



Balancing Strategic Trade Control Implementation with the Broadening Role of Technology and Financial Controls in Foreign Policy

A Conference Report
of the Workshop on Strategic Trade Controls
in the Asia-Pacific

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Pacific Forum

Based in Honolulu, the Pacific Forum (www.pacforum.org) is a foreign policy research institute focused on the Indo-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.

Institute of International Relations, National Chengchi University

The Institute of International Relations (IIR) was founded on April 1, 1953, as the Association for International Relations. In 1961, the Association's title was changed to the Institute of International Relations of the Republic of China. From then on, it began to expand and develop relationships with other academic institutions at home and abroad. Since July 1, 1975, the IIR both has been affiliated with National Chengchi University as an autonomous institution and has continued to develop its research into mainland Chinese and international affairs.

I-Shou University

Formerly called Kaohsiung Polytechnic Institute (KPI), I-Shou University (ISU) was established in 1986 by Chairman I-Shou Lin of E United Group to benefit the villages and towns where he started his business. With its excellent performance on teaching, research and administration, KPI was officially upgraded and renamed I-Shou University in August of 1997. Currently, it has nine colleges with some 16,000 students. It is a well-developed comprehensive private university with a strong conviction that education is the best way to change one's destiny.

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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

WORKSHOP ON STRATEGIC TRADE
CONTROLS IN THE ASIA-PACIFIC

The Pacific Forum, National Chengchi University's Institute of International Relations, and I-Shou University's Department of Public Policy and Management with support from the Taiwan Coast Guard, Prospect Foundation, Ocean Affairs Council, and the US State Department's Export Control and Related Border Security Program held their eighth annual strategic trade control (STC) workshop on Nov. 7-8, 2018 in Kaohsiung, Taiwan. Nearly 40 participants from relevant government agencies and nongovernmental organizations attended in their private capacities. Discussions focused on the status of outreach programs in the Asia-Pacific, proliferation finance controls, issues associated with technology controls and transfers, the relationship between foreign policy and nonproliferation goals, and transit/transshipment and port security. Key findings include:

There has been significant progress in establishing comprehensive STC programs in several ASEAN countries. Laos has strong political support at Ministry of Industry and Commerce and plans to have an STC law in place by 2020. Myanmar is well-positioned to make progress in STC, but seems to lack sufficient political will to move things forward. Cambodia Customs is working closely with the World Customs Organization and the UN Office on Drugs and Crime through the Global Shield program to raise awareness. The challenge is now moving from awareness to action.

While there has been significant progress in implementing national STC programs in the Asia-Pacific region, broader nonproliferation

measures, including countering proliferation financing and establishing better controls over technology transfers are needed. Southeast Asian countries that have committed to STC are worried about these broader demands. Yet developing countries need to comply with the US/EU control list requirements if they want to integrate into the global supply chain for high-technology goods.

The volume and speed of transit and transshipment represents a practical challenge for many ports in the Asia-Pacific region. The lack of documentation needed for risk assessment and the lack of interface with main transaction parties contribute to the problem.

National STC programs for Southeast Asian countries should be less complicated than they are in the developed economies. Developing countries should be reassured that the target for STC is relatively small, and that STC is concerned with nonproliferation to non-state actors that can disrupt the international system, in line with UN Security Council Resolution 1540.

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.

One weakness in STC outreach is the presence of many donors but not enough coordination. Recipients may get the same thing, but the donor countries have different approaches, which can be confusing. Every recipient country is different so training should be adapted to suit the needs of each country. If a recipient country does not have political will, generating interest in an STC outreach program is extremely difficult.

The EU P2P (Partner-to-Partner) Export Control Programme has been actively engaged in all 10 ASEAN countries except Indonesia. Nevertheless, given its size and significant impact on the region's economy, Indonesia's involvement in developing comprehensive trade control measures is crucial to the effectiveness of strategic trade controls (STC) in Southeast Asia.

Drafting relevant strategic trade control legislation has been a primary focus for the EU P2P program although it has also assisted with translating the EU control list into local languages.

The United States is changing its approach to STC-related outreach. There will be more coordination among agencies, more flexibility in how funding is allocated, and a threat-prioritized approach rather than focusing on the needs of individual countries. Anticipated changes include more threat-specific and cross-regional outreach; more focus on sanctions and enforcement; and greater emphasis on targeted and tracked outcomes and impacts.

The Korea Strategic Trade Institute (KOSTI) focuses on sharing experience in industry outreach rather than on

governmental licensing and enforcement. KOSTI does not have a standardized program, but instead develops tailored programs for individual countries. Partner countries can also give feedback through the program. South Korea's perspective is that it also stands to learn about STC from partner countries.

The Philippines has partnered with numerous countries and organizations to develop its STC program. Despite the diversity of partners, the Philippines does not perceive significant overlap in the outreach or assistance efforts being provided.

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.

The EU dual-use regulation "recast" includes "human security" considerations. Proposed changes also include a broader definition of dual-use items. Some argue that human rights considerations go beyond WMD nonproliferation and that human rights protection through other means is more appropriate than through the EU dual-use regulation.

The nature of emerging technologies is likely to increase the focus on intangible technology transfer (ITT) controls. Controlling ITT is very challenging for national authorities and companies and will only become more difficult with emerging technologies.

A significant change with the US Export Control Reform Act of 2018 (ECRA) is the introduction of export controls for “emerging and foundational technologies.” The Department of Commerce will establish interim and permanent controls on these technologies. This could represent a major shift in controls for exporting new technologies to China and other countries.

Since international criminal and terrorist groups are increasingly using cryptocurrencies, the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury has focused on monitoring them in an effort to prevent them from being used to evade sanctions.

More work is needed to improve coordination between financial regulators and STC implementers. Sharing data from national export licensing and proliferation financing cases would serve as a useful cross-reference to understand the size/scale of the problem in the region.

BALANCING STRATEGIC TRADE CONTROL IMPLEMENTATION WITH THE BROADENING ROLE OF TECHNOLOGY AND FINANCIAL CONTROLS IN FOREIGN POLICY

CONFERENCE REPORT

The Pacific Forum, National Chengchi University's Institute of International Relations, and I-Shou University's Department of Public Policy and Management with support from the Taiwan Coast Guard, Prospect Foundation, Ocean Affairs Council, and the US State Department's Export Control and Related Border Security Program held their eighth annual strategic trade control workshop on Nov. 7-8, 2018 in Kaohsiung, Taiwan. Nearly 40 participants from relevant government agencies and nongovernmental organizations attended in their private capacities. Discussions focused on the status of outreach programs in the Asia-Pacific, proliferation finance controls, issues associated with technology controls and transfers, foreign policy versus non-proliferation goals, and transit/transshipment and port security. The workshop concluded with a visit to Kaohsiung port on Taiwan International Ports Corporation's harbor cruise yacht and a Taiwan Customs Administration guided tour of the US-Taiwan joint counter-terrorism facilities.

Status of Outreach Programs in the Asia-Pacific

Progress has been made in the Asia Pacific on Strategic Trade Controls (STC) since 2011, when the Workshop on Strategic Trade Controls in the Asia-Pacific first began. At the time, Taiwan, Malaysia, and Singapore were the only countries in Southeast Asia to have STC systems in place. Today, most countries in Southeast Asia, including Laos, Cambodia, and Indonesia, appear interested in moving forward with STC. At this stage, it is useful to take a look back and see how we have gotten, assess how we have done, and consider what work remains.

Mohamed Shahabar Abdul Kareem (Consultant) explained that the EU P2P (Partner-to-Partner) Export Control Programme is global, covering over 30 countries in 6 regions. Southeast Asia is considered one region under this program. The EU P2P program was initiated in 2015 and launched in 2016. Its objectives are to reduce the risk of proliferation and to strengthen international cooperation in promoting strategic trade control systems. Since 2015, it has deployed "EU Common Training Toolkits (EUCOTT)," which include 11 training modules that cover topics such as licensing processes, interdiction, proliferation financing, transit and transshipment, and investigation and prosecution. The training modules also take into account regional developments and the current situation in the recipient country. The program also provides themed training modules at a more involved level, which are implemented based on mutual agreement between the EU P2P program and the target country.

The EU P2P program has been implemented in all 10 ASEAN countries except Indonesia. While the EU has decided not to pursue any initiatives in Indonesia for some time, it is an important country in the region. Given its

size, Indonesia's participation is crucial to the effectiveness of STC implementation in Southeast Asia.

Specific EU P2P activities in Southeast Asia include drafting relevant export control legislation. The main focus in the initial program outreach is whether there is a law or a draft law, and whether political will has been established. The EU P2P program has also assisted with translation of the EU control list, which is generally accepted as a useful baseline for developing an indigenous control list. The program also provides commodity identification training using the World Customs Organization (WCO) Strategic Trade Control Enforcement (STCE) curriculum, which is based on Harmonized System (HS) codes. Finally, the program emphasizes industry engagement, awareness, and compliance.

Several Southeast Asian countries continue to make substantial progress toward implementing a national STC program. The latest success story is the Philippines, which expects to officially implement its STC law on Jan. 1, 2019. It has covered all the main pillars of STC, and is also controlling imports. Laos is the most recent STC champion in Southeast Asia. The government has political support at the Ministry of Industry and Commerce. Following an "18-month road map," Laos should have an STC law in place by 2020, if not sooner. To enact the law, the prime minister will sign a decree rather than going through the normal parliamentary approval procedure. Laos' primary interest in STC is focused on establishing a mechanism to control transit/transshipment of goods through the country.

Myanmar is well-positioned to make progress in STC, but is still lacking sufficient political will to move things forward. In Brunei, the National Security Council (NSC) is the focus of EU P2P outreach, which is determining whether the NSC can lead the STC process.

The initial focus of the EU P2P in Cambodia has been the Chemical, Biological, Radiological and Nuclear (CBRN) Risk Mitigation Centres of Excellence (CoE) Initiative, although this program is focused on internal security. Separately, it was noted that Cambodia Customs works closely with the WCO and UN Office on Drugs and Crime through the Global Shield program. Cambodia currently has sufficient outreach and awareness programs, but knowledge of how to move from awareness to action is lacking. One major task is a gap assessment. Countries sometimes get lost in the process of implementing STC, and outreach programs come from a variety of angles. Officials therefore do not know what to do or where the gaps are.

Neither Vietnam nor Indonesia are currently working on an STC law. In Vietnam, there has been a trust deficit and officials are suspicious of foreigners coming in to provide assistance. But the Customs Department has proven to be a good focal point. There was some engagement in Indonesia in 2010, but now one generation of trained people has been lost due to the regular rotation of officers. Without Indonesia, it will be difficult to establish an effective ASEAN-wide STC system.

Shahabar said that one challenge for STC outreach in the Asia-Pacific region is a limited international foundation for implementing a national STC program. Countries such as Indonesia point to the lack of an international treaty-based legal foundation. United Nations Security Council Resolution (UNSCR) 1540 has helped fill in some of this gap, but for more conventional dual-use items (those covered under the Wassenaar Arrangement), a solid foundation is still lacking. For these items, there is often less buy-in for national STC development. Another challenge is that variation among countries, such as in their trade and government structures, can have an impact on effective implementation.

Other challenges include traditional concerns over STC having a negative impact on trade facilitation and the economy; different national priorities (nonproliferation or STC are not always a national priority, so countries do not always want to engage in an elaborate program with the European Union or the United States); and host country capacity (sometimes there is not the office, personnel, or budget required to support the building of an STC system). There can also be issues with communication and coordination (internally and externally). Internally, it can be challenging to find a UNSCR 1540/STC coordination contact. Externally, there has been some duplication of effort, especially between the EU and the US, which can be confusing for recipient countries.

Jay Nash (Center for Policy Research) described outreach on STC by the United States as being an intersection of many different types of assistance associated with various security concerns: counterterrorism, nonproliferation and counter-proliferation of WMD, and Customs and law enforcement. Recipients in partner countries may not be aware of these different spheres and may see these efforts as being one package. Yet the reality is not so well defined, which can make internal and external coordination difficult. The Export Control and Related Border Security (EXBS) Program is the closest thing the US has to a coordinating body or an inter-agency mechanism in promoting STC initiatives. Other agencies often conduct outreach efforts under the EXBS banner.

The current status and approach of US STC outreach in the Asia Pacific include multiple programs implemented by many different offices, with loose coordination. Outreach is also tied to the US federal budget and legislation, which is controlled by the US

Congress, not the implementing agencies. Thus, agencies may not be able to run coordinated programs at all times due to budgetary and congressional restrictions. To date, STC outreach has been country-specific, but this is changing. That said, the US does have regional advisors or in-country advisors. The United States works with a variety of in-country partners, mostly national governments, and often the Foreign Ministry or the lead STC-related agency. Sometimes outreach is conducted through non-governmental actors. The US also focuses on industry outreach.

The United States is in the process of making some changes in approach to STC-related outreach. Nonproliferation programming is being reformed as a whole, as announced a few weeks ago by the Bureau of International Security and Nonproliferation, Department of State.¹ The thrust of the changes is to align outreach efforts with US national security priorities. There will also be more coordination among agencies and more flexibility in how programming and funding is allocated. Focusing on national security priorities will require identification of the greatest threats from a US national security perspective. This means that future outreach will be more threat specific and cross-regional rather than country-specific; there may be more focus on sanctions and enforcement initiatives; and a greater emphasis on targeted outcomes and impacts (a trend apparent across the US government).

Nash suggested that for recipient countries in the Asia-Pacific region, implications of the reforms in US nonproliferation programming include the need to find the “underlying core commonality” between US reasons for STC outreach and their own. Also, because the US government is moving toward a more

¹ Christopher Ashley Ford, “Reforming Nonproliferation Programming,” September 25, 2018, remarks delivered at Stimson Center,

Washington, DC.
<https://www.state.gov/t/isn/rls/rm/2018/286210.htm>.

regional, threat-based model, recipient countries should try to bolster the regional institutions, such as ASEAN, that are involved in STC outreach in the Asia-Pacific. Nonetheless, ASEAN is more focused on trade facilitation and connectivity, so it will be difficult to have a regional approach to STC. Recipient countries should try to enhance national or intra-governmental STC coordination and consider ways to harmonize STC programs among the countries within ASEAN. That is why getting Indonesia to adopt an STC system is important.

George Tan (Global Trade Security Consulting) said that looking at STC outreach on a global scale, the donors are mainly advanced countries and the United Nations (the 1540 Committee and Office for Disarmament Affairs). In particular, the United States, the European Commission, Germany, and Japan have actively advanced STC outreach. South Korea and Australia conduct outreach on a case-by-case basis, as do Singapore and Malaysia. Countries such as Canada and the United Kingdom primarily sponsor outreach through nongovernmental organizations.

Most countries will send people to attend outreach as a kind of incentive, Tan said. Thus, attendees are not necessarily involved with STC when they return to their countries. For example, Japan's Ministry of Economy, Trade and Industry (METI) has invited officers from all Southeast Asian countries to attend its training programs, but every year a different officer is sent. METI, which is also facing budget constraints, is now adjusting its program in light of this fact.

Tan noted that recipients have their own priorities, so there is not always a 100 percent match with donor goals. Most countries that do not have an STC law at the moment do not have an agency that has been officially designated to lead the implementation process. So what is needed is to build a

relationship with the foreign ministry to determine how a national STC program can be implemented.

Another issue in STC outreach is the presence of many donors but not enough coordination. Recipients get the same thing, but the donor countries have different thinking and approaches, which can be confusing. There have been efforts to bridge outreach from Germany's Federal Office of Economics and Export Control (BAFA) and EXBS. Moreover, every country is different, so donors cannot use the same training in all countries. Most importantly, if a recipient country does not have political will, there is no way to start an STC outreach program.

Masaaki Takashima (CISTEC) shared that Japan has held the Asian Export Control Seminar annually since 1993, and views continuity as very important. The 26th annual seminar will be held in February 2019. A recent trend in Japan's outreach activity is that recipient countries have more specific needs in STC, such as product classification, model compliance programs, and intangible technology controls.

CISTEC regularly supports the Japanese government in its outreach efforts, and three years ago, began sending its own missions consisting of participants from private companies to Asian countries such as Thailand and Philippines. In particular, CISTEC has been welcomed in countries that have yet to introduce STC regulation and is expected to share expertise to enhance the progress of such introduction. CISTEC is also invited to various STC seminars/workshops and supports collaboration between Japan's Ministry of Economy, Trade and Industry and EXBS. Such engagements have been enabled due to CISTEC'S unique nature as an NGO in which private industry knowledge and experience have accumulated.

Chae-wook Lim (KOSTI) explained that the South Korean government focuses on licensing and enforcement in its STC outreach efforts. Meanwhile, the Korea Strategic Trade Institute (KOSTI) encourages compliance with STC principles. KOSTI's program focuses on sharing experience in industry outreach rather than on licensing/enforcement, which is the biggest difference from the EU and US outreach programs. KOSTI has divided the process of developing an STC system into three steps. Countries in Step 2 (industry outreach, compliance tools, and inter-agency cooperation) or Step 3 (ICP, ITT control, international cooperation) are ideal for KOSTI's program. Once an STC system is developed, the next thing is industry outreach. Many ASEAN countries are still in Step 1 (legislation, control list, licensing authorities), but Thailand, Malaysia, Singapore, and the Philippines are in Step 2 or 3. KOSTI does not have a standardized program that can be used for any country, but instead develops tailored programs. Partner countries can also give feedback through the program. South Korea's perspective is that it also stands to learn from partner countries about STC.

Examples of KOSTI's recent outreach projects include Malaysia in July 2017, where KOSTI collaborated with the Strategic Trade Secretariat in the Ministry of International Trade and Industry to develop a self-classification system. It is important to develop this kind of convenient tool in many countries. In May 2018, KOSTI worked with the Philippines' Strategic Trade Management Office (STMO) in the Department of Trade and Industry on the development of an IT system. A Memorandum of Understanding was signed between KOSTI and STMO for KOSTI to provide technical assistance.

Armando Mercado Jr. (Strategic Trade Management Office, Philippines) stated that in the Philippines, the Strategic Trade

Management Act (STMA) Implementing Rules and Regulations was published on Sept. 25, 2018, and took effect 15 days after the publication, on Oct. 10, 2018. The government is carrying out phased implementation to provide ample time to stakeholders to prepare for final implementation of the Act over the course of 2019-2020.

The Philippines has partnered with numerous countries and organizations to develop its STC program. These include the European Union (EU P2P outreach on dual-use goods and Arms Trade Treaty, and CBRN CoE), the United States (Department of State [and EXBS], Department of Energy [and National Laboratories], the Department of Commerce [and Bureau of Industry and Security], the Department of Defense [and Defense Threat Reduction Agency, Defense Technology Security Administration]), Japan (METI, CISTEC), Australia (Australian Business Forum, which conducted a capacity workshop in the Philippines in July 2018), South Korea (KOSTI), Taiwan, Singapore Customs, the 1540 Committee, the Organisation for the Prohibition of Chemical Weapons, and the WCO, the Financial Action Task Force on Money Laundering, and the International Atomic Energy Agency. Despite the many and various organizations the Philippines has worked with, the government does not perceive overlap in the outreach or assistance efforts being provided. To avoid duplication or overlap, STMO informs the sponsors of the current programs/workshops/training provided by the other sponsors. The Philippines felt it was best to accept all assistance and training and get best practices from each of the countries. It also wants to show that it is serious about implementing the Strategic Trade Management Act by January 2019.

Anupam Srivastava (Stimson Center) said that the Stimson Center, a nongovernmental organization, runs an Assistance Support

Initiative (funded by Global Affairs Canada) as part of its Partnership in Proliferation Prevention Program. The purpose of the initiative is to help states build their capacity to make more effective assistance requests to effectively implement the obligations of UNSCR 1540. The initiative helps states navigate the maze of assistance available in part by creating a searchable database (<https://1540assistance.stimson.org/>) of assistance providers and how to approach them. It also provides matchmaking services – finding the right technical support for the assistance the country needs. Tools and videos are being designed on how to seek assistance, and new assistance programs/projects are being explored. Stimson is currently seeking a volunteer (national governments seeking assistance) to provide feedback on its matchmaking tool.

Stimson also has a Trade, Technology, and Security Program that looks at emerging technologies both as a challenge to security and as a solution, such as the security benefits that distributed ledger technology may provide. The program additionally conducts traditional work in terms of training governments, such as a national export control academy, which is a two-week training program for junior government officers on all the aspects of a national STC system including a regulatory framework, licensing, enforcement, and industry outreach. Stimson also does outreach to industry on STC as well as sanctions and briefings for policymakers and decision makers.

Proliferation Finance Controls

Togzhan Kassenova (Carnegie) described financial institutions as currently seeing proliferation finance controls as a somewhat misplaced issue. The regimes for anti-money laundering and counter-terrorist financing are much more advanced than those for countering proliferation financing. For

example, at the last Asia/Pacific Group on Money Laundering (an inter-governmental organization) meeting, several days were devoted to proliferation financing controls, but participants found it difficult to grasp what proliferation was and its relationship to other illicit financial activity.

In many cases, financial institutions view proliferation financing in a very narrow way – as sanctions implementation. For example, banks use software that compares transactions with lists of designated entities and individuals. But in reality, proliferation is a broader problem beyond sanctioning individuals and entities. While banks are aware and up-to-date on DPRK and Iran sanctions, there is a general lack of awareness within the finance community regarding UNSCR 1540. Yet UNSCR 1540 implementation guidance does require states to include measures to monitor financial transactions.

Challenges with implementing proliferation financing controls Kassenova highlighted include problems associated with UN sanctions enforcement. In many countries, the requirement to implement UN sanctions is not fully reflected in domestic legislation, which creates a delay in acting on any UN update to a sanctions list. Furthermore, list-based scanning can lead to a high number of false positives – up to 95 percent. Requiring banks to file a report in the event of any list match is highly inefficient. Financial institutions also have limited capacity for activity-based analysis. While they understand that they should not fund proliferation activity, it is very hard for them to detect it. They have great difficulty in identifying who the end-user is (who the actors are) or what the goods of concern are since they do not have access to the information.

Common financial patterns in proliferation financing include murky structures in countries with lax regulations where front

companies are created. Company creation services rarely require more than a name and local address and often conceal other information about the company. Once established, they can initiate payments through the global financial system. Without in-house experts, financial institutions cannot investigate the trillions of monthly transactions. Instead, they often rely on trigger words and other patterns, but the process depends on accuracy of the information provided by originating financial institutions.

Some large banks – which are notoriously risk-averse – are operating their own investigations, using data and artificial intelligence (AI) to identify suspicious transactions. There is also now sophisticated compliance software to see a customer's history, especially if it is a US dollar-denominated transaction that must flow through the United States. Compliance software is becoming better and more affordable, which has helped the community grapple with the lax jurisdictions. Utilizing AI and the massive amounts of data banks collect helps. Yet, Kassenova pointed out that this compliance is very expensive – \$300 billion per year for the industry, which is expected to double by 2022. Thus, smaller financial institutions often cannot afford sophisticated compliance solutions. There are some solutions for smaller institutions, but they are not as advanced. Proliferators are good at finding gaps, taking advantage of smaller institutions.

Brian Moore (US Department of Treasury) explained that the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury has been focusing more on cryptocurrencies in the past 12-18 months. Since 2008 and the release of Bitcoin, international criminal and terrorist groups are increasingly using cryptocurrencies, which are a natural attraction for illicit actors. A cryptocurrency exchange account only

requires an email address, and once established, account owners can transact with anyone. Thus, fraudsters, drug traffickers, and others have been active in this space.

Since 2017, there has been an emergence of state-sponsored (national) cryptocurrencies. Venezuela has developed its virtual currency, the Petro and Iran is developing its own as well. Russia is also examining how it can utilize cryptocurrencies and blockchain technologies and North Korea recently hosted an international conference on the technologies in October 2018. There seems to be an explicit intent to circumvent the global financial system by using cryptocurrencies to evade UN or US sanctions. While these instruments still lack legitimacy within the global financial system, the developments are concerning. If illicit actors can find ways to exchange the fiat currency with legitimate currency, then they will do so since unregulated exchanges will allow such exchanges. Abuse will continue in the short term, but officials are confident that the industry can ultimately be normalized.

Part of the problem with proliferation financing is the lack of coordination between financial regulators and STC implementers. One participant suggested including member governments in a future meeting on proliferation finance. Data from national export licensing, and in particular any examples related to proliferation finance, would serve as a useful reference to understand the size and scale of the problem in the region. A future workshop could develop guidelines on best practices on how to improve coordination between the two communities.

Technology Controls and Transfers

Kolja Brockmann (SIPRI) began his presentation by noting that the category of “emerging technologies” is one that everyone uses, but lacks a common, shared definition.

Common characteristics include novel elements, disruptive potential, rapid development, targeted R&D efforts, and increasing adoption by industry. Yet these technologies usually do not have agreed technical standards for proliferation-relevant qualities, he noted. There is also often no conclusive common risk-assessment in the nonproliferation regimes. The challenges of controlling emerging technologies are neither new nor unique, but their specific combination is worth exploring.

National control approaches to emerging technologies include temporary listing on control lists. In the United States, this falls under the Export Control Classification Number “0Y521” series. Technical advisory committees provide advice on which technologies should be covered and how; items under 0Y521 are controlled domestically (unilaterally) while the US government seeks expansion of controls within the multilateral export control regimes.

A good practice, Brockmann suggested, is integration of export control elements in other governance tools. For example, the EU Horizon 2020 program requires researchers to declare possible applicability of export controls in research proposals for grant applications, thus bringing the screening process in early to the development of research proposals. Further integrating some of the mechanisms that are not necessarily traditional export controls could help manage emerging technologies and their proliferation risks.

Robert Shaw (Middlebury Institute of International Studies) noted that in the United States, intangible technology transfer (ITT) controls have been a source of discussion, controversy, and debate since the 2000s, as have controls on “deemed exports.” Universities and industry have been active in offering input while also increasing compliance efforts. Industry responses to

ITT controls in the US context are characterized by a vigorous effort to comply. The nature of emerging technologies is likely to increase the focus on ITT controls. For example, 3D printing may be controlled depending on what items or materials are involved. Implementing control measures on ITT is very challenging for national authorities and companies. These challenges will only increase with increasingly sophisticated technologies. There is also a lack of consensus on how to implement controls. The James Martin Center for Nonproliferation Studies (CNS) is working on a project to provide practical examples of how companies are implementing controls in university or industry settings can help.

Lino Arboleda (GE) addressed the issue of how a major multinational corporation like General Electric (GE) overcomes the challenges with different jurisdictions imposing controls on goods and technologies. The Asia-Pacific region presents many export control compliance challenges, especially when dealing with US-origin technologies. In one illustration, GE could need up to five different licenses for one transaction across multiple jurisdictions. For ITT, GE focuses on requirements that are applicable globally, but include known differences (e.g., on deemed exports and data encryption). GE’s policy is to adopt the most stringent controls to ensure compliance.

STC and Foreign Policy versus Non-Proliferation Goals

There is a growing disconnect in how we think about technology controls. STC implementation may be affected by the shift in approach the United States is taking, particularly as US-China competition heats up. Some countries are now thinking about requirements for controlling technologies for reasons such as intellectual property

protection rather than preventing WMD proliferation.

Rajiv Nayan (IDSA) described the disappearing traditional divide between national security and foreign policy. Proliferation is now being considered a direct threat to countries, so it becomes a national security priority. In parallel, terrorism is being also considered a bigger threat. While WMD terrorism has been a topic of discussion for decades in the West, after 2010-2011, it became considered a serious problem among a broader group of countries.

There has also been internationalization of STC in parallel with a struggle to find common foreign policy objectives, Nayan noted. The US or EU perspective may not be adopted by other countries as they move away from the Cold War-era goals of export controls. There is also a divide between developed and developing countries. Developing countries with emerging economies have their own interests. They want to be integrated with the global high-technology supply chain. Over the last several years, they have started accepting the norm of strategic trade controls, especially under UNSCR 1540 (the development of which was a revolution for STC). All developing countries are at least trying to join or adhere to the multilateral export control regimes as a means to gain access to the high-technology supply chain. Some even share the foreign policy objectives of the developed countries. Yet the moment that it is perceived that economic development will be affected, they will start acting as a “developing country bloc.” There is also opposition to unilateral measures.

Human rights are another issue that remains controversial. There is no definition even in the EU legislation or regulations of what constitutes human rights, and moreover, human rights are not always the same across countries (e.g., your terrorists could be my

freedom fighters). There are also national interests in defining “countries of concern” and no universally accepted list.

Nayan warned that the old STC system needs to be rationalized to prevent accumulation of redundant and irrelevant rules. To enhance the current approach to STC, there should be dialogue and consensus building. International organizations and multilateral bodies should be used for discussions. Countries should not increase the scope of controls without considering whether they are manageable or not.

Lia Caponetti (University of Liege), in a presentation delivered by Crystal Pryor, described EU foreign policy as being guided by values and principles, including WMD non-proliferation and human rights protection. The EU’s tools include WMD and human rights clauses in international agreements with third countries and trade controls for human rights considerations. In particular, the EU can control listed items through Regulation (EC) No 428/2009 annex updates (a list of EU controlled items, which is a compilation of international trade control regimes’ lists). Items on Annex I include the Wassenaar Arrangement’s December 2013 updates, including some “Intrusion Software” and “IP Network Surveillance Systems.” For unlisted items, EU member countries can implement a catch-all clause based on Article 8 of the EU dual-use regulation. These are items controlled because they could violate human rights, but are formally adopted under WMD/military considerations. The catch-all clause based on Article 8 of the dual-use regulation is optional for member states to implement.

An evolution Caponetti highlighted with the EU dual-use regulation “recast” is the inclusion of “human security.” Proposed changes to the regulation also include a broader definition of dual-use items, such as “Cyber-surveillance technology which can be

used for the commission of serious violations of human rights or international law, or can pose a threat to international security or the essential security interest of the Union and its Member States,” as well as targeted catch-all controls.

Some skeptics ask if human rights protection is really a WMD non-proliferation issue. They argue that human rights considerations go far beyond WMD non-proliferation matters and that human rights protection through EU Anti-Torture Regulation is more appropriate because it better fits the scope of this regulation. Fewer items to control in this framework make for easier implementation. Moreover, items related to torture and death penalty are not controlled under the international export control regimes, so covering them under the EU Anti-Torture Regulation is a more appropriate means.

Implications for Asia-Pacific countries include the possible addition of an entire category of criteria and conditions related to human rights to assess before granting authorizations for listed items. There is also a permanent risk of catch-all clauses being applied to exports from the EU for non-listed items for HR considerations. Meanwhile, export control outreach programs and international agreements can facilitate trade of strategic human rights-related items (technology), potentially allowing recipient countries to be less impacted by human rights considerations.² Many countries in Asia-Pacific follow the EU control list in some fashion.

Crystal Pryor (Pacific Forum) explained that dual-use export controls have looked beyond WMD proliferation among nation states to broader questions in fields of national, regional, and international security. For example, the idea that export controls on

dual-use items play a role in preventing acts of terrorism has been firmly established since Sept. 11, 2001, primarily through UNSCR 1540. Also, as discussed in the previous presentation, EU-level controls on export of dual-use items include references to human rights concerns. In the United States, items are controlled in furtherance of US foreign policy and other objectives, including anti-terrorism, crime control, Firearms Convention, regional stability, UN sanctions, and short supply reasons.

In the United States, the Export Control Reform Act of 2018 (ECRA) and Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) became law on Aug. 13, 2018. The goal is to enhance US export and investment controls to address concerns regarding the release of critical technologies to end uses, end users and destinations of concern, including China. It is the permanent statutory authority for the Export Administration Regulations, which are administered by Department of Commerce’s Bureau of Industry and Security (BIS). On one hand, the Export Controls Act of 2018 preserves the status quo and does not change any country-specific licensing policies. On the other hand, Section 1756(d) requires BIS to review the impact of proposed exports to the defense industrial base, and Section 1758 includes a requirement to identify and control emerging and foundational technologies. The Department of Commerce is to establish interim and permanent controls on emerging and foundational technologies. There is an interagency process to determine which technologies are covered. Potentially subject items include cybersecurity, artificial intelligence, machine learning, autonomous vehicles, 3D printing, augmented virtual reality, gene editing, financial technology, semiconductors, robotics, nanotechnology, and biotechnology. This could represent a

² The EU has international agreement negotiations (Free Trade Agreements) ready or in progress with

many of the Southeast Asian countries that have participated in the EU P2P program.

major shift in controls for exporting new technologies to China and other controlled destinations. It is also seen as a response to China's plans to acquire technologies pursuant to the "Made in China 2025" plan.

Pryor noted several potential downstream effects of recent shifts in the application of export controls. One is that human rights may be treated as a "national security" concern. Another relates to the requirement that US emerging technology controls have a mandate to be made multilateral, especially via the Wassenaar Arrangement. If made multilateral, the changes could impact a range of countries. Some fear that the shift in the focus of export controls represents a kind of "CoCom 2.0." Yet the situation today is different from the Cold War. In today's global economy, it is unclear if effective technology controls are even possible or desirable. There could also be negative consequences for countries that adopt the Wassenaar or EU dual-use control lists.

One participant stated that a new polarization is happening in STC and suggested a bright line be drawn between STC and the much more complicated defense procurement and export control systems. Another participant noted that for the EU dual-use regulation recast, there is a 2019 deadline, at which time European Parliament elections will be held. This could change the entire legislative process in EU again and they may have to redo much of the work to form a law or regulations. Also, there is an assumption (on the Western side) that new controls can be pushed through the Wassenaar Arrangement. But in reality, if STC moves in a foreign policy-driven direction, such a framing will make it much harder to get consensus.

Participants expressed concern over whether we will lose the advances we have made in getting developing countries to abide by principles of the four export control regimes. People may become confused about what the

requirements are. From the perspective of Southeast Asian countries that have committed to implementing national STC programs, they are worried about what additional steps will be required of them. Still, these countries need to comply with US and EU control lists if they want to integrate into the global supply chains, as multi-national corporations emphasize.

In the EU, it was noted that technology controls have come up more frequently in the context of investment controls, including in the face of Chinese acquisitions of German robotic firms. This discussion includes foreign policy concerns, but usually the EU does not frame it in terms of foreign policy. Such considerations have now been made more explicit. Germans, for one, are practicing more foreign investment controls.

Another participant noted that emerging technologies have been discussed in the Committee on Foreign Investment in the United States (CFIUS)/investment context for years. Whether a technology is critical to national security is a major factor in whether to allow the foreign acquisition of a US company. This has not been a factor in how BIS reviews export control licenses, however. The 2018 ECRA was actually a result of the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018. It was deemed better to handle the emerging technology issue under an export control context than within the FIRRMA context.

Transit/Transshipment and Port Security

Jay Nash (Center for Policy Research) argued that the high volume of trade in the region is based on transit/transshipment transfers, which have been primary target points for proliferators over the last several years. The term "strategic trade management" is often used instead of "export controls" to incorporate the importance of regulating transit and transshipment in addition to

exports. Nash said that what is typically called for in an STM process, including timelines, does not fit into the typical time on the ground and speed of transit and transshipments. Transit/transshipment controls are the final (enabled) phase in the WCO's STCE maturity model, meaning that if a country has these kinds of controls, from a WCO perspective, it is in the most mature part of an STC system.

Practical challenges in the Asia-Pacific region that Nash described include the volume and speed of transit and transshipment. These facilities are also more sea- and air-based than land-based. Customs officials face a lack of documentation needed for assessment and lack of interface with main transaction parties because they are far removed from the actual transaction. Countries also have to deal with jurisdictional issues, both within and without the territory, such as on ship-to-ship transfers. Meanwhile, governments in the Asia-Pacific region are interested in facilitating trade. This perspective often comes into conflict with STM.

Countries approach transit and transshipment activity in a variety of ways, Nash noted. The Philippines, for example, controls all transits and transshipments, approaching it exactly the same as exports from an STM perspective. Malaysia and Singapore have baseline controls for all transit/transshipment of strategic items with large carve-outs, so are less comprehensive than the Philippines in their approach. In Singapore, certain items are never eligible for exemption due to their sensitivity. Malaysia applies transit and transshipments controls around certain UN sanctions and embargoed countries. Taiwan applies transit/transshipment controls if the goods are going to specified "restricted areas," taking more of a sanctions/sensitive end-user approach. Japan and South Korea take a hybrid approach to transit/transshipment where arms always require a license;

otherwise, items fall under "catch-all" controls – i.e., if informed an item may be used for WMD purpose, a license is required. In Hong Kong, a baseline of strategic items is controlled, but there are exemptions for air transshipment.

In the discussion it was noted that all Customs agencies use electronic systems. Most countries require information 24 hours before a ship arrives from a foreign port of loading. Because information is automatically transferred after loading in the ports is complete, countries often get information 3-5 days in advance. Therefore, documentation can be checked in advance. STC has only added a new filter to Customs' existing process – an additional piece of information to add to advance cargo declarations.

The meeting concluded with the reflection that while the region is becoming more sophisticated in STC, there is a corresponding expectation of implementing a broader perspective, including proliferation financing and technology transfer controls. Yet given the nature of their economies, Southeast Asian controls should be less complicated than controls in the developed economies. Developing countries should be reassured that the target for STC is relatively small, and national policies for state actors or defense/national security perspectives involve a separate set of issues. We would do well to focus on the primary objective of UNSCR 1540 – preventing WMD proliferation to non-state actors that can disrupt the international system.

For more information, please contact Crystal Pryor [crystal@pacforum.org] or Carl Baker [carl@pacforum.org]. The findings and report reflect the view of the organizers; this is not a consensus document.

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

APPENDIX A

Workshop on Strategic Trade Controls in the Asia-Pacific
85 Sky Tower Hotel | Kaohsiung, Taiwan
November 7-8, 2018

AGENDA

Tuesday, November 6, 2018

18:30 **Opening dinner**
The Brasserie, 39th Floor, 85 Sky Tower Hotel

Wednesday, November 7, 2018

8:30 **Registration**
Meeting Center, 42nd Floor, 85 Sky Tower Hotel

8:55 **Welcome Remarks**

9:00 **Session 1: Status of Outreach Programs in the Asia-Pacific (Part 1)**
This session will provide an update on the range and scope of STC capacity building and outreach programs in the Asia-Pacific, including those sponsored by the EU, the United States, Japan, South Korea, and implemented by non-governmental organizations such as the Stimson Center. How does their approach to engagement vary? Have these programs been effective in achieving their stated goals? What barriers still exist to successful outreach and STC development in the Asia-Pacific?
Speakers: Mohamed Shahabar Abdul Kareem, Jay Nash, George Tan

10:30 **Coffee Break**

10:45 **Session 2: Status of Outreach Programs in the Asia-Pacific (Part 2)**
This session will continue the discussion on the range and scope of STC capacity building and outreach programs in the Asia-Pacific. To what degree are Taiwan, Japan, and South Korea incorporating STC into their recent policies of enhanced business and political engagement with Southeast Asia? What has been the experience of recipient states in engaging with donors? Is there overlap or duplication of efforts, or ways to better share information among donors, thereby maximizing limited resources?
Speakers: Masaaki Takashima, Chae-wook Lim, Anupam Srivastava, Armando Mercado Jr.

12:15 **Lunch**

- 13:30 **Session 3: Proliferation Finance Controls**
This session will examine how STC and proliferation finance controls intersect and can reinforce each other. What measures are available to counter proliferation financing methods, and to what extent have states integrated them into their STC programs? What role does distributed ledger technology have to play in trade and security? What measures would enhance information exchanges between STC programs and agencies involved in countering proliferation financing?
Speakers: Togzhan Kassenova, Brian Moore
- 15:00 **Coffee Break**
- 15:30 **Session 4: Issues Associated with Technology Controls and Transfers**
This session explores from a variety of angles the challenges associated with modern technology controls. What are the challenges and emerging challenges in controlling sensitive technology? How are intangible technology transfers being implemented in company and institutional settings? What steps are the United States, the EU, Japan, South Korea, Taiwan, and other countries currently taking to enhance their technology controls? What is developing countries' perspective on technology controls? Where do technology controls and human rights considerations intersect?
Speakers: Kolja Brockmann, Robert Shaw, Lino Arboleda
- 17:00 **Session Adjourns**
- 18:30 **Dinner**
The Brasserie, 39th Floor, 85 Sky Tower Hotel

Thursday, November 8, 2018

- 9:00 **Session 5: STC and Foreign Policy versus Non-Proliferation Goals**
Under UNSCR 1540, the primary purpose of STC is to prevent non-state actors from acquiring WMD-related materials or means of delivery, especially for terrorist purposes. Yet states have implemented STC for a variety of other reasons, such as keeping WMD-related materials from "states of concern," maintaining a critical military advantage, ensuring regional stability, enforcing sanctions, safeguarding intellectual property, and protecting human rights. This session explores tension in the practice of STC in pursuit of foreign policy versus non-proliferation goals. Does an enhanced focus on foreign policy goals create a divide between the developed and the developing countries on STC? Is there a gap between the EU in its pursuit of technology controls and human rights considerations, and the countries that incorporate the EU dual-use control list in their national regulations? Is the current approach to STC promotion and enhancement sustainable? Are there potential pitfalls in associating sanctions with STC? Is there danger in trying to do "too much" through STC?
Speakers: Lia Caponetti, Crystal Pryor, Rajiv Nayan

10:30	Coffee Break
10:45	Session 6: Transit/Transshipment and Port Security Is there a gap between how the STC and customs communities understand “transit”? What is the distinction between transit and transshipment in practice? What does the World Customs Organization Strategic Trade Control Enforcement (STCE) outreach involve? Which countries require advance submission of paperwork for transits and transshipments? What is the status of the Container Security Initiative (CSI) in the Asia-Pacific? What are Taiwan’s current practices on transit, transshipment, and transport facilitation controls? How do licensing and customs officials coordinate in Taiwan, and what mechanisms exist for reachback? Speakers: Jay Nash, Chih-Ping Jao
12:00	Wrap-up and next steps
12:30	Lunch / Transit to port facility
14:00	Arrive at Banana Pier for a tour of the Kaohsiung port on the Taiwan International Port Corporation’s cruise
15:40	Customs Administration guided tour of the US-Taiwan joint counterterrorism facilities
17:00	Visit to Kaohsiung Port Warehouse No. 2
18:00	Dinner <i>Bian Yi Fang (No. 23, Penglai Road, Gushan District)</i>

APPENDIX B

Workshop on Strategic Trade Controls in the Asia-Pacific
85 Sky Tower Hotel | Kaohsiung, Taiwan
November 7-8, 2018

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