



Implementing Strategic Trade Controls in Asia Pacific

**A Conference Report of the
Workshop on Strategic Trade Controls
By David Santoro**

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Pacific Forum CSIS

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The views expressed here represent personal impressions and reflections of the program participants as interpreted by the rapporteurs; they do not necessarily represent the views of the relevant governments, or the co-sponsoring or parent organizations and institutes. Comments regarding specific presentations reflect the rapporteurs interpretations of actual comments made. As such, they should not be directly attributed to the individual presenters.



Conference Report

By David Santoro

The Pacific Forum CSIS, National Chengchi University's Institute for International Relations, and the Prospect Foundation, with support from the US Department of State's Export Control and Related Border Security (EXBS) Program and the Taiwan Ministry of Foreign Affairs, held an Asia-Pacific dialogue on strategic trade controls (STC) in Taipei, Taiwan on November 5-6, 2015. Some 32 experts, officials, and observers from throughout the Asia Pacific and beyond attended, all in their private capacity. The off-the-record discussions covered recent STC developments; control lists and trade management of strategic goods; free trade zones (FTZ); transit, transshipment, and brokering; intangible transfers of technology (ITT); the interface between licensing and detection; and regional cooperation on STC issues. This report represents the view of its authors; it is not a consensus document.

Recent development in strategic trade controls

Chin-hao Huang (*Yale-NUS College*) gave an overview of STC implementation in the Asia Pacific. While some states have sophisticated regimes (Japan, South Korea, Singapore, Malaysia), others lag behind (Thailand, Vietnam, Philippines, Indonesia). The least advanced states are making progress, however. In August 2014, for instance, the Philippine finally passed its Strategic Trade Management Act; the process took a long time to be concluded because domestic and industry support had to be built, as the Filipino representative pointed out. Meanwhile, Thailand and Vietnam are working to improve management of dual-use items as well as enhancing detection and enforcement practices. Indonesia, however, has developed draft laws for each weapon category but focuses its attention on the major nonproliferation treaties; it does not want to adopt a specific STC regime, despite the gaps and limitations of these treaties. Looking ahead, regional states interested in implementing STC should move toward streamlining legislation to facilitate enforcement, adopting the EU control lists, and establishing clearer lines of authority among relevant agencies. Challenges remain, of course. Capacity to implement controls and ensure compliance is often in short supply, notably for newcomers.

Seema Gahlaut (*University of Georgia*) focused on the developments associated with implementation of United Nations Security Council Resolution (UNSCR) 1540 and its effects in Asia. Since its adoption in 2004, UNSCR 1540 has helped build momentum to make progress toward the prevention of proliferation and terrorism. In Asia, this has translated into the establishment of the ASEAN Regional Forum Inter-sessional Meeting on Nonproliferation and Disarmament and the ASEAN Convention on Counter-Terrorism, among other initiatives. These efforts at the official level have been supported by effective track-II efforts, especially the work of the Council for Security Cooperation in the Asia Pacific (CSCAP), including its memorandum on "Guidelines for Managing Trade of Strategic Goods" (2009). Looking to the future, the UNSCR 1540 Committee will continue to scrutinize gaps in STC systems in Asia. Particularly useful would be to continue engagement with legislators, industry, and academia; pursue efforts to develop

cost- and time-efficient tools for data-sharing at the national and regional levels; further integrate STC with trade facilitation measures; and develop significant capacity for (and give authority to) the office of the UNSCR 1540 point of contact.

Control lists and managing trade in strategic goods

Ian Stewart (*Project Alpha, King's College London and EU Outreach Program on Dual-Use Goods*) provided an overview the EU review of its control lists, which was recently completed. The review was intended to address new and evolving threats, including new technologies, cyber threats, and the potential abuse of “open” scientific research. Another goal was to address the problem posed by the rise of global value-chains in dual-use industries and the increasing blur between civilian-military duality. Adjusting to the evolving environment appeared critical to enhance human security, act faster and smarter on STC implementation (by building an “EU Technological Reaction Capacity,” i.e., a more transparent and inclusive consultation process), and simply modernize controls. Ultimately, this will help level the global playing field on STC. This begins with a harmonization of EU controls (based on a common risk management framework), the creation of more convergence in catch-all controls, and improvement of intra-EU transfer controls. It also involves the development of an efficient EU control network across all relevant EU agencies and expanding and deepening partnerships with the private sector. In the immediate term, the EU review will mainly affect EU member states. Dialogue with non-EU member states, however, has started. It has focused on explaining the extent and implications of the review, notably the impact on control list updates; this effort has been spearheaded by the EU Outreach Program on Dual-Use Goods.

Norah Huang (*Prospect Foundation, Taipei*) explained that Taiwan, Singapore, Hong Kong, and Malaysia have adopted the EU control lists; significantly, and as is the case of other countries that opt for the EU lists, Taiwan adopted the elements of the lists that fit its profile, but not everything included in the lists. Taiwan introduced them into its STC program in 2009. Taiwanese authorities then updated their list in 2014, following the revision of the EU control list of dual-use. While the EU lists offer numerous advantages to states interested in adopting STC (in particular, as one participant has stressed, that they cover 99 percent of what needs to be covered), implementation challenges remain to adapt them to local needs. Particularly difficult is to follow the EU revision cycle and making updates to the local lists in a timely manner. As a consequence, it is important for the European Union to conduct workshops to explain the development of its EU technological reaction capacity, how to de-control items that have become obsolete, procedures for controlling cyber-tools and dual-use research, and enhancing ITT traceability and enforcement. Also, it is paramount for the European Union to provide more resources to implement control of cyber-tools and pre- and post-transfer control on ITT.

Free trade zones

George Tan (*Global Trade Security Consulting*) stressed that FTZs are a particular class of economic zones where goods may be landed, handled, manufactured or reconfigured, and re-exported with minimal intervention by local customs authorities. Only when goods are moved to consumers within the country in which the zone is located do they become subject to the prevailing customs duties. FTZs are generally located near major seaports, airports, and borders, i.e., areas with many geographic advantages for trade. FTZs have numerous benefits: they offer tax-free/relief services, are foreign-investment friendly and serve as a hub for international trade, and contribute to the development of strong industrial structures. States with STC programs do require license/permit to export strategic goods and technologies. Yet FTZs often include fewer controls. An especially weak point of controls is in transit and transshipment activities. As a consequence, it is critical for states to have STC programs that define requirements in FTZs: not only licensing requirements, but also provisions to deal with transit and transshipment and other activities, such as brokering and ITT. Government control over FTZs must also be complemented by enterprise control. Companies should have robust internal compliance programs, for instance.

Rajiv Nayan (*Institute for Defense Studies and Analyses, New Delhi*) discussed FTZs in South Asia, stressing that Prime Minister Modi is encouraging their development to boost the region's output, particularly in high-tech industry. There are many problems, however, because most South Asian countries are yet to ratify international conventions for cross-border movements of goods and vehicles and because rules, regulations, and standards are not harmonized. As a consequence, at present, FTZs present important proliferation risks in South Asia. Nevertheless, in Indian and Pakistani FTZs, licenses *are* required and reporting mechanisms exist when it comes to trade of strategic goods.

Confusion remains about what FTZs are, the types of FTZs that exist, and how/if STCs are systematically implemented in such zones. Some participants suggested that mapping Asia's FTZs and identifying their level of openness and regulations would be helpful. Others, however, pointed out that it would be more productive to ensure that all states include provisions in the STC systems that controls also apply to FTZs.

Transit, transshipment, and brokering

Mohamed Shahabar Abdul Kareem (Independent Consultant, Kuala Lumpur) discussed national controls in Malaysia over transit, transshipment, and brokering activities. He explained that no changes or new developments have been undertaken in exports, transit, and brokering since the adoption of the 2010 Strategic Trade Act. Meanwhile, some recent amendments are being proposed to tighten the Free Zone Act of 1990 to more effectively control transshipment from free commercial zones at seaports and airports, which until now have been under minimal customs authority.

After summarizing the key features of Taiwan's STC program, Kuoping Huang (*Ministry of Finance, Taipei*) explained how transshipment goods are handled in

Taiwan's ports. He stressed that except for some specific items, most transshipment goods are not subject to detailed commodity description, making customs enforcement difficult. Also at issue is that it takes time to verify whether goods fall under the umbrella of Taiwan's STC program. As a result, customs intervention is always delayed and often causes financial loss for exporters. This creates a lot of pressure on the Customs Bureau to avoid inspections if at all possible.

Intangible transfers of technology

Jay Nash (*SECURUS Strategic Trade Solutions*) began by distinguishing between tangible and intangible transfers of export of technology. While the former refers to sending things such as hard-copy blueprints or diagrams, a model, or technical data on a USB drive from a country to another, the latter involves sending or transmitting technology from a country to another via electronic (email, fax) or oral (phone) means, or making it available for electronic access. Of note, the provision of "technical assistance" may also be a form of ITT. In the Asia Pacific, the following countries have embedded ITT controls in their STC systems: Australia, China, India, Japan, South Korea, Malaysia, New Zealand, the Philippines, and Singapore. The quality of these controls varies considerably, however. More often than not, for instance, controls exist on electronic and/or "territory-origin" transfers. In some countries, controls are limited to "deemed" exports, while others have controls on transfers of technology distinct from STC systems, particularly in the area of encryption. The key issues and challenges associated with ITT controls include establishing and determining what/when technology is required/necessary, cloud computing, determining the cost on international technology cooperation, and, above all, enforcing these controls. Improving ITT controls in the Asia Pacific requires a gradual movement toward ITT STC harmonization (starting with common definitions and standards over what technology needs to be controlled), the establishment of programs to promote legitimate, productive intra-regional technology transfers, industry outreach, and enforcement training.

Tristan Volpe (*Carnegie Endowment for International Peace*) presented the findings of the paper "3-D Printing the Bomb? The Nuclear Nonproliferation Challenge" that he co-wrote with Matthew Kroenig and published in the fall 2015 issue of *The Washington Quarterly*. Taking stock of the revolution in manufacturing underway as a result of the Additive Manufacturing (AM) or, in laymen's term, 3D-printing, he explained that this development may make it easier for countries to acquire nuclear weapons and more difficult for the international community to detect and stop them. Yet the analysis suggests that the proliferation potential of AM has not yet fully materialized and, as a result, that it is good timing for concerned parties (chiefly the United States) to initiate and lead an international effort to prevent an AM-enabled proliferation cascade. This effort requires a strategy that combines bottom-up initiatives of expert working groups and top-down attention from the highest levels of national governments and international organizations, which, together, should work to create new multilateral frameworks, update existing control regimes, and develop technical fixes allowing the world to reap the benefits of AM while mitigating its proliferation dangers.

Controls over ITT and AM are problematic to control and there is little agreement as to whether effective controls can be implemented in a comprehensive manner. In Asia, particularly Southeast Asia, ITT controls are few. Controls over AM, meanwhile, are inexistent. Of note, one participant noted that AM control is less about nuclear proliferation than missile and bio-tech proliferation because nuclear materials cannot be printed.

The licensing-detection interface

Mi-Yong Kim (*US Bureau of Industry and Security*) began by explaining that licensing and enforcement have an interdependent relationship. Customs officers reach back to licensing people during border checks, during investigations, and serve as expert witnesses during trials. Customs officers are also involved in end-user reviews during license evaluations and both licensing and enforcement authorities have to agree before a license can be issued. As a general rule, good practices for a successful licensing/enforcement relationship involve open communication between the two communities, regular training of border officials on regulation and controlled items, the establishment of a single window for liaison and for obtaining license determination, and the development of a uniform template of forms to request information and respond to requests.

Renaud Chatelus (*Universities of Liege and Georgia*) argued that addressing the gaps between licensing and detection processes require increasing mutual understanding between the two communities (through common exercises and regular meetings), improving information exchanges and the cross-checking of records, train specialized customs officers to facilitate interface, and, more significantly, make a better use of correlation tables. Progress is possible and steps have already been taken to adapt to the challenge. The World Customs Organization, for instance, has added explanatory notes to the Harmonized System and studies have been conducted to evaluate the quality (value) of each correlation or the average reliability of declared data for each customs category.

Eugene Yung-Jang Chen (*Bureau of Foreign Trade, Taipei*) gave an overview of Taiwan's controls and on the licensing-detection interface in particular. Initiated in 1990, Taiwan's control lists cover dual-use items and technology based on the EU list and EU munitions list and there are special provisions for trade with North Korea, Iran, and a few other states (and a catch-all clause). While challenging because of the lack of correlation between the strategic trade control classification system and WCO Harmonized System codes, licensing and detection authorities have developed a relationship in Taiwan. There are regular exchanges between the Bureau of Foreign Trade, the Ministry of National Defense, the Science Park Administration, and the Export Processing Zone Administration (the licensing authorities), customs, and intelligence services. This is a work-in-progress, however. It is paramount for Taiwan to continue enhancing cooperation and communication with international export control organizations, to continue developing its legal framework in line with international norms, and to expand bilateral contacts and cooperation.

Regional cooperation on strategic trade controls

Stephanie Lieggi (*James Martin Center for Nonproliferation Studies*) stressed that there is an increase in dual-use capabilities trade in the Asia Pacific, and in Southeast Asia in particular, which is the home of numerous transshipment points (where proliferation can occur). The financial services sector also continues to grow, raising concerns about STC in the region. So far, regional organizations have taken a limited role in STC, with the notable exception of the ASEAN Convention on Counterterrorism, which seeks to prevent terrorism financing, increase relevant border/customs control, improve information exchange and databases, and strengthen the ability of regional states to deal with WMD attacks. Other significant regional initiatives include the activities of the ARF Inter-sessional Meeting on Nonproliferation and Disarmament, the work of the Asia-Pacific Economic Cooperation, and, more recently, the efforts of the Asia-Pacific Group on Money Laundering. The APG, which has 41 members from Asia and includes Taiwan and all ASEAN states, has ramped up its activities in recent years, although it has focused predominantly on counter-terrorism financing, anti-money laundering, and related countermeasures more so than proliferation financing.

Karla Mae Pabelina (*Center for International Relations and Strategic Studies, Manila*) explained that the establishment of the ASEAN Economic Community (AEC), which will be announced at the end of 2015, aims per its blueprint to transform the region into “a single market and production base, a highly competitive economic region, and a region of equitable economic development and fully integrated into the global economy.” With the establishment of the AEC comes the risk that the region be used as a hub for illicit trade or the transfer of sensitive items and commodities that have WMD significance. Combating proliferation begins with strong customs enforcement and cooperation among customs agencies at the region level. Fortunately, ASEAN has begun to move in this direction. The ASEAN directors-general of customs, for instance, now meet on a regular basis. More progress is needed, however. While it will help improve border enforcement (including trade security), the ASEAN Single Window initiative, which aims to expedite cargo clearance, does not incorporate STC elements. Moreover, at the moment, most of the assistance requests for nonproliferation/STC capacity-building from ASEAN states are coursed through the UNSCR 1540 Committee. There is little or no coordination at the regional level. That is why one participant suggested that an organization should set up a clearinghouse that would identify ASEAN needs, gather information, and vet with national authorities to help facilitate the pairing of capacity-building, thereby easing the work of the UNSCR 1540 Committee.

General observations and next steps

The concluding session focused on a discussion on how CSCAP can help promote STC in the Asia Pacific, building upon its 2009 memorandum. Some proposed that CSCAP convert its memorandum into a matrix that would be reviewed on a regular basis and co-managed by the Pacific Forum CSIS and the University of Georgia’s Center for International Trade and Security. This could lead to draft a report assessing the pros and cons of establishing common guidelines and lists of dual-use items and suspect entities

within ASEAN. This report could then be used as a guide for further development of national STC systems and should also help improve regional coordination; a copy should be submitted to the ARF to include in its dialogue with the UNSCR 1540 Committee.



APPENDIX A

Conference Agenda and Participant List

Workshop on Strategic Trade Controls
Taipei, Taiwan | November 4-6, 2015

Agenda

November 4, 2015

18:30 Welcome Reception and Dinner

November 5, 2015

9:00 Introduction and Opening Remarks

9:15 Session 1: Recent Developments in Strategic Trade Controls

This session will examine recent developments related to implementation of strategic trade controls in Asia. What progress has been made in implementing strategic trade controls in Asia over the past year? What are the outcomes from recent meetings of the four trade control regimes (NSG, AG, MTCR, and WA)? What is the current focus of UNSCR 1540 Committee? What is the status of UNSCR 1540 Matrix Reviews? What should we expect from the 2016 Comprehensive Review? How does this impact strategic trade controls in Asia? What are the recent developments related to the Arms Trade Treaty?

Speakers: Chin-Hao Huang
Seema Gahlaut

10:45 **Coffee Break**

11:00 Session 2: Control Lists and Managing Trade in Strategic Goods

This session will examine current issues related to the development of national controls to regulate strategic goods and technologies. What countries in Asia have adopted the EU Control Lists? Have they adopted them fully or partially? How adaptable are these lists to local needs? In 2014, the European Commission issued a Communication (COM (2014) 244) directing the review of the EU export control policies. What changes in the international trade environment are driving the perceived within the EU need for a review? What impact will this review have on the EU export control lists and the use of these lists in the Asia-Pacific?

Speakers: Ian Stewart
Norah Huang

12:30 **Lunch**

14:00 **Session 3: Understanding Free Trade Zones in Asia**

This session will focus on understanding the implementation of strategic trade controls in Asian free trade zones. What is the purpose of these zones? What types of enterprises manage these zones? What types of businesses operate in these zones? What are the similarities and differences in terms of licensing and customs clearance requirements in each type of zone? What are the challenges to developing effective oversight of strategic goods being processed in and through these zones?

Speakers: George Tan
Rajiv Nayan

15:15 **Coffee Break**

15:30 **Session 4: Transit, Transshipment, and Brokering**

This session will examine trade control mechanisms for goods transferred through brokers or through transit or transshipment facilities, including practices of the Taiwan Custom Administration. What are the most common problems associated with controlling the transfer of strategic goods? What good practices have been developed to control transferred goods? Are multilateral standards needed to eliminate or at least reduce the risks associated with controlling the transfer of strategic goods?

Speakers: Shahabar Abdul Kareem
Kuo Ping Huang

17:00 **Session Adjourns**

18:30 **Opening Dinner**

November 6, 2015

9:00 **Session 5: Intangible Transfers of Technology**

This session will examine issues related to intangible transfers of technology (ITT). What is ITT? What are the common problems associated with controlling them? How are they detected? What good practices have been developed to control them? What are “deemed exports” and how do they differ from ITT?

Speakers: Jay Nash Tristan Volpe
Yea Jen Tseng

10:15 **Coffee Break**

10:30 Session 6: Licensing and Detection Interface

This session will examine the relationship between licensing and detection. What issues create the greatest difficulty in this relationship? What are good practices to ensure effective coordination between agencies involved in licensing and detection? What impact does the lack of a direct correlation between strategic trade control classification systems and the World Customs Organization's Harmonized System (HS) Codes have on being able to detect suspicious activity? Why is there a lack of correlation? What has been done to reduce the impact of the lack of correlation? What more can or should be done?

Speakers: Renaud Chatelus
 Mi-Yong Kim
 Eugene Y. J. Chen

12:00 Lunch

13:30 Session 7: Regional Cooperation

This session will examine areas where regional cooperation can help in implementing strategic trade controls. Where are the greatest opportunities for pursuing regional cooperation to promote stronger strategic trade controls in Asia? What impact will the establishment of the ASEAN Economic Community have on implementing strategic trade controls in Southeast Asia? What can be done to improve cooperation in Northeast Asia?

Speakers: Stephanie Lieggi
 Karla Mae Pabelina

14:45 Session 8: Wrap-Up and Next Steps

This session will conclude the meeting by highlighting its key findings and discussing next steps for future research and workshop activities.



**Workshop on Strategic Trade Controls
Taipei, Taiwan | November 4-6, 2015**

Participant List

1. **Carl BAKER**
Director of Programs
Pacific Forum CSIS
2. **Renaud CHATELUS**
Senior Fellow
Center for International Trade
and Security
3. **Eugene Y. J. CHEN**
Chief Secretary
Bureau of Foreign Trade
Ministry of Economic Affairs
4. **Arthur S. DING**
Director
Institute of International
Relations, National Chengchi
University
5. **Seema GAHLAUT**
Assistant Director
Center for International Trade &
Security
University of Georgia
6. **Chin-Hao HUANG**
Assistant Professor of Political
Science
Yale-NUS College
7. **Kuo Ping HUANG**
Deputy Director, Department of
Investigation
Customs Administration
Ministry of Finance, R.O.C.
8. **Norah HUANG**
Deputy Director, Division on
International Studies
Associate Research Fellow
Prospect Foundation
9. **Yao-Me HUANG**
Section Chief
Customs Administration
Ministry of Finance
10. **Mohamed Shahabar
KAREEM**
Independent Consultant
11. **Mi-Yong KIM**
Acting Chair
End-User Review Committee
12. **Julia KLAUS**
EXBS Regional Advisor for
Thailand, Cambodia, and
Vietnam
US Department of State
13. **Jae Rim KU**
Team Leader
Export Control Support
Department
Korea Strategic Trade Institute
14. **Wei-Kung LAI**
Deputy Executive Secretary
Bureau of Foreign Trade
Ministry of Economic Affairs

15. **Stephanie LIEGGI**
Senior Research Associate
James Martin Center for
Nonproliferation Studies,
Monterey Institute of
International Studies
16. **Sherry LIU**
Project Coordinator
CSCAP Taiwan
Institute of International
Relations,
National Chengchi University
17. **Jay P. NASH**
Research Fellow
Center for Policy Research,
University at Albany, State
University of New York
18. **Rajiv NAYAN**
Research Fellow
The Institute for Defense Studies
and Analyses, India
19. **Binh Van NGUYEN**
Researcher
Institute for Foreign Policy and
Strategic Studies
Diplomatic Academy of Vietnam
20. **Thuy Minh NGUYEN**
Researcher
Institute for Foreign Policy and
Strategic Studies
Diplomatic Academy of Vietnam
21. **Viet Nga NGUYEN**
Head of Division
International Cooperation
Department
Vietnam Customs
22. **Karla Mae PABELINA**
Foreign Affairs Research
Specialist
Center for International Relations
and Strategic Studies, Philippines
23. **Maile PLAN**
Vasey Fellow
Pacific Forum CSIS
24. **Crystal PRYOR**
Sasakawa Peace Foundation
Fellow
Pacific Forum CSIS
25. **David SANTORO**
Senior Fellow, Nuclear Policy
Pacific Forum CSIS
26. **Ah Reum SHIN**
Senior Researcher
Korea Strategic Trade Institute
27. **Mari SKUDLARICK**
Program Manager
Pacific Forum CSIS
28. **Anupam SRIVASTAVA**
Senior Fellow
Center for International Trade
and Security
29. **Ian STEWART**
Senior Research Fellow
War Studies Department
King's College London
30. **Hsu-Min SU**
Officer
Customs Administration
Ministry of Finance
31. **George TAN**
Director
Global Trade Security
Consulting Pte Ltd

32. **Yea Jen TSENG**
Professor, International Business
Department
Southern Taiwan University of
Science and Technology
33. **Chen-dong TSO**
President & Professor
Prospect Foundation
Department of Political Science
National Taiwan University
34. **Tristan VOLPE**
Associate & Stanton Fellow
Nuclear Policy Program
Carnegie Endowment for
International Peace
35. **Gordon WANG**
Project Coordinator
CSCAP Taiwan
Institute of International
Relations,
National Chengchi University
36. **Su-Chia WANG**
Auditor
Customs Administration
Ministry of Finance
37. **John K. WARDEN**
Senior Fellow, National Security
Policy
Pacific Forum CSIS
38. **Mei-Lan WONG**
Executive Officer
Bureau of Foreign Trade
Ministry of Economic Affairs
39. **Tiehlin YEN**
Deputy Executive Director
Center for Security Studies in
Taiwan
40. **Alan YANG**
Associate Research Fellow
Institute for International
Relations,
National Chengchi University
41. **Alvin YAO**
Director
Division on International Studies
Prospect Foundation