

Information Circular

INFCIRC/636

Date: 23 November 2004

General Distribution

Original: English

Pakistan's national legislation entitled: "Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004"

1. The Director General has received a letter from the Permanent Mission of Pakistan, dated 4 November 2004, concerning Pakistan's national legislation entitled "Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004".
2. As requested by the Permanent Mission of Pakistan, the letter and the Export Control Act of 2004, are reproduced herein for the information of the Member States.



AMBASSADOR

PERMANENT MISSION OF PAKISTAN
TO THE INTERNATIONAL
ORGANIZATIONS
VIENNA

No.UN-6/04/IAEA

Dear Director General,

I have the honour to submit, on behalf of my Government, a copy of Pakistan's national legislation entitled "Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004" (please see attached). The legislation entered into force on September 23, 2004, after its adoption by the Parliament and approval by the President of Pakistan.

2. Pakistan shares the international concern regarding threats posed by proliferation of weapons of mass destruction and is fully committed to the objectives of non-proliferation. The new Export Control Act is a major step towards the realisation of these objectives.

3. The purpose of the Export Control Act is to further strengthen controls on export of sensitive technologies, goods, materials and equipment related to nuclear and biological weapons and their means of delivery. Pakistan already has necessary legislation in place for control of transfers relating to chemical weapons, materials and technologies.

4. The salient elements of the new Export Control Act include:-

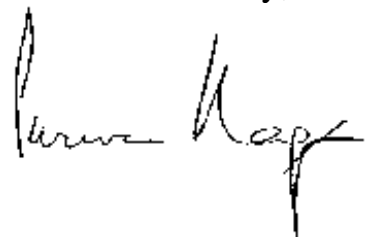
- Controls over export, re-export, transshipment and transit of goods, technologies, material and equipment covered. Prohibition of diversion of controlled goods and technologies.
- Wide jurisdiction (also includes Pakistanis visiting or working abroad).

- Envisages an authority to administer rules and regulations framed under this legislation. Also provides for the establishment of an Oversight Board to monitor the implementation of this legislation.
- Comprehensive control lists and catch all provisions.
- Licensing and record keeping provisions.
- Penal provisions: Up to 14 years imprisonment and Rs.5 million fine or both, and on conviction offender's property and assets, wherever they may be, shall be forfeited to the Federal Government. Right of appeal provided for.

5. I would be grateful if you could arrange for the circulation of this letter and the enclosed Export Control Act, 2004, to all the IAEA Member States as an INFCIRC document as a manifestation of Pakistan's support for the objectives of non-proliferation as well as the Statutory responsibilities of the IAEA.

Accept, Sir, the assurances of my highest consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ali Sarwar Nagvi', written in a cursive style.

(Ali Sarwar Nagvi)

Dr. Mohamed ElBaradei,
Director General,
International Atomic Energy Agency (IAEA),
Vienna.

The Gazette  **of Pakistan**

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, MONDAY, SEPTEMBER 27, 2004

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 25th September, 2004

The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 23rd September, 2004, is hereby published for general information:

ACT No. V OF 2004

to provide for export control on goods; technologies, material and equipment related to nuclear and biological weapons and their delivery systems;

WHEREAS the Islamic Republic of Pakistan--

- (a) is determined to safeguard its national security and foreign policy objectives and to fulfill its international obligations as a responsible nuclear weapon State;
- (b) as a party to the Chemical Weapons Convention has promulgated the Chemical Weapons Convention Implementation Ordinance, 2000 (LIV of 2000); and

(111)

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[812 (2004)/Ex.Gaz.]

- (c) is committed to prevent proliferation of nuclear and biological weapons and missiles capable of delivering such weapons;

AND WHEREAS to achieve the aforesaid objectives it is necessary to strengthen controls on the export, re-export, transshipment and transit of goods and technologies, material and equipment related to nuclear and biological weapons and missiles capable of delivering such weapons;

AND WHEREAS it is expedient to provide for export control on, goods, technologies, material and equipment related to nuclear and biological weapons and their delivery systems;

It is hereby enacted as follows:

1. Short title, extent, application and commencement.--(1) This Act may be called the Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004.

(2) It extends to the whole of Pakistan.

(3) It applies to--

- (a) every citizen of Pakistan or a person in the service of Pakistan within and beyond Pakistan or any Pakistani visiting or working abroad;
- (b) any foreign national while in the territories of Pakistan; and
- (c) any ground transport, ship or aircraft registered in Pakistan wherever it may be.

(4) It shall come into force at once.

2. Definitions.-- In this Act unless there is anything repugnant in the subject or context.--

- (a) "basic scientific research" means theoretical- or experimental work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts;
- (b) "biological weapon" means any weapon designed to kill or harm or infect people, animals or plants on a large scale through effects of the infectious or toxic properties of a biological warfare agent;

- (c) "delivery system" means missiles exclusively designed and adapted to deliver a nuclear or biological weapon;
- (d) "development" means any activity or phase prior to production and may include or relate to design research, design analysis, design concept, assembly and testing of prototypes, pilot production schemes, design data, the process of transforming designed data into product, configuration design and integration design or layout;
- (e) "equipment" means an assembly which may, comprise electrical, electronic, mechanical, chemical and metallurgical components, including those used in manufacturing or pilot plants, used in the production of nuclear and biological weapons;
- (f) "export" means--
 - (i) shipment, transfer or transmission of goods or technology out of the territory of Pakistan; and
 - (ii) a transfer of goods or technology within Pakistan with the knowledge or intent that the goods or technology will be shipped, transferred or transmitted to an unauthorized recipient outside Pakistan;
- (g) "goods" means any article natural or man-made substance, material supply or manufactured product, including inspection and test equipment except technology;
- (h) "material" means materials used in the production of nuclear and biological weapons and their delivery system;
- (i) "nuclear weapon" means any weapon designed to kill or cause destruction or harm people on a large scale through the effects of a nuclear explosion;
- (j) "*re-export*" means export of an item from any end user State or entity after having imported any goods or technology covered under this Act from Pakistan to any other State or entity;
- (k) "services" means providing training and technical assistance including intangible transfer such as disclosure of technical data relating to the purposes of this Act;

- (1) "technology" means any documents including blueprints, plans, diagrams, models, formulae, tables, engineering designs or specifications, manuals or instructions, necessary for the development and production of nuclear or biological weapons and their delivery systems, including on-the-job training, expert advice and services attached therewith except--
- (i) any document or information that is in the public domain or is related to basic scientific research and other peaceful applications of such technology including that related to its application for protective purposes; and
 - (ii) any application of the grant of a patent or any other form of protection for inventions or for the registration of a design in each case under the law of the Islamic Republic of Pakistan or any other country or under any treaty or international conventions to which Pakistan is a party or any document necessary to enable any such application to be filed, made or pursued;
- (m) "transit" means transportation through the territory of Pakistan by land, air or amphibious means of transportation; and
- (n) "transshipment" means shipment through ports of Pakistan.

3. Authority.--(1) For the purposes of this Act, the authority rests with the Federal Government and the Federal Government, as and when necessary, may--

- (a) make such rules and regulations as are necessary for implementation of this Act;
- (b) delegate authority to administer all activities under this Act to such Ministries, Divisions, Departments and Agencies as it may deem appropriate;
- (c) establish a government Authority to administer export controls established under this Act;
- (d) designate the agency or agencies authorized to enforce this Act;
- (e) establish an Oversight Board to monitor the implementation of this Act; and
- (f) require licenses for exports from Pakistan of goods and technology, and the re-export of goods and technology that originated in Pakistan.

(2) Officials of the designated agency or agencies are authorized to inspect consignments declared for export and review, acquire or confiscate records of persons engaged in the exporting or holding an export license under this Act, with the same powers in respect of exports in contravention of any provision of this Act. The Federal Government may vest any investigatory powers and powers of arrest authorized by law in officials of the customs administration or other appropriate agencies.

4. Control Lists.--(1) The Federal Government shall maintain Control Lists, to be notified separately, of goods and Technologies subject to licensing requirements under this Act.

- (2) The control lists shall be reviewed periodically, and revised or updated, as required by the Federal Government and notified accordingly.
- (3) The Federal Government shall notify all licensing requirements and procedures.
- (4) The Federal Government shall control export, *re*-export, transshipment, transit of goods, technologies, material and equipment, subject to the provisions of this Act, which may contribute to the designing, development, production, stockpiling, maintenance or use of nuclear and biological weapons and their delivery systems.
- (5) Nothing in this Act shall be construed to restrict or prohibit basic scientific research in Pakistan or other peaceful applications or relevant technologies.

5. Licensing.--(1) The Federal Government shall frame and notify the licenses required under this Act, and also adopt and notify the procedures under which such licenses shall be approved or rejected.

(2) Licenses for export of goods and technologies for peaceful applications may be approved unless the Government determines that the export would be in contravention of the provisions of this Act.

(3) An exporter is under legal obligation to notify to the competent authority if the exporter is aware or suspects that the goods or technology are intended, in their entirety or in part, in connection with nuclear or biological weapons or missiles capable of delivering such weapons.

(4) Nothing in this Act shall be taken to prohibit the export of licensed goods and technology, provided that all conditions attached to the said license are complied with.

6. Record keeping.--(1) All exporters shall maintain records of all transactions and report these to the designated authorities.

(2) Any Government agency or department involved in export licensing procedure shall keep records of their recommendations and decisions. Such records shall be made available to other agencies or departments involved in export licensing, upon request.

7. Offences, etc., to be tried by a Court of Session.-- Any person who contravenes any provision, or attempts to commit or abets the commission of an offence, under this Act or any order, rules and regulations framed thereunder shall be tried by a Court of Session only upon complaint in writing made by an officer of the Federal Government authorized in this behalf by the. Federal Government.

8. Offences and penalties.--(1) Any person who contra any provision of this Act or any order, rules and regulations framed thereunder, or provides false information concerning matters governed by this Act to any of the agencies responsible for administering this Act, shall be guilty for an offence punishable on conviction by imprisonment for a term which may extend to fourteen years, or with fine not exceeding five million rupees or both, and, on conviction offender's property and assets, wherever they may be, shall be forfeited to the Federal Government.

(2) Any person who attempts to commit or abets the commission of an offence under this Act shall be proceeded against in the manner as if he had committed such an offence.

(3) In case the offence is not serious for criminal proceedings, administrative actions, which may be determined from time to time, shall be taken against the individuals contravening any provision of this Act.

9. Appeal.-- Any person sentenced under this Act may within thirty days of the decision prefer an appeal before the High Court having jurisdiction.

10. Diversion of controlled goods or technologies to unauthorized use.-- Whenever the Federal Government determines that a recipient of controlled goods or technologies has knowingly diverted these goods or technologies to unauthorized use in violation of the conditions of an export license issued by, the Government of Pakistan, the Federal Government or officials of the appropriately designated agency may deny—

- (a) further export to that recipient of goods or technologies for a specified period for each offence; or

- (b) the recipient the privilege of exporting products into Pakistan for a specified period for each offence.

11. Act not to derogate from other laws, etc.-- The provisions of this Act shall be in addition to, and not in derogation of, any law, rules, orders or notifications for the time being in force.

RAJA MUHAMMAD AMIN,
Acting Secretary.