, subject to this Act, to verify whether an item falls under the National Control List and subject to regulations. Where any unit or individual knows or should know that the goods and items, technologies, equipment and services to be exported will be used by the receiving party for the purpose of putting together a weapon of mass destruction or a weapon of mass destruction program, it shall not export such goods and items, technologies, equipment and services whether included in the National Control List or not, unless appropriate licenses are obtained.

SECTION 11. Registration and Issuance of Permits and Licenses. – Anyone who intends to engage in the trade of strategic item/goods, technologies, equipment and services shall register directly with the DTI and file for a license application to be accomplished in such a prescribed manner and form and accompanied by such fees as may be prescribed under the IRR of this Act.

The DTI may likewise grant permit or license to an applicant subject to conditions it may deem fit and may renew a license with or without conditions: Provided, That any person whose application for a license has been denied by the DTI may file an appeal to the Council as constituted under this Act, whose decision shall be final and executory.

The Council and the DTI may, upon recommendation of involved regulatory branches of the government, temporarily decide to exercise export control on specific dual-use item/goods and related equipment and technologies other than those listed in the National Control List if deemed necessary.

SECTION 12. Breach of Conditions of Registration, License or Permit. –

Any person who holds a permit or is registered to engage in trade of strategic items/goods and who contravenes, without lawful excuse, a condition of the permit or license or registration prescribed under the IRR of this Act shall be held liable and shall suffer the penalty of two (2) years imprisonment but not to exceed four (4) years imprisonment.

Anyone who undertakes trade of strategic items/goods, technologies, equipment and services without being licensed, or trade beyond the scope of the license granted without authorization shall be investigated for criminal liability in accordance with the relevant provisions of existing laws on the crime of smuggling, illegal business operations, or such other crimes. If such crimes are not serious enough for criminal punishment by distinguishing different circumstances, such person shall be punished in accordance with applicable provisions of the Customs Law, or be given a warning, or have the items/goods confiscated, and/or be fined according to the relevant provisions of the Philippine Trade Laws. The DTI may concurrently revoke the license for such person's foreign trade operations.

Where the receiving party contravenes the guarantees made according to the conditions, permit or license granted, or there is a risk of proliferation of dual-use restricted items/goods, technologies, equipment and services, the Council thru the DTI, shall suspend or revoke the license or permit initially granted and immediately notify the Bureau of Customs of such suspension or revocation of license or permit.

SECTION 13. Other Restrictions. - A license holder who intends to change the original declaration of end-use of the strategic items/goods, technologies, equipment and services as previously declared shall surrender the original license and must file for a new license subject to the provisions of this Act.

Any person who forge, buy or sell license for the conduct of trade transactions on strategic item/goods, technologies, equipment and services shall be held criminally liable in accordance with existing laws on the crime of illegal business operations, the crime of forging, altering, buying or selling of official documents, certificates or seal of State functionaries. If such act is not serious enough for criminal punishment, such person shall be punished in accordance with the relevant provisions of the Customs Law, and the DTI may concurrently revoke the license for foreign trade operations.

When the license for the trade of strategic goods and items, technologies, equipment and services is obtained through fraud or other illegal means, the DTI shall impose the following penalties: 1) revocation of license; 2) confiscation of subject illegal items/goods; 3) imposition of fines; and 4) suspension or revocation of the license for their foreign trade operations.

SECTION 14. Liability of State Functionaries. - State functionaries in charge of controlling and regulating the trade of strategic items/goods, technologies, equipment and services who abuse their powers, neglect their duties or extort or accept money or

bribe by taking advantage of their positions, shall be investigated for criminal and/or administrative liability in accordance with existing criminal and/or administrative laws.

SECTION 15. Documents and Records-Keeping Requirements. - As provided in Section 11 of this Act, the following documentary requirements shall be complied with when applying for a license or permit:

- a) Identification of the applicant's legal representatives, manager, and the person/s handling the deal;
- b) Duplicates of contract agreement and other certification documents,
- c) Technical specification of the strategic goods, items, technologies, equipment and services;
- d) Certificate of end-user and declaration of end-use/s;
- e) Documents of guarantee from the receiving party that such strategic items/goods, technologies, equipment and services which are subject of such transaction will:
 - 1) Not be used for the development, production, acquisition or stockpiling of nuclear, biological, chemical weapons or missiles capable of delivering such weapons;
 - 2) Not be used for purposes other than the declared end-use without the consent of authorized Philippine agencies; and
 - 3) Not be transferred to any third party other than the declared end user without the consent of authorized Philippine agencies.

The Bureau of Customs shall be provided with copies of all documentations mentioned.

SECTION 16. Obligations of Applicants. - Any person subject to the requirements of this Act shall keep a record of the transit, transshipment or re-export of strategic items/goods, technologies, equipment and services and all other information that may be required by the regulations for a period of five (5) years.

Any person who, in connection with an application for permit or license or registration, or being required to give any information or document to an authorized officer, gives any information that is false or misleading in a material particular; or gives any documents which gives a statement or omits any matter which renders the document false or misleading in a particular material shall suffer the penalty of reclusion correccional in its medium and maximum period or imprisonment of not less than four (4) years and not more than six (6) years and a fine not to exceed one hundred thousand pesos (Php 100,000.00).

SECTION 17. Confidentiality of Business Proprietary Information. - No information obtained as part of the license application may be disclosed to any nongovernment agency unless such disclosure is in the national security or foreign policy interest of the Philippines or the same may facilitate progress of pending investigations.

SECTION 18. Penalties for the Obstruction in the Enforcement of this Act – It shall be unlawful for any person who, without lawful excuse, commits the following acts:

- a) Refuse any authorized officer/person, acting in his assistance, access to any conveyance or premises which the authorized officer/person is entitled under this Act;
- b) Obstructs or hinders any authorized officer/person in the execution of any powers conferred upon such authorized officer/person; and
- c) Refuses to provide reasonable assistance to any authorized officer/person in the execution of any powers conferred upon such authorized officer/person in this Act.

Any person who commits any of the acts herein mentioned shall suffer the penalty of imprisonment of six (6) months to one (1) year imprisonment, a fine not to exceed fifty thousand pesos (Php 50,000.00), or both.

SECTION 19. Prosecution for the Violation of any Provision of this Act. – The following provides for the prosecution of cases for the violation of any provision of this Act:

- a) The Regional Trial Court (RTC) shall have jurisdiction to try and hear cases involving violations of this Act and its implementing regulations;
- b) The Department of Justice (DOJ) shall designate special prosecutors to exclusively handle cases in violation of this Act;
- c) The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of filing;
- d) When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the record; and
- e) Trial of the case under this Act shall be finished by the court not later than ninety (90) days from the date of filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the resolution.

TITLE IV - FINAL PROVISIONS

SECTION 20. Implementing Rules and Regulations. - The constituted Strategic Items/Goods Trade Control Council shall, in consultation with all concerned agencies, promulgate within sixty (60) days the Implementing Rules and Regulations necessary to implement the provisions of this Act.

SECTION 21. Appropriations. - The amount necessary to implement the provisions of this Act shall come from the General Appropriations Act.

SECTION 22. Suppletory Application. - For purposes of this Act, the Revised Penal Code and other applicable laws shall have suppletory application.

SECTION 23. Separability Clause. - If any portion or provision of this Act is held unconstitutional, the same shall not affect the validity and effectivity of the other provisions affected thereby.

SECTION 24. Repealing Clause. - All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 25. Effectivity Clause. -This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.

Approved,