

Kazakhstan's law "On control of specific goods": balancing economic development goals and international non-proliferation obligations

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Abstract

This article examines how Kazakhstan's 2022 strategic trade control (STC) law, "On control of specific goods", which replaces the 2007 law "On export controls", balances the country's economic development goals with the fulfillment of its international non-proliferation obligations. The article demonstrates how microeconomic policy instruments, such as various types of licensing, and reduction in the asymmetry of information tools, such as a catch-all clause, end-user certification, and Internal Compliance Program (ICP), are used to achieve regulatory compliance. Overall, the new law introduces comprehensive STCs that are more in line with international best practices. The new STC law will likely improve Kazakhstan's position in the Peddling Peril Index (PPI). However, it is also important for the government to receive industry feedback on how well the new law minimizes associated industry compliance costs and promotes stated economic development goals.

Keywords

Kazakhstan; Strategic Trade Control legislation; STC; non-proliferation; export control; Eurasian Economic Union (EAEU); Peddling Peril Index (PPI).

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Article info

Submission date: March 13, 2023. Acceptance date: April 24, 2023. Publication date: June 23, 2023.

How to cite

Anar Shaikenova, "Kazakhstan's law "On control of specific goods": balancing economic development goals and international non-proliferation obligations", *Journal of Strategic Trade Control*, Vol. 1, (June 2023). DOI: 10.25518/2952-7597.83

Publisher

European Studies Unit (ESU), University of Liège

Peer review

This article has been peer-reviewed through the journal's standard double-anonymous peer review, where both the reviewers and authors are anonymized during review.

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Open access

The Journal of Strategic Trade Control is a peer-reviewed open-access journal. Accessible at www.jost.org

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Introduction

On June 30, 2020, the Export Control and Licensing Division of the Committee for Industrial Development, under the Ministry of Industry and Infrastructure Development (MIID), introduced a draft law, "On control of specific goods", in the lower chamber of the Parliament of Kazakhstan.¹ The draft law was adopted two and half years later, signed into effect on December 28, 2022, and replaced the 2007 law "On export controls".² According to the United States Department of State Export Control and Border Security Program consultant Toomas Raba, who rendered legal assistance to the MIID:

"The new Law is a big step forward, bringing Kazakhstan legislation closer to fulfilling UNSCR 1540 requirements, and is based on international standards and best practices. The new Law strengthens the Government of Kazakhstan's competencies in export, import, transit, re-export, extraterritorial re-export, and extraterritorial brokering and technical assistance; re-establishes physical control over the movement of specific goods across the Kazakh border with

¹ O Kontrole spetsificheskikh tovarov [On control of specific goods], the Law of the Republic of Kazakhstan № 172-VII, December 28, 2022, accessed June 16, 2023, <https://adilet.zan.kz/eng/docs/Z2200000172>.

² Catherine Dill and Ian Stewart, "Defining Effective Trade Controls at the National Level," *Strategic Trade Review*, Issue 1 (Autumn 2015), pp.10-13. The authors relate strategic export controls to the adoption of laws and enforcement action to control the movement of goods, technologies, and intangible technologies with strategic importance. Strategic trade control (STC) includes all the elements of strategic export control plus border, transit, and trans-shipment controls. Thus, STC formulation not only includes control lists and licensing but also incorporates roles for the customs and intelligence services, as well as industry outreach efforts by governments. This makes STC a broader term than strategic export control, shifting the focus from controlling the movement to building a comprehensive management system for strategic items (goods, technologies, and intangible technology transfers). Meanwhile, Kazakhstan's new law is called "On control specific goods," which is a particular term used in Kazakhstan. The reason is that the term "strategic goods" is used in relation to coal, gas, fuel oil, and diesel fuel used as fuel for energy production (see Zakon Republiki Kazakhstan "Ob estestvennykh monopoliyakh," Law on natural monopolies, Article 4, accessed June 16, 2023, <https://adilet.zan.kz/rus/docs/Z1800000204>). The "specific goods" definition in the new law covers dual-use goods and includes military items and goods, controlled for national security reasons. In fact, the new law no longer has a definition of export controls, but rather introduces a new term, "control of specific goods," which is "a set of measures established by this Law and other regulatory legal acts of the Republic of Kazakhstan to comply with the requirements of the legislation of the Republic of Kazakhstan in the field of control of specific goods and international obligations of the Republic of Kazakhstan" Law №172 On control of specific goods, accessed June 16, 2023, <https://adilet.zan.kz/eng/docs/Z2200000172>.

the Eurasian Economic Union (EAEU) member states;³ introduces various export license types and legal basis for electronic licensing; introduces risks assessment criteria and strengthens liability for violation of the strategic trade control.”⁴

There has been increasing recognition of the value of an effective strategic trade control (STC) system in attracting advanced technologies and foreign direct investments. Hence, the challenge for the Government of Kazakhstan was to strengthen an STC policy, which would maximize the economic benefits and minimize the negative impacts of the regulation on the production and exporting capabilities of affected industries. Kazakhstan must also fulfill its international non-proliferation obligations regarding dual-use commodities and technologies, preventing their transfer to illicit state and non-state actors, and ensuring that items exported, imported, or transiting the country’s territory are sufficiently controlled. This article attempts to assess how well Kazakhstan’s new STC law achieves the above goals, i.e. balancing economic development goals and international non-proliferation obligations.

Following the introduction, the literature review focuses on the economic cost and benefits of introducing STC legislation. The literature review shows that this topic has not been adequately explored, especially in relation to developing and transitioning economies. The section that follows provides an overview of Kazakhstan’s STC system from a global perspective. It describes two different STC enforcement approaches depending on the bordering country’s membership status in the EAEU. Kazakhstan’s role in the global supply chain of production, import, and export of dual-use items is rather modest. However, the role that the country plays, given its geographic location and the global transit and transshipment routes passing through its territory, is very important. The focus of microeconomic analysis is a theoretical discussion of how well economic instruments and incentives are used in the law “On control of specific goods” to ensure voluntary compliance not only by producers, importers, and exporters, but also by brokers, freight forwarders, as well as intermediaries involved in extraterritorial re-export, extraterritorial brokering, and technical assistance. A comparison between the old and new laws shows that the latter is more comprehensive in terms of extending and enforcing responsibilities to all types of businesses. The

³ EAEU is an international organization, created to support regional economic integration of its member-states: the Russian Federation, the Republic of Kazakhstan, the Republic of Armenia, the Republic of Belarus, and the Kyrgyz Republic. “General Information”, Eurasian Economic Union, accessed June 16, 2023, <http://www.eaeunion.org/?lang=en#about>

⁴ Toomas Raba, email message to author, February 22, 2023.

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paper then discusses Kazakhstan's movement along various categories of the Peddling Peril Index (PPI).⁵ Finally, the paper concludes with a discussion of the hurdles to be overcome by Kazakhstan in the process of implementing its new STCs.

This research study is timely and has practical applications for the implementation and enforcement of the new law. The study will also add to STC policy studies about Kazakhstan.

Literature review

The relationship between STCs and economic benefits has been debated among scholars, industry, and the government for decades. On the one hand, proponents of introducing STCs stress the positive externalities for companies in the supply chain of dual-use items, such as increased credibility that allows attraction of international contracts in production, brokering, and shipment of these highly regulated commodities. On the other hand, overly rigid STCs impede the production and export of dual-use items. The literature review below discusses the economic reasons that deterred the adoption of STC legislation and how these reasons were either economically mitigated or politically overcome by some countries, including Kazakhstan.

First, several governments view export controls as contradictory to their primary economic goal of enhancing national wealth by promoting exports and imposing fewer export restrictions.⁶ However, Matthew Fuhrman argues that this position is overtaken by a country's political decision to introduce export controls. He then discusses the various paths countries such as the Russian Federation and India have taken to develop national STCs in compliance with the United Nations Security Council Resolution (UNSCR) 1540.⁷

⁵ The index was developed by David Albright and a group of researchers from the Institute for Science and International Security and measures the extent and performance of strategic export controls in about 200 countries (see section "Kazakhstan on the Peddling Peril Index").

⁶ Matthew Fuhrman, "Making 1540 Work: Achieving Universal Compliance with Non-Proliferation Export Control Standards," *World Affairs*, Vol. 169, Issue 3 (2008), pp.143-152.

⁷ Fuhrman, "Making 1540 Work". UNSCR 1540 requires countries to develop comprehensive STC measures on dual-use commodities to prevent the proliferation of weapons of mass destruction (WMD).

Second, export controls have originated and largely continue to be viewed by developing countries as an attempt to withhold International Technology Transfer (ITT) or knowledge extension.⁸ In the World Bank Policy Research paper on the transfer of technology to developing countries, Hoekman et al. have discussed the importance of ITT for economic development.⁹ The authors argued that developing countries rely on imported technologies as sources of new productive knowledge, and that follow-up innovation and adaptation of knowledge are essential drivers of technological change in these countries. Those opposed to export controls in developing countries have frequently accused the United States of denying technology transfers and viewed export controls as limitations to their economic development.¹⁰

Third, reluctance to adopt STC legislation could be explained, at least partially, by a lack of empirical evidence of the economic benefits of introducing STCs. The literature on quantifiable benefits and economic models is scarce. A major study on whether the adoption of STCs in developing countries facilitated or inhibited trade was conducted by Scott Jones and Johannes Karreth from the Center on International Trade and Security at the University of Georgia.¹¹ The authors analyzed trade data using fixed-effects time series regression and tracking of Advanced Technology Products (ATP)¹² flows before and after the introduction of STC laws in 14 developing and transitional economy countries. The study did not find evidence of any negative impact on trade in these countries. Yet, the authors noted a limitation of the study: only a sub-sample of ATP exports are included in the list of controlled dual-use commodities.¹³

Studies on the effects of export controls on the U.S. economy have generated contradictory results. Craig Elwell's report to the U.S. Congress examined the relationship between export controls and economic performance using a gravity model of trade data. The report concluded that the economic costs of U.S. export control legislation, calculated in

⁸ Brahma Chellaney, "An Indian Critique of U.S. Export Controls," *Orbis*, Vol. 38, Issue 3 (Summer 1994), pp. 439-456.

⁹ Bernard Hoekman, Keith Maskus, and Kamal Saggi, "Transfer of Technology to Developing Countries: Unilateral and Multilateral Policy Options," World Bank Policy Research Working Paper 3332, June 2004.

¹⁰ Chellaney, "An Indian Critique of U.S. Export Controls," pp. 439-456.

¹¹ Scott Jones and Johannes Karreth, "Assessing the Economic Impact of Adopting Strategic Trade Controls," prepared by the Center for International Trade and Security of the University of Georgia for the U.S. Department of State Bureau of International Security and Non-proliferation Office of Export Cooperation, December 2010.

¹² Advanced Technology Products are high-technology goods as defined by U.S. Census Bureau 2008. Jones and Karreth, "Assessing the Economic Impact," p. 22.

¹³ Jones and Karreth, "Assessing the Economic Impact," pp. 20-21.

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the form of static losses, were modest, given the size of the overall economy.¹⁴ However, using systems-dynamics modeling, Barry Borst found that the export license processing period prevented U.S. firms from responding promptly to foreign requests for proposals. He suggested that improved timelines would allow the firms to be more competitive.¹⁵

Other research on the impact of STCs has focused on improving governmental regulation by reducing industry compliance costs to promote industry competitiveness. A Stockholm International Peace Research Institute study noted that, "the extent and the way the companies and the sectors are affected by EU's dual-use and arms export controls vary significantly, depending on a company's size, location, product range, market structure, and shipment destination."¹⁶ The authors' policy advice on export control improvement measures emphasizes government-industry partnership through Internal Compliance Policy (ICP) adoption by the industries and its recognition by the governments to streamline dual-use exports in oil and gas; chemical, aerospace, and nuclear energy; advanced electronic and defense products; and automobile manufacturing – all sectors affected by the EU's dual-use and arms export controls.¹⁷

Given the uncertainty around the economic costs and benefits of implementing STCs, it should come as no surprise that several countries have adopted STC legislation rather recently. Singapore's journey toward its implementation of STCs changed from "hindrance" to "withstanding international pressure" to becoming the first country among Association of Southeast Asian Nations (ASEAN) members to adopt an STC system in 2003, based on its Strategic Goods Control Act (SGCA).¹⁸ The Malaysian government also shared industry-centric views, as STCs were "not something that attracted votes or increased popularity of the ruling government or opposition. The Malaysian Strategic Trade Act was not adopted until 2010."¹⁹ In 2015, the Philippines became one of the latest adopters of the STCs, with its Strategic Trade Management Act. The

¹⁴ Craig Elwell, "Analysis of Economic Costs," Congressional Research Service, the Library of Congress, February 10, 2000.

¹⁵ Barry M. Borst, "Assessing Export Control License Timelines using System Dynamics Modelling," (Ph.D. diss., George Washington University, 2012).

¹⁶ Sibylle Bauer, Kolja Brockmann, Mark Bromley, and Giovanna Maletta, "Challenges and Good Practices in the Implementation of the EU's Arms and Dual-Use Export Controls," *Stockholm International Peace Research Institute* (July 2017), p. 9.

¹⁷ Bauer et al., "Challenges and Good Practices," p. 9.

¹⁸ George Tan, "Singapore's Journey Towards Its Implementation of Strategic Trade Controls," *Strategic Trade Review*, Issue 2 (Spring 2016), pp. 90-91.

¹⁹ Mohammed Shahabar Abdul Kareem, "Implementation and Enforcement of Strategic Trade Controls in Malaysia," *Strategic Trade Review*, Issue 2 (Spring 2016), p.105.

country is in the process of introducing one of the most comprehensive laws and implementing some of the best practices in strategic trade management.²⁰ All three countries have gradually acknowledged the significance of implementing comprehensive STCs to foster continued economic growth, attract investments in high-tech manufacturing sectors, and enhance their reputation as reliable political partners.

Recognizing that STCs may vary from country to country, Catherine Dill and Ian Stewart, in their article, present a framework that differentiates effective STCs at the national level. Considering the absence of a universally recognized list of measures that countries must adopt in fulfillment of their international obligations under the UNSCR1540, the authors proposed a list of varying controls depending on a country's possession of weapons of mass destruction (WMD), its risk of becoming a diversion point, its manufacturing of "related materials," its being a transit and transshipment hub or service sector hub, or "none of the above."²¹

Kazakhstan, as a country that once had a large WMD arsenal, continues to manufacture "related materials," and is evolving as a transit and transshipment hub along the New Silk Road. It has striven to establish a comprehensive STC system since its independence in 1991. The willingness to establish comprehensive STC policies and legislation is closely tied to the country's overall commitment to supporting non-proliferation efforts and positioning itself as a global leader in nuclear non-proliferation, peace, and security.

The historical role of Kazakhstan in the global nuclear order that pre-determined its willingness to adopt comprehensive STC legislation has been well described by Togzhan Kassenova.²² The author characterizes Kazakhstan's early years of independence and nuclear diplomacy as "uniquely attuned to both non-proliferation and disarmament," given enormous environmental and health consequences, domestic public pressure, fragile sovereignty, and potential threats from powerful neighbors.²³ She points out that Kazakhstan benefited from infrastructure and expertise to develop an advanced nuclear industry. This allowed the country to pursue ambitious plans in the field of nuclear energy and nuclear cycle development, such as establishing the Low-Enriched

²⁰ Karla Mae G. Pabelina, "The Strategic Trade Management Regime in the Philippines," *Strategic Trade Review*, Issue 2 (Spring 2016), pp. 118-129.

²¹ Dill and Stewart, "Defining Effective Trade Controls," pp. 10-13.

²² Togzhan Kassenova, "Kazakhstan and the Global Nuclear Order," *Central Asian Affairs*, Vol. 1 (2014), pp.1-18.

²³ Kassenova, "Kazakhstan and the Global Nuclear Order," p. 1.

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Uranium (LEU) bank of the International Atomic Energy Agency (IAEA).²⁴ Kassenova defines the bank as Kazakhstan's contribution to the global non-proliferation regime, as the purpose behind the LEU bank was to make it available to countries on a commercial basis, thereby reducing incentives to pursue indigenous nuclear fuel cycles. She concludes that Kazakhstan is likely to continue supporting both the nuclear disarmament and non-proliferation objectives of the international community.²⁵

Last but not least, a review of academic scholarship on Kazakhstan's STC system is incomplete without mentioning the seminal work of Keith Wolfe.²⁶ In 1998, Wolfe described Kazakhstan as "still in the middle of a long process of building a functional export control system consistent with Western standards."²⁷ He noted that "the most fully developed aspect of the Kazakhstani system is the licensing process,"²⁸ and "a group of other elements which can be considered highly developed relatively for Kazakhstan, but not up to Western standards are those governing control lists, training, and bureaucratic process."²⁹ Twenty-five years later, Kazakhstan's efforts have evolved into a comprehensive STC system that is more in line with Western standards. The analysis that follows shows that Kazakhstan continues consistently and coherently improving its STC legislation, licensing, and enforcement.

Overview of Kazakhstan's strategic trade control system and its global role

This section is composed of two parts: the first part is a discussion of the role Kazakhstan plays in promoting global security and non-proliferation, given the country's geographic location and the global transit and transshipment routes that pass through its territory. The second part is an overview of Kazakhstan's STC system, which is enforced with the help of two different systems depending on the bordering country's membership status in the EAEU.

The importance of building an effective STC system in Kazakhstan is best

²⁴ Kassenova, "Kazakhstan and the Global Nuclear Order," p. 13.

²⁵ Kassenova, "Kazakhstan and the Global Nuclear Order," p. 16.

²⁶ Keith D. Wolfe, "A Work in Progress: The Development of Export Controls in Kazakhstan," Chapter 5, in Gary K. Bertsch and Suzette R. Grillot ed., *Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union* (New York: Routledge, 1998), pp.115-136.

²⁷ Wolfe, "A Work in Progress," p. 116.

²⁸ Wolfe, "A Work in Progress," p. 117.

²⁹ Wolfe, "A Work in Progress," p. 118.

explained, given the country's geographic location and the global transit and transshipment routes that pass through its territory. Kazakhstan is the 9th largest country in Eurasia and lies in the heart of the continent. Its border with the Russian Federation is 7,600 km long, which makes it the second longest border between any two countries after the US-Canadian border.³⁰ Kazakhstan also borders China, Kyrgyzstan, and Uzbekistan and shares the Caspian Sea with Iran, Azerbaijan, Turkmenistan, and Russia. Kazakhstan is a member of the EAEU together with Russia, Kyrgyzstan, Azerbaijan, and Belarus.

Kazakhstan now has to pay increased attention to the non-proliferation of dual-use goods in transit and transshipment on West China to West Europe highway project that allows cargo to travel from the "city of Lianyungang to St Petersburg in ten days, compared with the 45 days it takes by sea,"³¹ and on a rail project that allows rail cargo from the Khorgos border-crossing point on the Chinese border to reach the Kuryk marine port on the Caspian Sea in seven days.³² In light of Russia's invasion of Ukraine and sanctions imposed against Russia, the latter route, known as the Middle Corridor, has seen an unprecedented increase in traffic on both trains and trucks.³³ The volume of transit goods tripled in the first nine months of 2022 compared to the same period in 2021, while Kazakhstan's own exports increased eight times along this path.³⁴

Regarding the STC system of the Republic of Kazakhstan, specifically the actors involved and their respective roles, it comprises the following ministries and committees with various functions:

1. Ministry of Foreign Affairs (MFA) – international cooperation;
2. Department of Export Control and Licensing of the Committee for Industrial Development of the MIID – policy formulation and licensing;
3. State Revenues Committee (formerly Customs) (SRC) – implementation;

³⁰ "Length of Longest International Land Border Worldwide," Statista, accessed June 16, 2023 <https://www.statista.com/statistics/1103985/border-length-between-countries/>

³¹ Didi Tang, "China Completes New Silk Road to Europe," *The Times*, October 10, 2018, <https://www.thetimes.co.uk/article/china-completes-new-silk-road-to-europe-highway-is-part-of-belt-and-road-initiative-n89q0ll3f>.

³² "Kuryk Port Development Project", Kuryk Port Development, accessed March 3, 2023, <https://kuryk.kz/en/kuryk-project.html>.

³³ Almaz Kumenov, "Kazakhstan: Transport Routes Offer Major Potential, but Oil Addition to Remain," *Eurasianet*, last modified December 5, 2022. <https://eurasianet.org/kazakhstan-transit-offers-major-potential-but-oil-addiction-to-remain>

³⁴ Kumenov, "Kazakhstan: Transport Routes".

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4. Border Guard Services (BGS) – law enforcement;
5. Ministry of Agriculture (MA) – expertise in the identification of chemical dual-use goods;
6. Ministry of Energy (ME) – expertise in nuclear and related materials;
7. Various departments in the MIID – expertise in the identification of machinery, mining, aerospace, and oil and gas dual-use goods;
8. Ministry of Health (MH) – expertise in radiological, radioactive, and medical equipment;
9. Ministry of Defense (MD) – expertise in arms, military equipment, and munition;
10. Ministry of Finance (MF) – anti-terrorism, money laundering, and financial crimes;
11. Ministry of Internal Affairs (MIA) – investigation; and
12. Office of the General Prosecutor (OGP) – prosecution.

The first three governmental agencies: MFA, MIID, and SRC, are the three pillars of the STC system in international cooperation, policy and licensing, and implementation, respectively. The primary role in the system is given to MIID's Department of Export Control and Licensing of the Committee for Industrial Development; it is the so-called authorized agency. MIID takes on legislative initiatives and coordination roles for all the government agencies involved in the area of STCs. MIID is also responsible for updating Kazakhstan's dual-use goods control list based on the European list of controlled commodities. However, the list is not being updated systematically on an annual basis. In fact, the last update was in May 2018.³⁵

The remaining government agencies participate in the licensing review process. The level of expertise in STCs varies from agency to agency. There is also a high turnover of entry and mid-career experts in civil service. This demands constant training and re-training of government employees, especially those working in customs, enforcement, and licensing.

The implementation agency, the SRC, was created by merging the Tax Committee and the Customs Committee in 2014, with the former taking the lead in the merger. The SRC implements two different systems of

³⁵ For further discussion of Kazakhstan's control lists, see Kamshat Saginbekova, "National Controls Lists in Central Asian Countries," (Chapter 6) in *A Decade of Evolution of Dual-Use Trade Control Concepts: Strengthening or Weakening of Non-Proliferation of WMD*, ed. Michel Quentin (European Studies Unit of University of Liege, 2020), pp. 71-90.

STCs depending on the country. On the border with the “third countries”,³⁶ STC is implemented through an automated risk management system based on the preliminary customs declaration evaluating proliferation risks of goods and country destinations.

On the border with EAEU countries, the Russian Federation, and Kyrgyzstan, the implementation of STC initially presented a challenge to the SRC. After forming a single customs union in 2010, Kazakhstan withdrew its customs officers from the borders with the Russian Federation in 2011 and with Kyrgyzstan in 2015. De jure, EAEU was created to allow for the free movement of goods and people; however, de facto, each state is still responsible for fulfilling their international non-proliferation obligations. Therefore, the SRC created a Division on Export Controls in 2017, and returned its customs officers to the borders of Russia and Kyrgyzstan in 2018.³⁷ The mechanism for enforcing STC could not be based on customs code and rules, which are common to all five countries. Hence, it was created within the tax legislation to be discussed in the following paragraph. Subsequently, in 2021, the Export Control Division of the SRC was renamed as the Division of Administration of Value-Added Tax (VAT) within the EAEU. The new name reflects the division’s primary function of VAT verification and collection within the EAEU; yet, it is also responsible for implementing STCs.

The law “On control of specific goods” re-establishes Kazakhstan’s authority to control the movement of specific goods through the EAEU border. However, the mechanism of its implementation is designed through the SRC’s tax control function.³⁸ On December 31, 2020, Kazakhstan launched a pilot project and, as of April 1, 2023, it requires all companies to submit a “goods invoice”³⁹ on all shipments from Kazakhstan to the countries of EAEU.⁴⁰ The goods invoice essentially

³⁶ “Third country” is any country that is not a member of the EAEU. Kazakhstan borders with China, Uzbekistan, and through the Caspian Sea with Iran, Turkmenistan, and Azerbaijan.

³⁷ “Updated National Report of the Government of Kazakhstan to UNSCR 1540”, Permanent mission of the Republic of Kazakhstan to the United Nations, New York, December 27, 2019, <https://www.un.org/en/sc/1540/documents/KazakhstanReport27December2019.pdf>, p. 5,

³⁸ Law №172 On control of specific goods, Article 28.

³⁹ “Soprovoditelnaya nakladnaya na tovary” in Russian is a shipping document that confirms the shipment of goods to the taxpayer from the supplier in electronic form through the Informational Portal “Electronic Invoices System” that belongs to the SRC.

⁴⁰ Order №1104 of the Minister of Finance of the Republic of Kazakhstan dated November 16, 2020, on the “Rules and Timelines for Implementation of the Pilot Project on Submitting Shipment of Goods Invoice,” <https://adilet.zan.kz/rus/docs/V2000021631#z4>

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works as a customs declaration requiring the company to attach either a license for dual-use items or certification that items are not licensed for all exports/imports to and from EAEU countries. Initially designed for the effective implementation of export controls on dual-use items, the implementation of this mechanism also allows Kazakhstan to tighten control over "gray" exports in the context of sanctioned items against Russia and Belarus.⁴¹ The new STC law declares the roles of MIID and SRC in control of dual-use items passing through the EAEU borders, which was absent in the old law.⁴²

To increase its institutional ability and technical capacity in licensing, implementation, and enforcement of STCs, Kazakhstan has cooperated with the U.S. Department of State Export Control and Border Security (EXBS) program,⁴³ the U.S. Department of Energy International Non-proliferation Export Control Program (INECP);⁴⁴ the EU P2P program (implemented by BAFA in cooperation with various experts from EU member states);⁴⁵ and the International Science and Technology Center (ISTC) initiative.⁴⁶ Another important partnership that Kazakhstan has established is with the World Customs Organization (WCO) on implementing its Strategic Trade Control Enforcement Guide (STCE).⁴⁷

Kazakhstan also actively participates in two international export control regimes: the Nuclear Suppliers Group (NSG) and the Zangger Committee. In addition, Kazakhstan declared its unilateral adherence to the Wassenaar Arrangement (WA), the Australia Group (AG), and the Missile Technology Control Regime (MTCR) (see Table 1). Kazakhstan chaired the NSG plenary session during 20-21 June 2019 in Astana, which was inaugurated by President Kassym-Jomart Tokayev. The President reiterated that, "Kazakhstan has a strict and comprehensive national

⁴¹ Joanna Lillis, "Kazakhstan poised to intensify vetting of re-exports to Russia," *Eurasianet*, last modified March 22, 2023, <https://eurasianet.org/kazakhstan-poised-to-intensify-vetting-of-re-exports-to-russia>

⁴² Law №172 On control of specific goods, Article 6.

⁴³ U.S. Mission Kazakhstan, "Export Control and related Border Security Assistance", The Export Control and Related Border Security (EXBS) Program, accessed 16 June 2023, <https://kz.usembassy.gov/exbs/>

⁴⁴ "International Nonproliferation Export Control Program", Office of Global Security Engagement and Cooperation, 2008, p. 9.

⁴⁵ "EU and Kazakhstan promote control of dual-use goods in Central Asia", EEAS, June 21, 2007, https://www.eeas.europa.eu/node/28535_en

⁴⁶ "Targeted Initiative 'CBRN Export Control on Dual-Use Materials and Technologies in Central Asia'", International Science and Technology Center, accessed June 16, 2023, <https://istc.int/export-control>.

⁴⁷ "National Workshop on Strategic Trade Control Enforcement (Kazakhstan, 5 - 8 November)," World Customs Organization, November 22, 2018, <https://www.wcoomd.org/en/media/newsroom/2018/november/national-workshop-on-strategic-trade-control-enforcement.aspx>

export control system and unilaterally adheres to other international export control regimes such as the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement, of which Kazakhstan hopes to become a member at the earliest opportunity.”⁴⁸

Table 1. Kazakhstan’s Adherence to Export Control Regimes⁴⁹

Export Control Regime	Primary Purpose	Founded	Kazakhstan’s Membership/ Adherence
Nuclear Suppliers Group	Non-proliferation of nuclear weapons through controls on sensitive nuclear-related materials	1974	2002 (member)
Zangger Committee	IAEA safeguards to be compulsorily applied to nuclear exports	1971	2008 (member)
Australia Group	Non-proliferation of chemical and biological weapons through controls on certain chemicals, biological manufacturing facilities, and equipment	1985	2015 (adherent) ⁵⁰
Missile Technology Control Regime	Controls over unmanned delivery systems capable of delivering WMDs	1987	2003 (adherent) ⁵¹
Wassenaar Arrangement	Controls over transfers of conventional arms and dual-use goods and technologies	1995	2015 (adherent) ⁵²

⁴⁸ “Public Statement Plenary Meeting of the Nuclear Suppliers Group,” presented at Nur-Sultan, Kazakhstan, June 20, 2019 <chrome-extension://efaidnbmnnnibpajpglclefindmkaj/http://nuclearsuppliersgroup.org/images//2019NSGPublicstatement.pdf>

⁴⁹ Table modified from Catherine Stewart and Ian Dill, “Defining Effective Trade Controls at the National Level,” *Strategic Trade Review*, Issue 1 (Autumn, 2015), p.2.

⁵⁰ The list of Australia Group Adherents can be found here: <https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/adherents.html>.

⁵¹ The list of adherents to the MTCR regime can be found here: [https://mtcr.info/partners/MTCR Partners – MTCR](https://mtcr.info/partners/MTCR%20Partners%20-%20MTCR).

⁵² Kazakhstan is a unilateral adherent to the WA, according to the official statement of the delegation of Kazakhstan at the Sixth Conference of States Parties to the Arms Trade Treaty (August 17-21, 2020, Geneva). [chrome-extension://efaidnbmnnnibpajpglclefindmkaj/https://thearmstradetreaty.org/hyper-images/file/KAZAKHSTAN%20Statement%20by%20the%20delegation%20of%20Kazakhstan_ATT%20\(002\)/KAZAKHSTAN%20Statement%20by%20the%20delegation%20of%20Kazakhstan_ATT%20\(002\).pdf](chrome-extension://efaidnbmnnnibpajpglclefindmkaj/https://thearmstradetreaty.org/hyper-images/file/KAZAKHSTAN%20Statement%20by%20the%20delegation%20of%20Kazakhstan_ATT%20(002)/KAZAKHSTAN%20Statement%20by%20the%20delegation%20of%20Kazakhstan_ATT%20(002).pdf)

Kazakhstan's law "On control of specific goods": balancing economic development goals and international non-proliferation obligations

Microeconomic policy tools used in the law "On control of specific goods"

An economic justification for the necessity of adopting a new STC law was elaborated in the Concept of the Kazakhstan draft law,⁵³ an explanatory note addressed to the parliamentarians:

"...noting a growing legal trade in dual-use goods and arms, which is important for the economic growth of the Republic of Kazakhstan. Import of dual-use goods and arms and access to leading technologies of foreign supplier countries will contribute to the strengthening of key industrial sectors, such as mining, machine-building, aerospace, and informational technologies. International experience shows that national export controls corresponding to international standards help countries acquire leading technologies, secure foreign direct investments, and promote exports."⁵⁴

This justification demonstrates the presence of economic goals related to stimulating the domestic economy and facilitating technological knowledge transfer, as opposed to the 1996 and 2007 versions of STC laws, which were limited to security and foreign policy goals. This is in line with the global trend of changing STC policy goals from pure security and preservation of power hegemony to integration in global supply chains, the attraction of foreign direct investment, and access to advanced technologies.

Meanwhile, Kazakhstan is characterized by the low economic complexity of industries (ECI). The country has lost its competitive advantage across several industries, and its industrial complexity decreased in 2020 compared to the beginning of the 2000s, dropping from 34th to 72nd place in the ECI index.⁵⁵

As such, the country exports strategic minerals and ores rather than commodities with high product complexity. Kazakhstan is one of the largest global exporters of uranium and a big exporter of precious metals such as beryllium and tantalum. These commodities are used in missile production, industrial explosives, fertilizers, and other hazardous chemicals. According to Kazakhstan's country profile composed as part of the Strategic Trade Atlas by the European Commission's Joint Research

⁵³ Concept to the development of the draft law "On control of specific goods," Ministry of Industry and Infrastructure Development, Astana, 2019.

⁵⁴ Concept to the development of the draft law, translated by Anar Shaikenova.

⁵⁵ "Kazakhstan's ECI country profile," accessed March 5, 2023, <https://oec.world/en/profile/country/kaz/>.

Center (JRC) for 2015-2019, the country's Revealed Comparative Advantage (RCA) in the exports of strategic commodities is the highest in Natural Uranium (2844.10), Enriched Uranium, and Plutonium (2844.20), followed by Uranium and Thorium ores and concentrates (HS 2612), Specialty Steels (HS 7224), Tantalum Crucibles (HS 8103), and Beryllium (HS 8112). Strategic commodities represent 5% of the country's total export volume and place Kazakhstan 40th in terms of the exports of strategic commodities worldwide.

Kazakhstan is a bigger importer of strategic commodities than an exporter. The share of strategic commodity imports in the country's total imports stands at 8% for 2015-2019, placing the country in the 51st place as an importer of global strategic commodities. The nomenclature of imported items is also much wider. However, the main categories in descending order by volume are as follows: unmanned aerial vehicles and spacecraft (HS 8802), valves (HS 8481), pumps (HS 8413), turbojet and turbofan engines (HS 8411), and specialty steels (HS 7224, 7225, 7226, 7228, 7304.51, 7304.59).

To achieve a comprehensive STC, the government relies on two microeconomic policy tools based on international best practices in this area: 1) licensing and 2) policies to reduce information asymmetry on dual-use transactions.⁵⁶ In case of STCs, licensing has been the preferred public policy tool restricting market entry and competition to only qualified and trusted companies for control of production, shipment, transshipment, exports, and imports of dual-use goods. The policies for reducing information asymmetry in dual-use transactions complement the licensing procedures. These include regulations related to catch-all controls, end user certification, and ICP.

A major change in the law is that it introduces a new license type: a bulk/general license that the applicant company may use during a certain period for dispatching pre-approved commodities to pre-approved destinations.⁵⁷ A bulk/general license is an addition to an individual

⁵⁶ Ivy Wigmore gives a definition of Information asymmetry in negotiations as "an imbalance between two parties in their knowledge of relevant factors and details. Typically, that imbalance means that the side with more information enjoys a competitive advantage over the other party". Ivy Wigmore, "Information Asymmetry", TechTarget, accessed June 16, 2023, <https://www.techtarget.com/whatis/definition/information-asymmetry#:~:text=Information%20asymmetry%20is%20an%20imbalance,advantage%20over%20the%20other%20party>. The concept applies to regulatory acts as the STC Law, where information asymmetry exists between the government, the regulator, and the companies.

⁵⁷ Law №172 On control of specific goods, Article 11.

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license that determines single transactions for single commodities, where the applicant must indicate a destination, route, and carrier type. While individual licenses are reserved for sensitive-to-proliferation commodities, bulk/general licenses are issued for less-sensitive commodity types and larger volumes of goods that companies may ship throughout the year in partial shipments. This license type could be used by large companies, which have large volumes and established partners with predictable demands throughout the year. This license type also benefits industries with single products and repeated transactions.

The law also strengthens controls in extraterritorial intermediary services and technical assistance. Thus, in addition to transit and extraterritorial re-export permits, according to Articles 13-15, MIID will now issue three new permits on "extraterritorial intermediary services or technical assistance," "permit for the transfer of imported specific goods to the third parties in the territory of the Republic of Kazakhstan," and "permit for technical assistance services."⁵⁸ The adoption of these three new permits, legal responsibilities, and punitive actions (Articles 15 and 34) is what makes the new law more comprehensive compared to the old law, with regard to encompassing the activities of intermediaries, brokers, freight forwarders, and technical assistance providers.

The new law establishes effective licensing control. It establishes rigid requirements for companies, starting from the provision of the company's legal documentation to the requirement of having a license for a particular economic activity such as uranium mining. The documents are submitted online via an efficient e-licensing system. The system ensures transparency and strict consideration of license review dates for the applicants by the governmental agencies involved in the license review. Another important change is that the law introduces a "security-based criteria" license review process, which is also a basis for the rejection of license applications.⁵⁹ All transaction records on dual-use items are subject to five-year storage, and some licensees may be required to report to the licensor on a biannual basis. Finally, companies are subject to administrative or criminal charges for non-compliance with the law "On control of specific goods."

The new law introduces policy tools to decrease the asymmetry of information between the licensor and the licensee, inherent in the principal-agent dilemma. These include the following: a catch-all clause (Article 24); end-user certification (Article 12); and ICP (Article 17). They

⁵⁸ Law №172 On control of specific goods, Article 8.

⁵⁹ Law №172 On control of specific goods, Articles 8, 21, 22, 23, and 28.

existed in the 2007 law “On export controls” and were retained in its 2022 version.

Every law in Kazakhstan that impacts the business environment goes through Regulatory Impact Assessment (RIA)⁶⁰ scrutiny along with the industry and business associations. The stakeholder consultations that take place during the RIA procedure allow industries to voice their concerns about the regulatory burden of proposed regulations, such as clarity versus ambiguity of the law, financial expenditures, time required for the preparation of qualifying documents, excessive documents requirements, and efficiency of the license application review.

However, some laws are exempt from RIA scrutiny, including the law “On control of specific goods” on the grounds of national security considerations. Therefore, it is extremely important for the government to launch an industry outreach program shortly after the implementation of the law, in order to monitor if the new law is effective in minimizing associated industry compliance costs and facilitating trade.

Kazakhstan on the Peddling Peril Index

Kazakhstan has been steadily improving its position on the PPI since 2017 (see Table 2). The index was developed by David Albright and a group of researchers from the Institute for Science and International Security and measures the extent and performance of strategic export controls in about 200 countries.⁶¹ Countries are assessed in the following five areas: 1) international commitment to preventing strategic commodity trafficking; 2) comprehensive STC legislation; 3) ability to monitor and detect strategic trade; 4) ability to prevent proliferation of financing; and 5) adequacy of enforcement against strategic commodity trafficking. For purposes of comparison, the countries are also divided into three tiers, based on similarity in supply potential, economic development, and other measures. Kazakhstan is a Tier One country, which includes “those nations that can supply, at least partially but significantly, the wherewithal to make nuclear weapons, other WMD, or the means to deliver them.”⁶²

⁶⁰ Entrepreneur Code of the Republic of Kazakhstan (unofficial translation), accessed June 20 <https://adilet.zan.kz/eng/docs/K1500000375>, Article 83.

⁶¹ David Albright, Sarah Burkhard and Andrew Stricker, “Peddling Peril Index (PPI) for 2019/2020,” Institute for Science and International Security, May, 2019.

⁶² Albright, Burkhard, and Stricker, “Peddling Peril Index,” p. 107.

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Table 2. Kazakhstan’s Position in the Peddling Peril Index, 2017-2021⁶³

Years	PPI Rank	Total Score (1300 total)	International Commitment (100 total)	Legislation (200 total)	Ability to monitor and detect strategic trade (200 total)	Ability to prevent proliferation financing (400 total)	Adequacy of enforcement (400 total)
2017	58	598	73	163	71	10	280
Percentage Achievement		46%	73%	81.5%	35.5%	2.5%	70%
2019	48	657	77	160	96	106	218
Percentage Achievement		50.5%	77%	80%	48%	26.5%	54.5%
Percentage Change		+3.5%	+4%	-1.5%	+12.5%	+24%	-15.5%
2021	52	724	80	150	124	115	255
Percentage Achievement		55.7%	80%	75%	62%	28.7%	63.7%
Percentage Change		+5.2%	+3%	-5%	+14%	+2.2%	+9.2%

As Table 2 shows, Kazakhstan’s 2019 PPI position relative to 2017 improved in “ability to monitor and detect strategic trade” and “ability to prevent proliferation financing” categories. Yet, the country’s position in “adequacy of enforcement” deteriorated substantially in 2019. The authors recognize the relative “ease” of improving “international commitment” and “legislation”, where Kazakhstan scored above 75% of total scores in 2019 and 2021. However, higher-weight categories that convert “international commitment” and “legislation” into a country’s tangible “abilities to monitor and detect strategic trade”, “counter-proliferation financing”, and “enforcement” are not that easily attainable. The authors note that the improvements in these categories require countries to demonstrate “systematic and long-term improvements”.⁶⁴ Also, high levels of national corruption can inhibit its standing; corruption scandals, especially among customs officers, have frequently made news in Kazakhstan.⁶⁵

Kazakhstan’s position in 2021 relative to 2019 improved in lagging categories: “the ability to monitor and detect strategic trade” and “adequacy of enforcement.” During the two-year period from 2019-2021, there was a noticeable improvement in collaboration among the agencies

⁶³ Calculated from Kazakhstan’s PPI rankings for 2017, 2019-2020, and 2020-2021.

⁶⁴ Albright, Burkhard and Stricker, “Peddling Peril Index”, p. 35.

⁶⁵ Several customs officers were found guilty of corruption scandals related to border-crossing on the border with China.

involved in the STC system of Kazakhstan. In 2019, the first court case was filed by MIID, based on intelligence data received from the SRC.⁶⁶ The issue became known through a social media post, which triggered a customs post-clearance audit, based on which the licensing agency MIID was able to file a lawsuit. MIID won the case against a company that lacked an import license. The court ordered the company to pay an administrative violation fine. This very first case in STC enforcement is highly significant – it not only demonstrates “the ability of Kazakhstan to monitor and detect strategic trade” but also demonstrates its “adequacy of enforcement” through interagency collaboration under the rule of law. During the next PPI index report, it is likely that the adoption of a comprehensive law “On control of specific goods” will enhance Kazakhstan’s PPI position in the “legislation” category.

Conclusion

Twenty-seven years ago, Kazakhstan joined the international strategic trade system by adopting its first law “On export control.” Since then, the country has become a member of two international export control regimes, developed a complex intergovernmental STC system, strengthened STCs on the EAEU border, and updated its legislation three times. Kazakhstan is highly committed to honoring its international security and non-proliferation commitments under UNSCR 1540. However, the country’s efforts in timely update of control list, continuous personnel training, and streamlining bureaucratic processes are a work in progress.

In summarizing economic policy alternatives proposed by the law “On control of specific goods,” it is evident that licensing and permits are principal instruments in international trade transactions for getting companies to meet established non-proliferation criteria. The law introduces a new license type that allows companies more flexibility and loosens the rigidity of the licensing process. Three new permits now regulate intermediary, brokering, and technical assistance compliance with STCs. It is also important to launch an industry outreach program to monitor the effectiveness of the new law in minimizing associated industry compliance costs, incentivizing domestic production to become a part of global supply chains, and facilitating trade.

Overall, the law on “On control of specific goods” introduces comprehensive STCs that are more in line with international best

⁶⁶ In a conversation with the author on June, 2019, MIID and SRC officials.

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practices. The law recognizes the value of an effective strategic trade management system in fulfilling Kazakhstan’s international nonproliferation obligations, securing proper STCs of export, import, transit, and transshipment through the country’s territory while preventing their transfer to illicit state and non-state actors.