



# STC Champions Encourage Progress in Southeast Asia

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A Conference Report of the  
Seminar on Strategic Trade Controls  
in Southeast Asia

By  
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ISSUES & INSIGHTS  
CONFERENCE REPORT

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## **Pacific Forum**

Based in Honolulu, the Pacific Forum ([www.pacforum.org](http://www.pacforum.org)) is a foreign policy research institute focused on the Asia-Pacific Region. Founded in 1975, the Pacific Forum collaborates with a broad network of research institutes from around the Pacific Rim, drawing on Asian perspectives and disseminating project findings and recommendations to global leaders, governments, and members of the public throughout the region. The Forum's programs encompass current and emerging political, security, economic, and maritime policy issues, and works to help stimulate cooperative policies through rigorous research, analyses and dialogues.

## **Diplomatic Academy of Vietnam**

The Diplomatic Academy of Vietnam was established in accordance with Decision 82/2008/QĐ-TTg dated 23 June 2008 by the Prime Minister of the Socialist Republic of Vietnam on the basis of upgrading the Institute for International Relations (successor of the College for Foreign Affairs established in 1959). The Academy carries out strategic research in international relations and foreign policies; undergraduate and graduate training and retraining of Foreign Service personnel; and serves as a “think tank” in foreign policy for the Ministry of Foreign Affairs, the Party and the State.

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## **ACKNOWLEDGMENTS**

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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.

# KEY FINDINGS & RECOMMENDATIONS

SEMINAR ON STRATEGIC TRADE CONTROLS  
IN SOUTHEAST ASIA, VIETNAM

The Pacific Forum and the Diplomatic Academy of Vietnam, with support from the US State Department's Export Control and Related Border Security Program, held the third Seminar on Strategic Trade Controls in Southeast Asia in Hanoi, Vietnam on July 24-26, 2018. Nearly 50 senior scholars and officials attended in their private capacity. Off-the-record discussions focused on structures of strategic trade control (STC) systems and the status of national STC implementation in Southeast Asia. There was also discussion on the relationship between UN Security Council Resolution (UNSCR) 1540, strategic trade controls, and sanctions. Each session included presentations to introduce the topic followed by a discussion offering all participants the opportunity to pose questions and share related ideas and experiences.

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Key findings from this seminar include:

STC is a filter to channel strategic items, ensuring that they go to the right users and are blocked from the wrong ones. Developing a national STC system should be a means to promote global harmonization of concepts, definitions, and procedures that facilitate legitimate trade and make the supply-chain secure – thus helping countries that are trading across multiple borders gain a better understanding its trade flows. STC is

therefore a trade management system as well as a way to integrate local industries into the broader international economy. By developing a robust STC system, smaller countries can gain access to high-tech manufacturing and move up the supply chain.

While they share the common feature of classifying traded items, there is an inherent incompatibility between the Harmonized System (HS) used by Customs and STC control used by licensing agencies. Because an HS code describes what an item does while STC control codes reflect how an item can be used for developing weapons, HS codes cannot replace export control codes. While harmonizing HS codes with export control numbers can improve detection, it would be better to utilize existing HS in STC practices rather than trying to amend the HS itself. HS codes could be used to assist with self-classification and can also help in identifying trends in international trade, such as industrial sectors that can be potentially exploited by proliferators, or where re-exports of commodities are going.

Singapore's practice of advance export declarations and the United States' Container Security Initiative are important schemes for facilitating efficient monitoring of goods passing through ports. The WCO has recommended advance screening of cargo, but not many countries have actually implemented such a practice.

Through the Authorized Economic Operator (AEO) program, Customs officials balance economics and security by providing incentives to the best exporters for responding to the needs of Customs. Such programs have a logical application for STC, even if they are not designed for STC. Incorporating STC compliance into the AEO scheme should be the next step, although Customs will likely resist such integration.

Numerous programs and projects exist to assist countries with complying with UNSCR 1540 obligations and to develop their STC systems. These include non-governmental organizations such as the US' Stimson Center and the UK's VERTIC, and intergovernmental organizations such as the Financial Action Task Force on Money Laundering (FATF), the World Customs Organization (WCO), the International Atomic Energy Agency (IAEA), and the Organisation for the Prohibition of Chemical Weapons (OPCW). Many US agencies also provide or fund outreach, especially the Department of State via its Export Control and Related Border Security (EXBS) program, the Bureau of Industry and Security (BIS) at the Department of Commerce, the Defense Threat Reduction Agency (DTRA) at the Department of Defense, the Department of Justice, the Customs and Border Protection Agency, and the Department of Energy. The European Union, South Korea, and Japan are among others that offer assistance with UNSCR 1540 implementation and/or STC development.

The European Union, the United States, and Northeast Asian countries have enhanced their focus on controlling technology transfers, beyond simply controlling goods and technologies. Advanced countries are (reverting to old practices of) covering more than WMD-related items, using export controls as a way to moderate foreign policy (i.e., influence or restrict relations between

countries). This Western approach to STC and export controls affects how people in Southeast Asia view STC. The divergence in approach to STC exposes an underlying difference in interests, where the West is more focused more on security but Southeast Asia is more focused on economics.

Advancements have been made in implementing STC in Southeast Asia – the Philippines, Thailand, Vietnam, Myanmar, Cambodia, and Laos provided updates on their progress in developing STC legislation, industry outreach programs, and Customs enforcement practices. The EU P2P export control program and efforts from the WCO, the United States, South Korea, and Japan have resulted in tangible progress on these fronts. Less progress has been made, however, toward achieving ASEAN regional economic integration.

# STC CHAMPIONS ENCOURAGE PROGRESS IN SOUTHEAST ASIA

CONFERENCE REPORT

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Participants from all countries in the region except Brunei and Indonesia joined the seminar. Some topics flagged at the start of the meeting included the divergence between a focus on *goods* and the *transfer of technology and expertise* in STC, how UNSCR 1540 serves as a basis for implementing national STC management systems, and the economic benefits of implementing STC in Southeast Asia.

## Session 1: Strategic Trade Control System Overview and National Legislation

**Seema Gahlaut** (Stimson Center) kicked off the seminar by presenting a comprehensive overview of different STC systems and national legislation. She described various concerns among developing countries about developing an STC system, such as lack of

resources or potential negative effects on the national economy. She then countered these concerns with various real-life examples. She noted that many developing countries have signed major nonproliferation treaties (for example, the Treaty on the Non-Proliferation of Nuclear Weapons or the Chemical Weapons Convention), but that countries' domestic legislation, implementation, and/or enforcement is often lacking. She described the UNSCR 1540 obligations, which are mandatory for all UN member states.

Gahlaut emphasized that STC is about *monitoring*, not about *forbidding* trade – essentially, STC is a filter to channel strategic items, ensuring that they go to the right users and are blocked from the wrong ones. Regulations need to be clear and transparent so everyone knows how to implement them. Developing an STC system should be a means to promote global harmonization of concepts, definitions, and procedures that facilitate legitimate trade and make the supply-chain secure – thus helping countries that are trading across multiple borders.

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Gahlaut described the core components of effective STC system as having a legal basis, licensing, enforcement, and industry engagement. She reiterated the benefits of STC implementation for governments, industry, trading partners, and the international community. To achieve effective strategic trade management,

Gahlaut noted the need for modern means of information gathering, using multiple sources for verification and data mining to spot anomalies and patterns of suspicious behavior. There is also a need for information sharing at all levels: among government agencies, with industry, with trading partners, and with regional and international organizations. She warned that proliferators are getting smarter, more tech savvy, and cooperating across national boundaries.

*Discussion:* Participants agreed that STC is a trade management system as well as a way to integrate local industries into the broader international economy. It is also a way for smaller countries to get access to high-tech manufacturing and move up the supply chain. Some noted the challenges for universities or academia in complying with STC given academics' focus on collaboration and information sharing in their research, whether that is across borders or domestically with foreigners. Some countries are now including universities in their STC outreach programs as way to address these concerns.

In response to a question about whether it would be better if the requirements of UNSCR 1540 were incorporated into an international treaty or other legal tool, it was noted that UNSCR 1540 allows for criminalization of non-state actors' behavior, unlike treaty obligations, which focus on states. UNSCR 1540 has no end-date and it is also stricter than a treaty in that all UN member states must follow it. Now all states have to play by the same rules, which benefits many countries because it creates a level playing field.

It was also noted that many countries lack the resources needed to fully implement the requirements contained in UNSCR 1540. But there are numerous resources available for those needing assistance, including the European Union's Partner-to-Partner ("P2P") program, which provides countries individualized assistance with implementing

UNSCR 1540. Still, countries need to know how to tap into these resources. To address an acknowledged weakness in the UNSCR 1540 Committee program designed to match donor countries with requests for assistance, the Stimson Center is currently setting up a database that should improve the process.

Several participants also remarked on the importance of political will in establishing an STC system, as well as the need for sufficient people in government across agencies and in the private sector to implement STC. If political leaders think STC hinders trade, there will be a lack of political will – some speculated that this may be the case in some Southeast Asian countries. Even once political will is established, there can be a change in government in which officials move out once they are trained, as has happened in Mexico. Thus, capacity-building is an ongoing process, especially with the development of new technologies.

## **Session 2: Licensing, Enforcement, and Industry Outreach**

**Mi-Yong Kim** (US Department of Commerce) explained the technology transfer process, specifically addressing how countries can protect technology through strategic trade management. She shared two recent newspaper articles that highlight the challenges of controlling technology transfers. She noted that sometimes controls on technology are more important than controls on goods. For example, the United States may authorize the export of an aircraft engine or certain integrated circuits (IC), but not the technology to make them. For many companies, knowledge is their competitive advantage.

She also explained how the concept of a "deemed export" is used in the United States: a transfer to a foreign national who is present in the United States. Scenarios for deemed export license requirements include a foreign national employee, a visiting customer to a company, a visiting professor or visiting



student to a university, or a foreign partner, affiliate, or research partner. Factors used in evaluating deemed export licenses include the level of technology and personal review of the foreign national.

**Lu Shu-Hua** (Taiwan Ministry of Economic Affairs) delivered a presentation on Taiwan's export control outreach, specifically with regards to strategic high-tech commodities ("SHTC"). Taiwan provides export control outreach and seminars, and to immediately resolve questions of companies, a telephone service. Broadly, it has four types of outreach: general outreach (at least four sessions per year), corporate outreach, themed outreach, and other outreach (the latter three types are irregular). Targets for export control outreach include manufacturers, freight forwarders, exporters, shipping companies, and academia. Taiwan's SHTC outreach promotes export control regulations, enhances understanding and prevents violations, and encourages Internal Compliance Program (ICP) membership. Taiwan has an ICP club that is only for existing and potential ICP members – a company needs to obtain certification from the Bureau of Foreign Trade of its ICP. So far, there are 59 certified ICP companies in Taiwan. The government holds ICP club meetings twice a year, which provides a good forum for dialogue between government and companies.

*Discussion:* Participants asked for more details on deemed exports, as well as other countries' practices on this. While countries besides the United States think in terms of intangible technology transfer (defining technology very broadly) and whether the transfer happens within the country or outside, even if a provision exists in law, it is challenging to actually enforce. One alternative offered for countries was to consider a deemed export provision to manage the risks associated with allowing access to an organization's competitive edge or "secret sauce." But it was pointed out that even those countries that

already have STC often have difficulty controlling technology. Therefore, it is important to first start with basic steps, including getting relevant government agencies to understand how important it is to have STC legislation. There were also questions about how universities manage technology controls.

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### **Session 3: UNSC Resolution 1540 and Strategic Trade Controls**

**Carl Baker** (Pacific Forum) presented on the relationship because UNSCR 1540 and STC. He said that keys to effective implementation of UNSCR 1540 are national discretion, assistance, a cooperative approach, and transparency. He described the role of the 1540 Committee as engaging in monitoring progress of national efforts, providing assistance through its outreach activities, and ensuring transparency by maintaining a website dedicated to the implementation process. In the second comprehensive review of the resolution, several areas were identified as needing more work. These included strengthening implementation and enhancing focus, facilitating monitoring and transparency, emphasizing intangible technology transfer and control lists, integrating UNSCR 1540 into mandates and programs in regional organizations (including

the ASEAN Economic Community), identifying emerging risks due to advances in science and technology, and improving the assistance process.

As to the relationship between UNSCR 1540 and UN Security Council sanctions, Baker said UNSCR 1540 is more focused on policy and cooperation, while sanctions resolutions focus on cooperation for the purpose of punishing violators. STC and sanctions also diverge in their goals and time horizons, targets, scope, and legislative basis. However, both STC and sanctions may focus on the same targets because both can be used to restrict transactions with individuals, groups, and entire countries. The scope and implementation of sanctions imposed for promoting nonproliferation objectives (against targets who are actively proliferating) may converge with STC. In the case of North Korea, sanctions measures are actually much more comprehensive than STC or control lists because so many non-strategic goods are restricted from import or export. Finally, when it comes to implementation and enforcement, often the same government bodies implement STC and sanctions, and both STC and sanctions require industry outreach to be effective.

#### **Session 4: STC Systems – Ideal vs. Existing Models**

**Kyaw Si Thu** (Pacific Forum) offered a comparison of existing national systems to derive an ideal system for managing goods. His presentation focused on the control of dual-use materials. He referred to the common set of elements of an STC system identified in *CSCAP Memorandum No. 14* as well as UNSCR 1540. He noted that countries without the capability to specify their own control lists can turn to the four multilateral export control regimes. For example, the Division of Atomic Energy under the Department of Technology Promotion and Coordination in Myanmar is presently

receiving advice from the Nuclear Suppliers Group.

Kyaw Si Thu discussed India, Thailand, South Korea, and UK's export control systems. Based on his comparison, he made several recommendations for countries developing their own STC systems. These included seeking assistance from VERTIC, the United States, or the European Union for assistance with drafting legislation if the country does not have the capacity to do so; drafting a specific law to cover all strategic items; creating a control list for item classification and verification; having one primary STC licensing agency for most types of strategic items and other agencies for recommendation and assessment; and maintaining an effective online system that connects the government and companies. An online system is especially important because it provides a medium for information sharing, facilitating awareness of export practices, and assisting companies in developing compliance capacities and avoiding illegal trade.

**Hyuk Kim** (Pacific Forum) explained the role of the Harmonized System (HS) and its application in STC practices. The differences between the HS and STC highlight the competing interests of trade promotion and trade regulation. While they share the common feature of classifying traded items, there is an inherent incompatibility between HS and STC. For one, HS codes are internationally established while export control numbers are considered an emerging standard – at best they are based on regional standards as in the European Union. In Asia, they are most likely based on national standards. The incompatibility between HS and STC is further rooted in different criteria and focus for item classification. The effect is that it is hard to make a one-to-one match between HS codes and export control numbers. Moreover, it is not possible to control non-physical transfers using HS codes. Thus, while harmonizing HS with

export control numbers can improve enforcement, Kim recommended better utilization of existing HS in STC practices rather than trying to amend the HS itself. For example, HS could be used to assist with self-classification, as done in South Korea through the *YesTrade* search service. HS codes can also help in identifying trends in international trade, such as industrial sectors that can be potentially exploited by proliferators, or where re-exports of commodities are going.

**Yonghwan Hyun** (KOSTI) explained the Korean export control system and the role of the Korea Strategic Trade Institute (KOSTI) in it, focusing on enforcement cooperation between the licensing authority and Customs agency on industrial dual-use items. KOSTI is the central organization related to the control of strategic goods. Among its initiatives, KOSTI helps update and improve the classification system every year to make it more user-friendly and does comparative research to make recommendations to the government and guidelines for companies and other organizations. KOSTI representatives also participate in international export control regimes and evaluate policy revisions in other countries in terms of their impact on industry. It has also sent delegations abroad, including to countries in Southeast Asia. KOSTI will do a determination of strategic goods for domestic companies, and also offers “home doctor consulting,” in which KOSTI representatives visit companies and help them determine what goods need to be controlled. About 300 companies use this service each year. Some 20,000 companies use the main functions of the *YesTrade* search and classification service.

The main licensing authorities in South Korea are the Ministry of Trade, Industry and Energy (MOTIE); the Defense Acquisition Program Administration (DAPA); the Nuclear Safety and Security Commission (NSSC); and the Ministry of Unification (MOU), which collaborate to ensure

processes and goods classification are effectively operated. MOTIE has jurisdiction over dual-use items and issues permits. Korea Customs Service evaluates all items on the basis of the Customs law, which was revised January 2016.

Some problems or loopholes in the current system include license and classification information not being transmitted correctly, information not being sent for cases where items are not declared as strategic, questions about the credibility of self-classification of exports, and control lists being too extensive and complex for on-site Customs agents. MOTIE is putting a great deal of effort into improving the current system. KOSTI also provides training for Customs staff and Customs brokers, and dispatches a resident employee to Customs for on-site classification at Incheon International Airport. The government is striving to share more information between online systems, *YesTrade* and *Uni-Pass*, to be sure they are capable of carrying out Customs clearance operations and can engage in cargo selectivity.

*Discussion:* Participants broached ways in which HS codes can be useful to STC, including to track North Korean violations of sanctions. Yet an HS code describes what an item *does* while STC control numbers describe *what it is capable of doing* with regards to WMD, so HS codes cannot replace export control numbers. Nonetheless, it was noted that the World Customs Organization (WCO) is promoting a program called Strategic Trade Control Enforcement (STCE) and has produced an implementation guide (<http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/guidelines/wco-strategic-trade-control-enforcement-implementation-guide.aspx>).

Singapore’s practice of advance export declarations and the United States’ Container Security Initiative were also highlighted as

important programs for facilitating efficient monitoring of goods passing through ports. With the former, an exporter or broker has to file an advance declaration as much as five working days before goods arrive to port. Singapore Customs will scrutinize the declaration to see if there is anything is illegal or export control related. Doing so follows a recommendation from the WCO, although not many countries have actually implemented such a practice. The United States also now requires advance information on the manifest 24 hours before a ship arrives in US territory.

Participants discussed the Authorized Economic Operator (AEO) program, in which Customs officials balance economics and security by providing incentives to the best exporters for responding to the needs of Customs. Cambodia, for example, has a “Best Trader” system. Such programs have a logical application for STC, even if they are not designed for STC – AEO is certification given for other types of compliance that are unrelated to STC compliance. Incorporating STC compliance into the AEO scheme needs to be the next step. One participant suggested that there should be a way for Customs officers to contact export control officials. Customs officers could take photos of suspicious items and send them to export control officials, be given guidance on what questions to ask the exporter, or be asked to document check what is on the license and what is at the port. Technology plays an important role here. Yet it was noted that Customs is still focused on revenue collection. Asking Customs officials to also enforce STC requires more work, and Customs officials likely do not want another agency at the border.

### **Session 5: Update on Assistance and Evaluation Programs**

**Seema Gahlaut** (Stimson) provided an update on various programs and projects at the Stimson Center. The first was the

Partnerships in Proliferation Prevention, established last year. It is an assistance support initiative, funded by Global Affairs Canada, to create an online database of all programs around the world offering assistance related to UNSCR 1540. It will provide an online training manual and help governments better understand how to make assistance requests more direct and focused on specific needs. This is necessary because if a letter is too generalized, assistance providers do not know what states are seeking, which creates confusion and delays.

The second was a project to improve global radiological source security, with the support of the government of Finland. The project looks at how each country is regulating its radiological sources and how this matches up with International Atomic Energy Agency (IAEA) Code of Conduct and other recommendations. The third was Stimson’s global chemical security project, which looks at the topography of implementation of international obligations. Finally, Stimson runs the Strategic Trade Efficiency Program (STEP), which promotes “dual-benefit” programs that improve security and economic development simultaneously, supply chain analysis that offers global trade solutions, security analysis that touches on local/transnational challenges and global threats, and industry engagement. The STEP approach has already been conducted in Jamaica, targeting chemicals and CWC precursors. Their next focus will be on Southeast Asia, and Stimson is currently looking for a willing partner country to track one or two dual-use chemicals relevant to UNSCR 1540. Gahlaut also provided an update on the Trade, Technology, and Security Program at Stimson, which is focused on how emerging technologies pose an issue for trade and security.

In addition to these Stimson-based initiatives, Gahlaut reminded participants that VERTIC provides assistance with legislation; the Financial Action Task Force on Money

Laundering (FATF) with proliferation financing or anti-money laundering issues; and the WCO with STC guidance. The IAEA and Organisation for the Prohibition of Chemical Weapons (OPCW) will send experts for radiological items and scheduled chemicals, respectively and the EU also provides assistance. US agencies, especially the Export Control and Related Border Security (EXBS), provide training and outreach as requested by governments; the Bureau of Industry and Security (BIS) at the US Department of Commerce also provides some assistance. On the defense side, the US Department of Defense offers programs on specific issues related to dual-use goods and the Defense Threat Reduction Agency (DTRA) is actively engaged in developing capabilities to control strategic goods in certain parts of world. The US Department of Justice will train judges or prosecutors on how to prosecute STC violations, and the US Customs and Border Protection Agency has its own training programs. The US Department of Energy will provide commodity identification training (CIT) on WMD-related materials. Outreach is often conducted bilaterally, government-to-government, or the US government will use non-governmental organizations or think tanks to deliver assistance in a non-governmental way.

*Discussion:* Participants further described various initiatives in the region, including the Centres of Excellence for Chemical, Biological, Radiological and Nuclear Risk Mitigation, which are an EU initiative, led, financed and implemented by the European Commission. For example, assistance will be provided for 30 months from February 2018 on the project “On-site Technical Support to the EU CBRN Center of Excellence (CoE) Regional Secretariat in Manila.”

Participants noted that proliferation financing is a challenge, and that there is a lack of training on the issue. Moreover, while it may be possible to follow the source of

money, criminals change their methods and will use different methodologies for converting ill-begotten profits into legitimate money.

With regards to UNSCR 1540, countries are required to have a law covering strategic goods. That said, it was pointed out that countries can choose how they do this and what laws they use. Customization is to be done by the country itself, yet most countries do not recognize that they can customize the requirements for what they need to do. For example, most Southeast Asian countries do not have a problem with fissile materials, but scheduled chemicals are an issue. Thus, it makes sense for these countries to work on controlling dual-use chemicals first.

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It was noted that in some cases, it is obvious how countries benefit from STC – countries with high-tech industry such as South Korea have an intrinsic incentive to implement STC to protect their technologies. But developing countries are still concerned about the hypothetical loss they face to their economies and trade. One participant remarked that it would be useful to have a systematic, analytical study on industry and how STC has helped countries that have transitioned from labor-intensive manufacturing to high-tech trade. One barrier that led to significant delays in STC implementation in the Philippines, for example, has been politicians

seeking justification in terms of economic benefits.

## **Session 6: STC Updates from United States and European Union**

**Crystal Pryor** (Pacific Forum) provided an update on the US export control system and efforts to reform the system. She described major US agencies with licensing jurisdiction and responsibility, particularly the Department of State for military items and the Department of Commerce for dual-use commodities. The Department of State's licensing authority comes from the Arms Export Control Act of 1976, and is implemented by the International Traffic in Arms Regulations (ITAR). Within the State Department, the Directorate of Defense Trade Controls licenses and regulates items covered by the US Munitions List, which fall into 21 categories. The Department of Commerce's licensing authority comes from the Export Administration Act of 1979. The Bureau of Industry and Security within the Commerce Department is responsible for implementing and enforcing the Export Administration Regulations. Pryor noted that each US agency has a different licensing process and/or system. Still, all agencies rely heavily on each other for inter-agency reviews. The Commerce Department's process is favored by industry as most efficient and user-friendly – the entire system is electronic, from application submittal to interagency review to license approval.

Pryor flagged several challenges in US implementation of STC. These include multiple licensing authorities and control lists with poor coordination among agencies. She also noted disagreements over commodity jurisdiction between the State Department and Commerce Department, as well as delays and inefficiencies in the license application process. She also pointed out a lack of mechanisms to evaluate the effectiveness of export controls.

Additionally, the United States has faced a lack of a permanent statutory basis because the Export Administration Act of 1979 has been lapsed since 2001. Therefore, the Export Administration Regulations have been implemented through the International Emergency Economic Powers Act (IEEPA), which must be renewed every year. Moreover, the Export Administration Act has not been updated since Cold War and still refers to the Soviet Union.

Pryor then discussed the Export Control Reform (ECR) Initiative, which included several goals – a single control list, a single primary enforcement coordination agency, a single information technology system, and a single licensing agency – collectively known as the “four singularities.” The ECR Initiative was launched both to enhance US national security and to strengthen US ability to counter threats such as WMD proliferation. Of the four goals, the most progress was made on harmonizing and de-conflicting the State Department and the Commerce Department control lists, and improving the underlying IT systems.

Pryor described the Export Control Reform Act of 2018 (ECRA), which was introduced in February 2018 to repeal the lapsed Export Administration Act and provide a permanent statutory basis for export controls. She also described the Foreign Investment Risk Review Modernization Act (FIRRMA), which was introduced in November 2017 as the most significant effort to reform the Committee on Foreign Investment in the United States (CFIUS) process since passage of the Foreign Investment and National Security Act of 2007. The ECRA is now incorporated into the FIRRMA text, and the passage of both acts is likely in the near future. Pryor also touched on the state of surveillance and intrusion controls, which have been controversial and on which the Bureau of Industry and Security is likely to publish another proposed rule to be followed by a public comment period.

**Lia Caponetti** (University of Liège) provided an explanation of dual-use trade in the EU system. The EU has 28 member states, which means there are 28 national competent authorities, but only one Customs territory. With regards to dual-use export controls, there is competence-sharing between the EU and member states. Dual-use trade controls form part of trade policy, which is under EU competence, while EU legislation is implemented in 28 member states. The legal basis for dual-use trade controls is Regulation (EC) No 428/2009. The regulation is directly applicable to the 28 member states, but some decisions are left to the individual states.

The EU distinguishes between “exports,” which are from the EU to a third party, or extra-EU, and “transfers,” which are from one EU member state to another, or intra-EU. Among dual-use items, the EU distinguishes between military versus civilian and nuclear versus non-nuclear items. Its list of dual-use items is a compilation of all the multilateral regimes’ control lists. Updates to the list following international regimes are done by the European Commission.

The EU has four catch-all clauses, two of which are mandatory and two of which are optional. Member states do not necessarily share the definition of the catch-all clauses, with some states seeing them as the possibility to control and others as a presumption of denial of export. EU member states have four license types: EU general, national general, global, and individual. Among other factors, license issuance takes into account whether industry has an Internal Compliance Program (ICP) in place. There is also a no undercut mechanism to reduce the risk of “license shopping,” i.e., one member state cannot authorize an export that is similar to another transaction denied by a different member state.

EU member states have an obligation to establish sanctions, as defined by the member state, and conduct record-keeping with a

minimum of 3 years for dual-use items and up to 10 years for other items such as weapons. Elements left to individual member states include implementation of catch-all clauses and the control of transit/transshipment and brokering activities. Member states may also establish national control lists (if they wish to include more items beyond those on the EU list), national general authorizations, and further conditions/criteria.

Currently, a Dual-Use Regulation recast legislative process is underway between the European Parliament and the European Council. The main novelty is human security, for which some are seeking a broader scope of control. For example, proposed controls would cover cyber surveillance technology that can be used for serious violations of human rights or international humanitarian law, or can pose a threat to international security or the essential security interests of the EU or its member states. While mobile telecommunications interception equipment, intrusion software, and digital forensics are already controlled, new additions would be monitoring centers, lawful interception systems, and data retention systems.

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With regards to intangible technology transfer (ITT), the EU's focus is no longer on transmission (uploading or downloading) but on the final recipient (end-user). Digital transfers to an end-user located outside of the EU are now subject to authorization.

*Discussion:* A main topic in the ensuing discussion was that STC is more than just controlling goods and technologies in Europe, the United States, and Northeast Asia, where the focus is really on technology control. Advanced countries are (reverting to old practices of) covering more than WMD-related items, using export controls as a way to moderate foreign policy (i.e., influence or restrict relations between countries). One participant said that it is important to understand that this Western approach to STC and export controls affects how people in Southeast Asia view STC. The divergence in approach to STC exposes an underlying difference in interests, where the West is more focused more on security but Southeast Asia is more focused on economics.

A participant asked for more information about the “four singularities” and implications of the US reform effort for helping Southeast Asian countries to avoid repeating the same mistakes. It was noted that the main accomplishment will have been to move some less-sensitive items from the US Munitions List to the Commerce Control List, but that the current US administration has not expressed interest in doing more than this.

There were also questions about US standards for evaluating the efficacy or efficiency of export controls and how the United States controls emerging technology and know-how. The response was that industry committees and technical advisory committees evaluate how the US government controls what it controls and what changes it needs to make. Also, a nuclear study was conducted by industry groups on the efficiency of US nuclear export controls

compared to other countries. As for emerging technologies, the US Commerce Department is grappling with this issue, but nothing is out yet.

There was also further discussion on catch-all clause implementation in the EU. Currently, member states are only obliged to share information with other member states about catch-all clause application in the case of refusal. A proposal in the recast process is to unify the e-licensing system among the member states and to have one data system to share all licensing information, thereby harmonizing the approaches. All information regarding catch-all clauses would be shared with member states and notified to the EC, and if one state implements a control, the other member states would too. The University of Liège provides updates on the recast legislative process (<http://local.droit.ulg.ac.be/jcms/service/index.php?serv=49&cat=3>).

### **Session 7: STC Updates from Philippines, Thailand, and Vietnam**

**Janice Dimayacyac** (Philippines Department of Trade and Industry) kicked off the presentations from Southeast Asian countries by describing the Philippine government's Enterprise Outreach action plan. So far there have been 19 examples of industry and government agency outreach. Major accomplishments include issuance of a provisional license to a Philippine consultancy service, publication of many strategic trade management-related policy reports, and signing of a Memorandum of Understanding between South Korea's KOSTI and the Philippine Department of Trade and Industry Strategic Trade Management Office (DTI-STMO). It took the Philippines 11 years to pass national legislation on STC (the 2016 Strategic Trade Management Act, STMA) and it has taken 3 years so far to implement its rules and regulations. Dimayacyac described the political situation in the Philippines that has



led to delays in implementing the STMA, which still needs implementing rules and regulations. These should be published within a year.

Furthermore, the Philippines has 7,100 islands, making it difficult to establish a comprehensive IT infrastructure. It also needs to harmonize its STMA with other countries and international treaties to avoid double licensing or duplication of process. The government is struggling to address implementation of import, re-export, reassignment, and provision of related services under STMA. While awaiting implementation of STMA, the government (together with the EU P2P program) is conducting an industry mapping study to determine which industries are engaged in the trade of strategic goods, and working on guidelines and manuals for exporters.

**Sari Pichsinee** (Thailand Ministry of Commerce) described Thailand's control of WMD, focusing on enterprise outreach as an essential pillar of effective export controls. Sari noted that outreach can benefit the government and all parties concerned. She described six ways to improve outreach programs in 2018: human resources, company visits, website and infographics, international cooperation, events, and public hearings on the Trade Controls on Weapons of Mass Destruction Act (TCWMD Act). As for the website, which is currently at [Test1.dft.go.th](http://Test1.dft.go.th), enterprises can now access it to practice using it and classifying their items before the law is implemented next year. There are two versions of the infographics in six languages.

As for the current status and future plan for the TCWMD Act, it is currently being revised and amended at the Office of the Council of State. The Dual-Use Item list of Annex 1 is being updated from the 2012 version to 2016 version based on the EU list. The HS codes of Annex 2 are being updated from the 2012 version to the 2017 version. Outreach is also

being conducted on the TCWMD Act and e-TCWMD (an electronic system). Finally, the e-TCWMD system is being developed for intangible classification and ICP.

**Sivachart Chattrastrri** (Thailand Customs Department) discussed STC enforcement in Thailand from the perspective of Thailand Customs. Thailand has six main licensing agencies. Chemicals are controlled by Department of Industrial Works (Ministry of Industry), radiological and nuclear items by the Office of Atoms for Peace (Ministry of Science and Technology), and arms by the Defence Industrial Department (Ministry of Defence). The Department of Foreign Trade (Ministry of Commerce) controls dual-use items not controlled by other agencies. In preparation for STC enforcement, Customs is receiving training on chemical inspection and STC enforcement from the WCO. The United States under the auspices of the Megaport Initiative conducts a field training exercise every year and provides monitoring devices.

Thailand has various collaborative programs with meetings every six months. These include domestic committees on non-proliferation of WMD, small arms, and light weapons; WCO security programs; and Customs alliance outreach programs.

Challenges Thai Customs face include human resources – officers retire and some are very new and lack the required knowledge – and legitimacy limitations because it does not have laws in place to support controls. For example, Customs cannot seize carbon fiber during transit because it has no law to do so. There are also limitations on operations, such as limited time and the cost of wasting time or damaging goods.

**Nguyen Thi Viet Nga** (General Department of Vietnam Customs) discussed the state of trade controls in Vietnam. Unlike the Philippines and Thailand, Vietnam does not have a comprehensive STC law in place, making it difficult for Customs to enforce

STC at present. While Vietnam does not have an STC system, it does control imports and exports. The legal and regulatory framework for doing so includes a control list of goods for import and export and enforcement measures for import/export goods.

Work has been done to prepare Customs for enforcement, including industry outreach, a CIT program, and a Megaport Initiative like that of Thailand. Radioactive detection portals have been installed in Vietnam at Noi Bai Airport and Tan Son Nhat, and will be installed in Da Nang in the future. Detection monitoring systems have also been installed at several sea ports, including Vung Tau and Cat Lai. Vietnam is thus laying the groundwork for STC.

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## **Some skeptics doubt the necessity of having STC regulation at all.**

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Ongoing engagements include those with the US EXBS export control program and the EU P2P export control program, as well as cooperation with the WCO on STCE training that is focused on enforcement, especially for containers in the seaport. Vietnam faces challenges to STC similar to other countries in the region, including having no legal framework for STC. Customs officials have difficulty in recognizing controlled goods since lists are usually complicated and technical. Dual-use goods are particularly challenging for Customs officials. Also, STC is not a measure for trade facilitation – for Customs, it is an enforcement issue – but STC is seen by some as a measure that inhibits trade. Some skeptics doubt the necessity of having STC regulation at all. They believe STC will be a burden for the government and ministries, essentially more

work for the Ministry of Industry and Trade or the Ministry of Defense.

*Discussion:* The discussion began with a clarification that Thailand’s TCWMD was different from its previous TMD (Trade Management of Dual-use Items) in that TMD covered only export activity while the current act covers export, re-export, transit, and transshipment. There was also a good deal of discussion about how Thailand’s HS code list was derived. It was noted that in other countries such as India, HS codes were used in the last stage of control classification, but the government ultimately stopped using HS codes for export controls. This is because India was able to simplify the multilateral export control lists after it learned who was producing what. Thailand recently adopted the EU control list and one participant suggested that it may move away from using HS codes for export control classification in the future.

On the Philippines’ MOU with KOSTI, the Philippine side said that it is building an IT system similar to *YesTrade*, but the specific details of what will be on the website are still under study. The government still needs further work with KOSTI to determine exactly what they need. The plan is to mimic South Korea’s system of commodity classification first, then address some of the gaps South Korea has identified in implementing their infrastructure. As for the role of the Technical Advisory Committee in the Philippines, before issuing further guidelines on STM implementation, the committee confirms with members of industry whether the group can do its job in implementing STC without hampering trade. The committee also addresses the issue of how policy can keep up with advances in technology. The government is committed to facilitating trade and implementing STC in a way that is not burdensome for industry.

**Session 8: STC Updates from Myanmar, Cambodia, and Laos**

**Phone Myint Naing** (Pacific Forum) described the current state of dual-use export controls in Myanmar. As background, he described two kinds of trade systems in Myanmar: conventional trade and border trade. Conventional trade includes overseas trade, air trade, and transit trade. Myanmar is currently trying to set up a law for STC and will begin by establishing controls for dual-use items.

Phone noted that Myanmar has enough existing laws, rules, and regulations to support the establishment of STC. Currently, some dual-use items are subject to control by the Ministry of Commerce and some by the Division of Atomic Energy in the Department of Technology Promotion and Coordination. Myanmar has an Export and Import Law (2012), which Phone said is the most appropriate entry point in national legislation for a dual-use trade control system and law. He described the current licensing system and responsible licensing authorities. The Ministry of Commerce is the primary ministry responsible for issuing licenses.

Myanmar receives financial and technical assistance from the EU on general awareness of STC, legal workshops and assistance on dual-use controls, and further technical training and capacity building. It also receives assistance from the United States and the WCO.

As for Myanmar's future STC system and recommendations, Phone stated that the Ministry of Commerce should remain the focal ministry. Myanmar currently has a "negative list" for exports and imports (items prohibited from import/export), but in the future should include a dual-use control list. As of yet, there are no penalties or enforcement mechanisms for STC. The Ministry of Commerce is in the process of releasing a dual-use goods list. Myanmar also needs to establish a dual-use control law and continue to cooperate with international organizations on this and other efforts.

**Vantha Hoy** (Cambodia Ministry of Commerce) explained the implementation of STC systems in Cambodia, detailing the law and next steps with regards to STC procedures. Hoy pointed out that Article 54 of the Cambodian constitution prohibits the production, use, and stockpiling of nuclear, chemical, and "vetrano" weapons. The fundamental basis for legislation and law enforcement on STC is the constitution plus laws on the prohibition of chemical, nuclear, biological, and radiological weapons and on the management of quality and safety of products and services. There are 12 different ministries involved in STC implementation and law enforcement.

**Sopanga SENG** (General Department of Customs and Excise of Cambodia) offered more details on Customs in Cambodia. Roles for Customs include solid waste management, trade facilitation based on risk management, maintaining lists of prohibited and restricted goods, and issuing other sub-decrees on the role and functioning of each agency. Cambodia Import-Export Inspection and Fraud Repression Directorate General (CAMCONTROL) is one of the only agencies working together with Customs.

Challenges include that national labs and university labs were not designed for STC but are sometimes being asked for their cooperation. International best practices based on the WCO revised Kyoto Convention for Customs obliges officers to be rotated to other checkpoints. Because of this and other reasons, Customs lacks sufficient skilled and trained officers. Cambodia is, however, receiving financial and technical assistance from governmental organizations like the EU and the Japan International Cooperation Agency (JICA).

**Soudachanh Darounphanh** (Lao Ministry of Industry and Commerce) delivered a presentation on Lao PDR's STC implementation. At present, Laos has not implemented STC and does not have existing

legislation in place. Progress made so far include establishment of an STC-Working Group and a national STC list, and completion of a first roadmap activity. The government will send out the national STC list to all line ministries for comments in August or September. The third legal workshop at a very high level will be held in mid-September 2018, and will span two days. Outreach to authorities and industry is slated for mid-December 2018. The outreach programs have already been prepared by a consultant to EU P2P program. The Strategic Trade Control Working Group will also take a study tour to Malaysia, as suggested by the consultant.

Challenges Laos is now facing include limited knowledge and understanding of STC/dual-use items, including the EU control list; how to identify the core agencies for STC; and limited human resources to work on STC. Only three people are currently working on STC in Laos.

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**Because most Customs officers are rotated through different posts according to international standards, the “train the trainer” model may be ideal for training officers.**  
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Ways forward include finishing the first piece of legislation, a decree on STC. Laos also requires more capacity building, especially via “train the trainer” programs because it has limited resources to send staff for overseas trainings. It also needs to conduct more

outreach to all stakeholders (e.g., industry, academia, service providers, etc.). Finally, it is seeking technical and financial support from international programs in support of WMD nonproliferation.

*Discussion:* The discussion began with an attempt to determine if the countries under discussion had actually sought external financial and technical assistance. Cambodia has pursued skill training for front-line Customs officers, particularly on the ability to detect suspicious materials. It was suggested that countries focus initial attention to adopting the EU list, which requires fewer resources than developing a list from scratch and will also facilitate trade with the West.

Because most Customs officers are rotated through different posts according to international standards, the “train the trainer” model may be ideal for training officers. Under this approach, governments conduct in-house training one or two times a year. STC knowledge is lacking not only at the ground level but also at the policy level, so workshops and training are important. Cambodia could also use support on the equipment side, such as devices to detect radiation that have been received mostly from US Department of Energy, the US State Department and the EU. More equipment needs to be installed at the borders cities like Siem Reap.

A unique feature of the Philippines STMA is the requirement to control the “reassignment” of strategic goods imported from the Philippines to a new end-user in the country of import. The requirement has been a challenge for the Philippines, which does not yet know how to implement reassignment controls, despite their stipulation in the STMA. It will be necessary to harmonize extraterritorial provisions and determine which items will be subject to reassignment controls.

The EU P2P program has suggested Myanmar adopt the EU control list, and the

EU is in discussions with the Myanmar military, Customs, and Ministry of Agriculture. The Ministry of Commerce agreed to adopt the EU list, but the other departments have not agreed to adopt it because it is difficult for them to control the relevant items. That is why the Myanmar government is focusing on dual-use items for now, and in two to three years will approach creation of an STC law.

### **Session 9: Strategic Trade Controls and Regional Economic Integration**

**George Tan** (Global Trade Security Consulting) in the final session discussed the potential for regional economic integration in Southeast Asia. The ASEAN Economic Community was supposed to start in 2015, but not all members of ASEAN have established their National Single Window for Customs clearance. There is also a question of how the individual National Single Windows will work, especially in the context of STC. Protecting privacy and technical information is difficult. Corruption still exists in the region, so even personal information can be sold. Therefore, Tan argued that it is difficult for the ASEAN Single Window to really come into force. Even when it does, while the infrastructure allows STC to be utilized, he said that member states are unlikely to agree to incorporate STC into the system.

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**...the critical  
component is political  
will**  
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Tan noted that most countries in the region have yet to establish effective and efficient strategic trade management and described the challenges for strategic trade management in regional economic integration. He said that

the critical component is political will, as the situation in Laos makes clear. Because they have a domestic champion, they have been able to make a great deal of progress in a short period of time.

Tan said that it is up to the Southeast Asian countries to take the next step in regional economic integration and to explain to the policymakers how to move forward, not only within each country but in the region. Of course, countries must respect the ASEAN principle of non-interference and the emphasis placed on sovereignty.

*Discussion:* The post-presentation discussion included updates on Japan’s STC. First, Japan is shifting its control list numbering system toward an EU-type system. Second, it is focusing more on new STC areas to reinforce national security, including outbound/inbound investment controls, emerging technology controls, technology transfer (especially from persons), and cyber-attack prevention. Third, Japan is monitoring the draft of China’s new export control law. It has found that the new law contains many unclear points, especially regarding re-export and deemed export controls. The United States practices re-export and deemed export controls, but China’s practices and targets will probably be different, thereby causing confusion for other countries.

Closing remarks emphasized that South Korea, Japan, and Taiwan all have their southward facing policies, and the United States has its new Indo-Pacific Strategy. Therefore, it is now ASEAN’s time. “ASEAN Community Vision 2025” is about the ASEAN economic community and sets standards and establishes norms of community behavior. Interested parties would do well to read the document and consider the implications for regional economic integration and STC.

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Crystal Pryor is Program Director and Research Fellow at Pacific Forum.

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# APENDIX A

**Seminar on Strategic Trade Controls in Southeast Asia  
Hilton Hanoi Opera, Vietnam  
July 24-26, 2018**

## AGENDA

### Tuesday, July 24, 2018

18:30            **Opening Dinner**

### Wednesday, July 25, 2018

9:00            **Welcome Remarks**  
Carl Baker

9:15            **Session 1: Strategic Trade Control System Overview and National Legislation**  
This session will first provide a general overview of a national strategic trade control system. What are the main objectives of strategic trade controls? What are the core components of an effective strategic trade controls system? What are the benefits of implementing strategic trade controls? What is the relationship between trade controls and trade facilitation? What fundamental legal authorities are required for an effective strategic trade control system?  
Presenter: Seema Gahlaut

10:30            **Coffee Break**

10:45            **Session 2: Licensing, Enforcement, and Industry Outreach**  
This session will examine the core elements related to controlling strategic goods through a licensing system. What are the core components of a licensing system? How are control lists developed and used? What are the key legal and regulatory requirements for effective enforcement? What are the key agencies involved in licensing, detection, and enforcement? Why is interagency coordination necessary? Why is industry outreach important in strategic trade controls? What incentives are most effective in encouraging the establishment of an internal compliance program? What are the good practices for government outreach to industry?  
Presenters: Mi-Yong Kim, Lu Shu-Hua

12:00            **Lunch**

13:15            **Session 3: UNSC Resolution 1540 and Strategic Trade Controls**  
This session explores the relationship between trade controls programs developed to ensure compliance with UN Security Council Resolution 1540, traditional export control systems to control dual-use technology, and trade sanctions enforcement. How and to what extent are the objectives of these systems different? To what extent can licensing systems and Customs clearance procedures for controlling strategic goods be used to implement trade sanctions? What role should the multilateral export control regimes play in implementing UNSCR 1540?  
Presenter: Carl Baker

14:15      **Session 4: STC Systems -- Ideal vs. Existing Models**  
This session will review aspects of existing STC systems globally to weigh the pros and cons of different models. Is separate trade control legislation necessary or can the necessary legal authorities be integrated into existing legislation? What are the benefits and drawbacks of having HS (Customs) code-based licensing system? Is it preferable to have a single licensing authority or multiple licensing authorities? What criteria should be used to determine the most appropriate authority in each country? Is it better to prioritize control lists or catch-all controls? What kind of supporting legislation is most effective in implementing STC? How can regional or international STC objectives or updates be (regularly) incorporated into national STC practices?  
Presenters: Kyaw Si Thu, Kim Hyuk, Kim Yonghwan

15:30      **Coffee Break**

15:45      **Session 5: Update on Assistance and Evaluation Programs**  
This session will provide an update on the various programs available to support countries' development and enhancement of STC. Tentatively these include the Stimson Center's Partnerships in Proliferation Prevention Program; UNSCR 1540 assistance and approved matrices; the Verification Research, Training and Information Centre (VERTIC); and the UN Financial Action Task Force (FATF). What capacity building programs do the United States and the European Union provide to facilitate STC implementation in other countries?  
Presenter: Seema Gahlaut

17:00      **Session Adjourns**

18:30      **Dinner**

**Thursday, July 26, 2018**

9:00      **Session 6: STC Updates from United States and European Union**  
This session will address recent STC changes in the United States and Europe, including Export Control Reform in the United States and European Commission's proposal to modernize the European Union export control system. What effect will the introduction of controls on surveillance and intrusion technologies in both places have in Asia? What challenges do the United States and EU member states face in STC implementation?  
Presenters: Crystal Pryor (US), Lia Caponetti (EU)

9:45      **Session 7: STC Updates from Philippines, Thailand, and Vietnam**  
This session will provide an update of the STC systems in the Philippines, Thailand, and Vietnam. What national legislation and licensing, enforcement, and industry outreach programs are in place? What challenges remain in STC implementation? What are the next steps? What economic/trade facilitation benefits have been realized? What are some examples of successful prosecutions of STC violations? What capacity building programs are available to facilitate implementation?  
Presenters: Janice Dimayacyac (Philippines), Pichsinee Sari (Thailand), Sivachart Chattrastrri (Thailand), Nguyen Thi Viet Nga (Vietnam)

10:45      **Coffee Break**



- 11:00 **Session 8: STC Updates from Myanmar, Cambodia, and Laos**  
This session will provide an update of the STC systems in Myanmar, Cambodia, and Laos. What national legislation and licensing, enforcement, and industry outreach programs are in place? What challenges remain in STC implementation? What trade facilitation benefits have been realized? What are some examples of successful prosecutions of STC violations? What capacity building programs are available to facilitate implementation?  
Presenters: Phone Myint Naing (Myanmar), Vantha Hoy (Cambodia), Soudachanh Darounphanh (Laos)
- 12:00 **Lunch**
- 13:30 **Session 9: Strategic Trade Controls and Regional Economic Integration**  
This session will provide an update on implementation of the ASEAN Economic Community (AEC) and the National Single Window (NSW) initiatives in Southeast Asia. What are the prospects for strategic trade management principles to be incorporated into the NSW system? What are the obstacles related to strategic trade controls in the context of the AEC and NSW? What are the viable options to address those obstacles? How can strategic trade controls be integrated into processes of realizing the ASEAN Community Vision 2025?  
Presenter: George Tan
- 14:45 **Coffee Break**
- 15:00 **Session 10: Wrap-Up, Concluding Remarks, and Next Steps**  
This session will summarize the meeting's key findings and reflect on next steps for better adoption and implementation of strategic trade controls by Southeast Asian states.
- 15:30 **Meeting Adjourns**



## APENDIX B

**Seminar on Strategic Trade Controls in Southeast Asia  
Hilton Hanoi Opera, Vietnam  
July 24-26, 2018**

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