



Strategic Trade Controls in the Asia Pacific: Emerging Challenges

**A Conference Report of the
Workshop on Strategic Trade Controls
By Carl Baker and Hyuk Kim**

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Key Findings and Next Steps

Throughout the discussion sessions following the presentations, several ideas were discussed that reflect a variety of views regarding components of a comprehensive strategic trade management system. Key findings are summarized below.

Intangible technology transfer (ITT) is a growing concern for controlling strategic goods and technologies. Acquiring tacit knowledge (defined as “competence, skills, and experience,” learned and transferred interpersonally) is crucial for operating and manufacturing advanced strategic technologies and goods. Increased access to knowledge through computer networks has lowered barriers to the acquisition of tacit knowledge. In this environment, it is necessary to identify and monitor dual-use sectors requiring tacit knowledge to ensure clear guidance for ITT control enforcement.

Controlling the output of laboratories and university-based research is an ongoing ITT challenge, especially in countries that host large numbers of foreign researchers. One solution is to consider residency as the distinction to determine access to information, although this does not fully address the problem of intangible transfer. Some universities have developed research steering committees to sensitize faculty and evaluate potential ITT violations. A good practice is to ensure STC compliance issues are addressed early in the grant proposal process and integrated into the research program before the grant is awarded.

Greater involvement by the private sector in STC detection and enforcement efforts is vital for accurate trade verification. The private sector is the source of more than 70 percent of the information required to ensure STC compliance, including information on legal trade (negative risk profiles), items and markets, and trade practices.

Different understanding of the terms transit, transshipment, and re-export among different stakeholders involved in managing transient trade has created confusion and could lead to gaps in controlling strategic goods. For example, the STC community considers transit as a scenario in which no change of transportation mode takes place and transshipment as a scenario where there is a change in transportation mode, while the customs community focuses on ensuring the absence of value-adding activities regardless of the transportation mode. Standard terminologies and mutual understanding between key players would enhance STC enforcement.

The high volume of transactions and pressure to facilitate transactions at global trade hubs and ports create an environment where verification of cargoes must be done with insufficient information within very limited timeframe. Limiting the scope of inspections by using exclusion lists for items or end-users for transit and transshipment control purposes is a good practice that increases the likelihood for efficient detection of violations.

Continual and mutually beneficial partnership between government and industry can enhance the secure trade environment without undue impediment to trade. Good

practices for building such partnership are seeking inputs from industry representatives and provision of one-on-one counseling services via phone and email. In so doing, the industry can understand what to do for STC compliance while the government can learn up-to-date trends in industry for better controls.

It is important to ensure that political will for STC compliance is followed by proper practices in industry. In this regard, industry outreach should target not only the management level but also working level in companies. Incorporating demonstration of compliance practice into outreach activities is one good example for such efforts.

The national authority for STC needs to provide guidelines for establishing internal compliance programs (ICPs) that are tailored to the size of companies and types of industry. This approach enables small and medium enterprises (SMEs) to develop ICPs at the minimum cost while the government can ensure compliance in their business practices.

When establishing an ICP, creating a culture of compliance in the all divisions of the company is a fundamental requirement to ensure appropriate STC requirements are fulfilled. For multinational companies, this includes overseas branches and subsidiaries.

Integrating the use of Authorized Economic Operators (AEO) into an STC program can facilitate trade and ensure compliance with STC requirements. The AEO certification process can serve as a baseline for establishing reliable and responsible trading activity and governments can provide incentives to AEOs by offering more flexibility in licensing and simplifying export procedures.

Community-building within an industry is important for promoting STC compliance. The national authority can identify STC champions within industry sectors or encourage benchmarking or incorporating STC in their policies. For instance, manufacturers can leverage their customers to pursue compliance by specifying STC requirements as a condition of supply in their commercial contracts and similar companies can benefit from sharing good practices.

Standardizing STC practices in the areas of control list development, licensing procedures, organizational structure, and penalty structure can contribute to promoting better and coherent controls. However, different motives for implementing trade management (broad foreign policy objectives vs. narrow nonproliferation objectives) make harmonization difficult.

The financial sector is the weakest link in preventing proliferation and sanctions implementation. Excessive risk aversion can lead to loss of business opportunities and humanitarian consequences while lax controls can entail reputational costs. The government must provide financial institutions clear-cut guidance for proliferation financing controls.

Enhancing coordination between proliferation financing controls and STC regimes is mutually beneficial due to overlapped domains such as information related to proliferators and transactions. Information sharing between local and regional actors can be facilitated through establishment of communication channels treated with a proper level of confidentiality.

Personal relationship between government officials established through STC workshops contribute to promoting STC enforcement coordination. In this regard, regional STC seminars should be regularly held and include a session for enforcement coordination for practitioners.

There is a wide range of views in the region regarding the value of integrating strategic trade management requirements into the ASEAN Single Window initiative. There was general agreement that success or failure would depend on the specific ways in which strategic trade management principles were integrated into the ASEAN Economic Community. The most significant obstacle is the need for additional transparency in economic activity.

Conference Report

By Carl Baker and Hyuk Kim*

Strategic trade controls (STC) is one of the most important tools for preventing horizontal proliferation of weapons of mass destruction (WMD) by controlling the transfer of sensitive goods and technologies to other states or non-state actors. While United Nations Security Council Resolution 1540 (UNSCR 1540) contributed to promoting STC implementation in many countries, there are still many areas to be further explored as STC is an evolving and somewhat vague concept that is not always understood and implemented in a consistent way. These areas include mechanisms for effective controls over new types of technology and transactions, ensuring collective and responsible efforts of all stakeholders in STC, and maintaining a balance between economic development and national, regional, and international security.

Building upon its extensive experience in examining strategic trade management programs in the Asia-Pacific, the Pacific Forum CSIS, in partnership with Chengchi University's Institute for International Relations, and with support from the US Department of State's Export Control and Related Border Security (EXBS) program and the Prospect Foundation, held a workshop on strategic trade controls in Taipei, Taiwan, on Nov. 2-3, 2016. The group included approximately 40 participants representing relevant government agencies and nongovernment organizations, all attending in their private capacity. Discussions focused on intangible technology transfers, mechanisms for enhancing enforcement of strategic trade control measures, requirements associated with transit and transshipment facilities, government outreach programs, internal compliance programs (ICPs), implementation of UN sanctions, regional cooperation for capacity building, and the prospect for institutionalizing the STC in multilateral regimes. The report that follows reflects the views of the organizers. While it has been reviewed by all participants, it is not a consensus document.

Intangible Technology Transfers (ITT)

Technology transfers can be classified by form of technology and means of transfer. Technology can be in the form of data or assistance, while it can be transferred by intangible or tangible means. For example, data such as blueprints for a gas centrifuge can be transferred by hard copy or intangible means such as facsimile or email. Technical assistance can be provided by on-sight training while communication tools such as a phone call represent an intangible means of transfer.

Instead of this common characterization matrix, Tristan Volpe (Carnegie Endowment for International Peace) stressed that it is necessary to focus on controlling technology transfers based on the type of knowledge being transferred such as explicit and tacit knowledge. Tacit knowledge is "competence, skills, and experience" that are crucial for operating and manufacturing advanced strategic technologies and goods since mastering such technologies often requires end-users to learn interpersonally. A major challenge for controlling tacit knowledge is that technological developments such as

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increased access to computer networks is lowering barriers to the acquisition of tacit knowledge or rendering it irrelevant. In this environment, it is necessary to identify and monitor dual-use sectors requiring tacit knowledge to ensure clear guidance for technology transfer controls.

Following the presentation, views and concerns over difficulties associated with enforcing technology transfer controls were exchanged, with particular focus on deemed exports and interagency coordination. Controlling deemed exports (exporting tacit knowledge through interpersonal exchange with foreign workers), is a significant challenge as it should be balanced with freedom of research. Some good practices for deemed export controls were suggested, such as incorporating ITT controls into visa issuance policies, establishing steering committees that sensitize research staffs about ITT controls, and ensuring STC compliance in the grant proposal process. It was also emphasized that the increased role of interagency coordination and the inclusion of the intelligence community are important in ITT control enforcement as measures and resources required are beyond the scope of those in traditional STC enforcement.

Enhanced Detection of STC Noncompliance

Enforcement mechanisms serve as the last-line defense in a national STC system. This responsibility generally rests with the Customs authority. For effective STC enforcement, the legal framework must reflect a commitment to the principles of nonproliferation including, the authority and capacity to enforce STC regulations and sufficient penalties to deter potential violations. There must be adequate resources and technology for detection of violations and an effective communication system among relevant agencies. Also, clear procedures for information sharing, controls, and disposal of goods are necessary to make STC enforcement measures effective.

Renaud Chatelus (University of Liege) explained the dilemma faced by Customs officers who are always under pressure to facilitate faster and larger trade flows. To keep the balance between this role in trade facilitation and STC, it is important to have an efficient and collaborative relationship among agencies and companies that generally have different objectives, functions, and cultures. To this end, stakeholders involved in STC enforcement should build coordination mechanisms based on political will, mutual trust, and recognition of their role and expertise. All actors should make technical expertise and resources available to each other. It is also frequently necessary for authorities to reach out for international assistance to ensure compliance.

Nguyen Viet Nga (Vietnam Customs) shared ideas regarding a practical approach for STC implementation in states where the STC system is still embryonic. Incremental implementation of elements of a STC program is important and facilitates quicker implementation rather than waiting until all components of the program are ready. For example, due to the country's focus on importation activities, Vietnam began with import controls as a part of STC implementation, while the regulatory framework for controlling exports is currently being developed. Identifying main control areas based on knowledge of national trade activities can be a first step toward a comprehensive STC system.

For effective STC enforcement, it is important to enhance information-sharing mechanisms among key players, especially between the government and industry. Industry is a source for more than 70 percent of knowledge necessary for fighting STC non-compliance such as information on market considerations, the context in which a specific item is used, trade practice, and characteristics of legitimate transactions (negative risk profiles). While there is no uniform way to establish a systematic information-sharing system, some good practices were identified to encourage industry's desire to cooperate with the government for STC enforcement. The government can enhance relations with the private sector by making customs and licensing procedures more efficient and incentivizing good players by simplifying their STC process.

Transshipment and Transit Issues

Bryan Early (State University of New York) stressed that effective measures for controlling goods passing through transit, transshipment and re-export areas are important for preventing major trade hubs and ports from being exploited by nefarious brokers or other third-party proliferators. The primary challenge for transit and transshipment controls is that the high volume of transactions and pressure to facilitate transactions create an environment where cargo verification is done with insufficient information and a very limited timeframe. A good practice for this challenge is determining the scope of controls required over certain types of goods to increase the likelihood of efficient detection of violations. For example, the state can impose restrictions on certain types of sensitive items or develop exclusion lists for particular classes of goods or end-users that are allowed to pass through transit and transshipment facilities. Also, a formal communication channel among government agencies should be established to identify potentially risky shipments and customs officers should be trained in risk-profiling techniques for efficient and effective transit and transshipment verification.

One complicating factor raised during the discussion is that different agencies tend to have a different understanding of terms transit, transshipment, and re-export that can lead to gaps in controlling strategic goods. For instance, the STC licensing community construes transit as a scenario in which no change of transportation mode takes place while the focus in Customs community is on ensuring the absence of value-adding activities regardless of transportation mode. To enhance STC enforcement, key players, and especially Customs, should set up standard terminologies that can lead to the application of consistent principles in transit and transshipment control practices.

Internal Compliance Programs (ICP)

ICPs are essential components for STC as a front-line defense mechanism. Catherin Dill (Center for Nonproliferation Studies) identified the core elements national authorities should provide to industry in outreach activities: education on industry's responsibilities under the national STC regime, information regarding new or updated regulations, and the establishment or updates to any control lists and restricted entities lists. Meanwhile, industry outreach can be extended to cover other elements such as using incentives to encourage the development of ICPs and by introducing ICP templates tailored to the size of companies and type of industry to minimize associated costs.

Publication of best practices and guidance for catch-all controls is another element that can be incorporated into industry outreach activities. The government can also consider community-building within industry by identifying STC “champions” that other companies in the industry can benchmark. Another idea shared by the representative from Bureau of Foreign Trade (BOFT, Taiwan) involves a program designed to demonstrate the basic elements of compliance practice, especially for working-level employees in companies in high-tech industry. This practice has been especially helpful in reducing ICP start-up and costs for small and medium enterprises.

Angie Wei (Taiwan Semiconductor Manufacturing Company) emphasized that establishing a culture of compliance that is consistently applied in all divisions of company including overseas offices is a fundamental component of organizing effective ICP. Creation and sustainment of the compliance culture should be initiated from top management with a definitive demonstration of political will to secure authority and power to require the employees to comply with the STC requirements. To ensure proper compliance by employees, information-technology based ICP system can enhance transparency in monitoring business processes and transactions. Other good practices include mandatory participation in training sessions, periodic internal audits, and sanctions for noncompliant employees such as termination of employment.

An effective ICP requires that company executives find a suitable balance between the compliance culture and the technical components that ensure STC-compliant processes are efficiently administered and consistent with legal requirements. Essentially, the ICP must be seen as promoting the core values of the company and contributing to its business success.

During the discussion, it was noted that the private sector’s needs and experience can serve as a cue and driver for development of STC systems. For example, industry has realized that the requirements for establishing Authorized Economic Operator (AEO) status were similar to ICP-associated practices. Finding similar points of convergence between STC and other trade-related mechanisms can lessen burdens for industry and facilitate compliance with STC requirements.

Institutionalization of STC Regime

George Tan (Global Trade Security Consulting Pte., Ltd) emphasized the value of institutionalizing the STC regime beyond the state. The primary benefit of establishing global common STC practices is the elimination of individual jurisdictions that can create a situation in which states can make different licensing decisions on the export of goods despite similar conditions. With better regional and global institutionalization, multinational companies can easily coordinate STC compliance by overseas offices in many jurisdictions when licensing schemes and control lists are standardized. A universal penalty system would also help industry standardize their understanding regardless of location in which they operate. Creation of a single agency responsible for STC implementation can promote common compliance practices in industry. It was suggested that incorporating standardized trade controls into existing free-trade agreements could be a step toward institutionalization of an STC regime, but there are many obstacles to this level of standardization.

Crystal Pryor (Harvard University) challenged the likelihood of global institutionalization of STC regime, based on the wide variance in how countries apply controls to exports. If the international community contemplates institutionalization of the STC regime, the first major step should be finding universal commonality. Albeit with slight different views, most countries implement trade controls based on two motives: broad foreign policy objectives or narrow nonproliferation objectives. The former can be described as informal multinational export control regimes such as the Coordinating Committee for Multilateral Export Controls (COCOM) which controlled transfers of military technologies to the Soviet Union and other Warsaw Pact nations during the Cold War. In this case, the motives can cover a broad range of concerns from human rights considerations to denial of access to military technologies. The latter is generally based on a much narrower concerns controlling transfers of strategic goods and technologies to non-state actors. The primary consideration for those focused on this motive is implementation of UN Security Council Resolution 1540, which requires all UN member states to establish controls to prevent these transfers.

Although the two motives share the goal of curbing WMD proliferation, the different contexts for trade management often lead to different views on the scope and level of controls. Reaching consensus on common denominators between two groups in the area of control list development, licensing procedures, organizational structure, and penalty structure needs to be pursued, based on mutual recognition and understanding. Recognizing these different motives must also be kept in mind when thinking about structuring international outreach programs to promote adoption of minimum standards.

Among the areas for possible institutionalization, there were different views on establishment of a universal penalty system for STC violations. Some stressed that a universal penalty could be integrated into a multinational company's operations and would promote recognition of the seriousness of STC violations. Others argued that it was not practical to harmonize penalties for STC noncompliance due to different legal frameworks and traditions in each country. As an example, prosecuting a catch-all violation is difficult for STC institutionalization since substantiating the intention of such a violation rests on legal interpretation and subjective judgment.

Implementation of United Nations Nonproliferation Sanctions

The use of sanctions to discourage proliferation by state actors is an important tool used by the United Nations, like-minded groups of states, and individual states. An effective national STC program has become critical element in facilitating implementation of measures specified in a number of UN Security Council sanctions resolutions.

The primary objective of UN sanctions on North Korea has been impeding the development of the DPRK's WMD programs without negative consequences for its general population. However, the impact of the sanctions regime on North Korea seems to be limited given the DPRK's continued progress in WMD development and its evolving techniques circumventing the sanctions. Phillip Schell (UN Security Council Committee Established Pursuant to Resolution 1718 Panel of Experts) identified possible reasons for the limited effectiveness of sanctions. They include lack of political will and

interests often complicated by a limited understanding of the substance of UNSC resolutions. It was emphasized that submission of detailed national implementation reports to the sanctions committee by member states is important in identifying weak links for opaque or limited implementation. Also, it was recommended that states should conduct enhanced due diligence on monitoring the activities of North Korean government officials including diplomats. End-use and end-user provisions in STC programs are a critical feature for success in implementing sanctions resolutions.

Togzhan Kassenova (Carnegie Endowment for International Peace) stressed the importance of proliferation financing controls in STC given the overlap between the concepts. Although proliferators often use international financial institutions to fund illicit trade activities, proliferation financing controls are understood as a new concept within the context of traditional money-laundering legal framework. Many challenges have resulted from a lack of preparedness by many states to implement proliferation financing controls such as the lack of awareness, inadequate regulatory basis and capacity, as well as the lack of guidance and coordination among agencies. For effective STC enforcement, it is important to enhance coordination between proliferation financing control and STC regimes as they are mutually beneficial, particularly in terms of information related to proliferators and transactions. Information sharing between local and regional actors can be facilitated through establishment of communication channels treated with a proper level of confidentiality.

Regional Cooperation for Capacity Building and Industry Outreach

Hisashi Riko (CISTEC) pointed out that several factors make regional outreach activities for STC implementation in Southeast Asia difficult. Those include diverse stances toward STC among countries, different legal and organizational frameworks, insufficient infrastructure, and the lack of STC awareness of academia and industry especially in small- and medium-enterprises. Therefore, outreach efforts in Southeast Asia should focus on raising awareness, providing information on the latest trends in proliferation, sharing best practices and experience, and promoting globally coordinated and regionally tailored STC programs. In addition, one of the ancillary benefits associated with regional outreach activities has been the development of personal relationships between practitioners established through regional workshops. These personal relationships have contributed to enforcement coordination and enhanced information sharing. Therefore, STC workshops should be regularly held not only for promotion of national STC implementation but also for regional coordination in enforcement.

Strong partnership between government and industry can enhance the secure trade environment without undue impediment to trade. Mi-yong Kim (Bureau of Industry and Security, US) highlighted that the partnership between industry and government should be continual and mutually beneficial. This helps industry better understand its role in STC compliance while the government can learn the latest trends within specific industries, which facilitates development of more relevant mechanisms for implementing trade controls. Some good practices for such a partnership were suggested such as

seeking inputs from industry representatives and provision of one-on-one counseling services via phone and email.

Chen-Dong Tso (National Taiwan University) stressed that cross-country supply chains and international nonproliferation norms are important drivers for regional cooperation for STC capacity building. While various sources for assistance are available, those sources of assistance need to focus on relevant requirements such as treaty accession and to be provided regularly with up-to-date information. As possible areas for regional cooperation, regional actors should focus on bilateral workshops not only between governments but also between industry associations, developing model software for ICP promotion, and enforcement coordination such as information sharing, equipment rental, and technical consultation.



APPENDIX A



Workshop on Strategic Trade Controls in the Asia-Pacific Taipei, Taiwan | November 2-3, 2016

Pacific Forum CSIS
Institute of International Relations, National Chengchi University
Prospect Foundation

DRAFT AGENDA

Wednesday, November 2, 2016

- 9:00 **Welcome Remarks**
- 9:15 **Session 1: Intangible Technology Transfers (ITT)**
This session will focus on intangible technology transfers. What are the sources and the means of transfers of tacit and explicit knowledge? What are the challenges and implementation mechanisms for ITT controls? What is the relationship with deemed exports? What are the good practices for ITT controls?
Presenter: Tristan VOLPE
- 10:30 **Coffee Break**
- 11:00 **Session 2: Enhanced Detection of STC Noncompliance**
This session will examine issues related to identification of noncompliant consignments in STC enforcement. What internal and external information can be acquired for risk profiling? What are the essential techniques in verifying target cargoes? What are technologies and resources required for effective verification? What training programs are available for enhancing detection? What are the roles of inter-agency coordination and industry outreach in risk profiling?
Presenters: Renaud CHATELUS
 Viet Nga NGUYEN
- 12:30 **Lunch**
- 13:30 **Session 3: Transshipment and Transit Issues**
This session will focus on managing strategic goods at transshipment, transit facilities. What are the key challenges in transshipment and transit controls? What are good practices associated with trade facilitators such as

freight forwarders and brokers? What are the primary risks associated with transshipment facilities? What are the primary risks associated with transit facilities? What are good practices associated with each?

Presenters: Bryan EARLY

15:00 **Coffee Break**

15:30 **Session 4: Internal Compliance Programs (ICP)**

This session will focus on internal compliance programs. How do internal compliance programs contribute to ensuring effective implementation of a strategic trade control system? What incentives can be used to encourage the development of strong ICPs? What measures can be taken to ensure a company's ICP is effectively implemented across all divisions and all subsidiaries? What are the short-term and long-term benefits of those programs for industry?

Presenters: Angie WEI
Catherine DILL

17:00 **Session Adjourns**

Thursday, November 3, 2016

09:00 **Session 5: Institutionalization of STC Regime**

This session will explore the institutionalization of STC. What are the linkages between UNSCR 1540 and multilateral export control regimes? What can be done to internationalize standards for STC implementation? What are the benefits associated with further institutionalization of STC? Can STC be integrated into Arms Trade Treaty or any free trade agreements such as Trans-Pacific Partnership?

Presenters: George TAN
Crystal PRYOR

10:30 **Coffee Break**

11:00 **Session 6: Implementation of United Nations Nonproliferation Sanctions**

This session will focus on the implementation of UN sanctions in Asia-Pacific. What is the relationship between implementation of STC and UN sanctions? What can be done to enhance the effectiveness of the sanctions regimes?

Presenters: Phillip SCHELL
Togzhan KASSENOVA
Presenter from the Bureau of Foreign Trade (BOFT)

12:30 **Lunch**

13:30

Session 7: Regional Cooperation for Capacity Building

This session will explore the role of regional cooperation in building strategic trade control capacity. How can UNSCR 1540 Committee's capacity matching assistance be better utilized? What regional initiatives have been established for building strategic trade control capacity in the Asia-Pacific? What areas of strategic trade management require most attention? What organizations are best suited to provide capacity building assistance?

Presenters: Hisashi RIKO
Mi-Yong KIM
Chen Dong TSO

15:00

Coffee Break

15:30

Session 8: 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 in the Asia-Pacific region.

16:00

Meeting Adjourns



APPENDIX B



Workshop on Strategic Trade Controls in the Asia-Pacific Taipei, Taiwan | November 2-3, 2016

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