



# Myanmar's Future STC System

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## **Pacific Forum**

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## ABSTRACT

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Myanmar, with the help of the United States, European Union and World Customs Organization, is currently working to establish a strategic trade control (STC) system. It is establishing controls on dual-use items as a first step. To implement an effective STC system, Myanmar needs to have appropriate legislation, licensing procedures, enforcement practices, and industry outreach in place. Myanmar currently has a “negative list” for exports and imports (items prohibited from import/export), but in the future, will release a dual-use control list. Currently, there are no penalties or enforcement mechanisms related to STC. Myanmar needs to establish a dual-use control law and continue to cooperate with international organizations on this and other efforts.

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# INTRODUCTION

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Development and implementation of a Strategic Trade Control (STC) system is needed to ensure effective management of dual-use<sup>1</sup> goods in Myanmar. An effective STC system is an important consideration for national security and for enhanced cooperation with international organizations. Myanmar is situated between two nuclear countries, China and India, and Myanmar's economy has developed more in recent years than it has over the past two decades. The more a country exports or imports, the more international organizations and other countries expect it to have an STC system to control the movement of sensitive goods.

STC systems prevent the proliferation of weapons of mass destruction (WMD) by controlling the transfer of sensitive goods and technologies. To control the flow of strategic goods requires a regulatory system and related enforcement actions to control the transfer of goods with strategic importance at the border, including transit and trans-shipment facilities. STC includes not only control lists and licensing, but also incorporates related government agencies and industry outreach efforts by governments.

## **Myanmar's current approach to STC**

Although Myanmar has no nuclear weapons, it does have some facilities with ionizing radiation, radioactive materials, and biological materials used for medicine, agriculture, industry, education and scientific projects. Nevertheless, Myanmar should consider how to effectively control transactions involving strategic goods, including transit, transshipment, and re-export because Myanmar is geographically situated between two powerful countries that possess nuclear weapons.

Myanmar cooperates with international organizations and domestic agencies to protect chemical, biological, radiological and nuclear materials. The Ministry of Education is responsible for these efforts. Currently, the Ministry of Education regulates the import of chemical and biological substances, and related software and technologies. The Biological Weapons Convention and Chemical Weapons Convention were ratified in 2014 with the help of the governments of Japan and Malaysia and the Organization for the Prohibition of Chemical Weapons.

At present, Myanmar is still trying to implement an STC law. Government officials have been studying how other states have approached STC implementation. Myanmar officials have decided to follow the practices of foreign countries, including discussing a legal framework, releasing a dual-use control list, and receiving capacity building from international organizations on dual-use controls. Based on these efforts, the Myanmar Ministry of Commerce is working together with the relevant ministries and organizations to discuss implementation of a comprehensive STC law. The good practices and examples of other ASEAN countries' STC systems, European Union (EU) rules and regulations, UN Security Council Resolution

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<sup>1</sup> Dual-use items are goods, software and technology that can be used for both civilian and military applications.

(UNSCR) 1540 guidelines, and EU member countries' STC implementation are being studied and analyzed.

### **Ministries involved in Myanmar's future STC system**

In discussions of the legal framework, the relevant ministries – the Ministry of Commerce (MoC), Ministry of Education (MoE), Ministry of Foreign Affairs (MoFA), Ministry of Agriculture (MoA), Ministry of Industry (MoI), and Ministry of Planning and Finance (MoPF) – are cooperating to set up an STC law and to release a dual-use control list. MoC will be the focal ministry for implementation of an STC system and manage the licensing process for exports of dual-use items. Having neither a control list nor a law to control these items creates problems for national security and for other countries. Therefore, MoC has prioritized identification of what goods are dual-use items.

MoC is responsible for issuing licenses and releasing regulations related to trade. MoA is responsible for giving recommendations about which agricultural goods are dual-use items and for sharing details with enforcement authorities if an exporter or importer violates the Agriculture Law. MoPF controls border trade as well as transit and transshipment facilities. It needs to carry out thorough inspections of dual-use goods. MoI issues licenses for chemical goods for import/export and MoE issues licenses for biological, radiological products for import/export. MoFA is responsible for Myanmar's international agreements on disarmament, WMD, and non-proliferation.

Myanmar has made several connections with international organizations for the establishment of an STC system. The EU pointed out that while Myanmar does not have a specific law to control dual-use goods, it has related laws, e.g., the Export-Import Law (2012), Sea Customs Act (2015), Atomic Energy Law (1998) and Pesticide law (1990). The Export-Import Law can control some goods through licensing procedures. The Sea Customs Act can restrict and prohibit export and import goods, especially at transit and transshipment facilities. The Atomic Energy Law controls chemical, biological, radiological materials and related equipment. Myanmar needs to cooperate with international organizations and foreign governments to implement a broader system to control dual-use goods.

### **International obligations and assistance**

Myanmar became the 166th state to ratify the Comprehensive Nuclear Test Ban Treaty (CTBT) in 2016. In the areas of nuclear safety, security and safeguards, it has improved transparency regarding nuclear activities, and has fulfilled international and regional commitments and responsibilities by acceding to the following relevant international and regional legal instruments:

- Partial Nuclear Test Ban Treaty, acceded on Nov. 15, 1963
- Convention on Early Notification of a Nuclear Accident, acceded on Sept. 26, 1986
- Treaty on the Non-Proliferation of Nuclear Weapons, acceded on Dec. 3, 1992
- Comprehensive Safeguards Agreement, entered into force on April 20, 1995
- Southeast Asian Nuclear-Weapon-Free Zone Treaty, ratified on July 17, 1996

- Additional Protocol to the Comprehensive Safeguards Agreement, signed on Sept. 17, 2013
- Comprehensive Nuclear Test Ban Treaty, acceded on Sept. 21, 2016
- Convention on Nuclear Safety, acceded on Dec. 6, 2016
- Convention on the Physical Protection of Nuclear Material, acceded on Dec. 6, 2016

In CBRN Project 47, the implementation tasks were to establish an effective system for control of dual-use goods, build stronger connections with international organizations, and support nuclear disarmament and non-proliferation.

In 2017 and 2018, a “National Dual-Use Trade Control’s Legal Framework and Perspectives of Enhancement” workshop<sup>2</sup> was held with the help of the EU-P2P program. It was hosted by MoC and included the DoT, DoC, DoA, DoAE and Central Leading Board, entitled. EU-P2P<sup>3</sup> program is dual-use control program aimed to enhance the effectiveness of export control systems of dual-use items in order to combat the proliferation of weapons of mass destruction and related materials, equipment and technologies.

### **Benefits of STC implementation and elements of an effective STC system**

Managing trade protects a nation’s economy and security and can benefit trade relations and global security. It can also provide for trade facilitation, economic growth, and development. A trade management system is essential for countries to protect strategic goods and technology from diversion, manipulation, theft, and other criminal activities as high-tech and value-added economies grow. UN Security Council Resolution 1540 imposes an affirmative obligation on all member states to take active measures to prevent the proliferation of WMD. Managing the trade of strategic goods is an integral component of that effort. Myanmar can receive potential economic benefits from alignment with international business. Currently, Myanmar is trying to reduce the black market in commodities. If an STC system is established, Myanmar can significantly reduce the risk or threat of strategic goods being diverted to unlicensed destinations.<sup>4</sup>

Implementing strategic trade controls can offer benefits for countries such as positive reputation effects and business benefits. They become well-regulated places to set up business and offers countries improved access to strategic technologies and commodities from suppliers. Strategic trade controls enhance the security of international commerce and minimize the risks of contributing to WMD proliferation. Comprehensive strategic trade control systems can enhance commercial and political reputations, attract foreign direct investment in strategic and high-tech sectors from multinational companies, and facilitate membership in the multilateral export control regimes. Reputation effects are directly linked to the efficiency of strategic trade control systems and the quality of industry outreach.

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<sup>2</sup> <https://export-control.jrc.ec.europa.eu/News/ArtMID/481/ArticleID/14496/1st--Legal-Workshop-in-Myanmar>

<sup>3</sup> <https://export-control.jrc.ec.europa.eu/projects/Dual-use-trade-control>

<sup>4</sup> ([https://supportoffice.jp/outreach/2013/asian\\_ec/T1-1\\_Dr.Bryan\\_Early\\_SUNY.pdf](https://supportoffice.jp/outreach/2013/asian_ec/T1-1_Dr.Bryan_Early_SUNY.pdf))



To implement an effective STC system, Myanmar needs to adopt practices of other countries and the suggestions of international organizations. Myanmar should have specific measures involving legislation, licensing procedures, enforcement practices, and industry outreach that are essential to an effective management system for strategic goods. According to the CSCAP guidelines, which detail best practices for managing strategic trade control implementation, the following five practices are specifically necessary for the implementation of an effective STC system.<sup>5</sup>

### *1. Legislation*

Each country should have a comprehensive law or amend existing laws to control all activities by individuals, organizations, and groups regarding all goods, equipment, materials, software and technologies related to Weapons of Mass Destruction (WMD) and their delivery systems. Activities subject to controls should include possession, stockpiling, transport, exports, re-exports, transfers, imports, transit, transshipment, brokering, intangible transfers, and warehousing. These controls should complement and be consistent with prohibitions on manufacture, sale, use, and intent to use that already exist in the regulations of most states.

National legislation should include either a unified control list that covers items related to all types of WMD and their delivery systems (i.e., nuclear, chemical, biological, missile and munitions). These lists can support enforcement agencies, including Customs, border security, national police, and armed forces in identifying proliferation-relevant items and prohibited activities. Member states should consider establishing a common regional control list and common minimum licensing criteria while maintaining individual national capacity, potential, and state structure.

Myanmar should establish a comprehensive law to ensure positive control over all goods, equipment, materials, software and technologies related to Weapons of Mass Destruction (WMD) and their delivery systems. The government has not yet implemented a law for strategic trade controls, but each ministry has existing laws to control goods related to WMD (i.e., nuclear, chemical, biological, missile, and munitions).

### *2. Licensing Procedures*

Countries should focus on the establishment of transparent licensing criteria that includes national security, foreign policy, trade promotion, and technology development. It should use an interagency licensing review process and concerned government ministries should establish a consolidated electronic database on exporters, importers, and foreigner end-users. Doing so would be useful for licensing, enforcement, and inspection.

Myanmar has a licensing system that is well-developed for commodities, but it lacks transparency in its licensing process. It also has weak interagency cooperation on national

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<sup>5</sup>A Memorandum from the Council for Security Cooperation in the Asia Pacific (CSCAP) No14 (2009): Guidelines for Managing Trade of Strategic Goods  
[www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%2014%20-%20Guidelines%20for%20Managing%20Trade%20of%20Strategic%20Goods.pdf](http://www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%2014%20-%20Guidelines%20for%20Managing%20Trade%20of%20Strategic%20Goods.pdf)

security, foreign policy, trade promotion, and technology development. Myanmar is currently trying to establish criteria for the licensing of sensitive goods.

### *3. Enforcement*

Authorized groups in the relevant ministries should be focused on detecting and enforcing any violations of STC. The laws, regulations and policies of each ministry should be developed and enhanced for trading with foreign countries, including export, re-export, transit, and transshipment transactions. Ministries should cooperate to establish a positive correlation between each of the licensed commodities on a country's control lists and the trade-relevant harmonized tariff system (HS) codes to make sure enforcement officials are able to inspect the items or documents that involve shipment declarations and Customs declarations.

Enforcement agencies should share information updates for assessing transfer risk and for any inspections. The agencies taking investigative authority need to inspect trade violations in sensitive commodities and other criminal cases related to WMD violations. Also, fines and criminal penalties for illegal WMD proliferation or transfers of strategic commodities should be considered. Training for all organizations on enforcement of WMD-relevant laws and regulations should be provided. All officials need to have relevant local or international technical assistance to be able to control and inspect strategic items. Countries should receive the assistance of international organizations.

Myanmar has been learning how to set up enforcement mechanisms for strategic trade violations. Government agencies are giving suggestions to MoC related to their policies, regulations, and existing laws to support enforcement. Each ministry has developed procedures for trade but has not set up enforcement focused on STC. The main difficulties in enforcement is not having a control list or authorized focal agencies to check and inspect sensitive goods. Corruption is also an issue.

### *4. Industry-government relations*

The government should conduct effective industry outreach to make companies and individuals aware of their responsibility under their country's export control system, including penalties for violations.

The focal agency for licensing or enforcement should establish operating procedures, including developing and updating a website. The website could provide texts of all relevant laws, regulations, guidelines, and forms, along with links to all concerned ministries, contact information, and appropriate explanations that would help businesses direct their queries relating to compliance, commodity classification, or other issues. Interactive meetings between government officials and various manufacturers and industry associations or technology exhibitions and trade fairs need to be organized annually by the government.

Myanmar should first establish a focal agency for licensing and for enforcement of STC. Government should also support and facilitate industry and government official dialogue.

## *5. Financial and Technical Assistance*

ASEAN countries should promote technical and financial assistance as well as receive capacity building to control and manage the trade of strategic goods. Countries with high tech and developed trade management systems such as the United States, Japan, Korea, and India provide ASEAN countries with technical and financial assistance. Recipient countries need to visit donor countries to evaluate control system and licensing practices and to get guidelines for further action.

Myanmar annually receives capacity building from countries with advanced strategic trade management systems. Promoting capacity and support for national security would be ideal. Yet progress after getting assistance from donor countries is difficult because Myanmar officials do not have enough background knowledge of STC, such as how to inspect strategic goods. More training to better understand the principles of controlling strategic commodities is needed.

### **ASEAN Countries' Practices**

This section includes practices of selected ASEAN countries on strategic trade controls and how they approach STC, including how they issue licenses for strategic goods, how they establish a legal framework for enforcement and penalties, and how their agencies are organized. Myanmar has been observing the practices of all ASEAN countries' implementation of STC law.

#### *Kingdom of Cambodia*

Cambodia has a number of laws that prohibit WMD, control weapons, and give enforcement power to Customs. Government agencies involved in the implementation and enforcement of strategic trade controls include the Ministry of National Defense's National Authority for the prohibition of Chemical, Nuclear, Biological, and Radioactive Weapons; the Ministry of Foreign Affairs and International Cooperation; the Ministry of Justice; the Ministry of Mines and Energy; the Ministry of Industry and Handicraft; the Ministry of Economy and Finance's Customs and Excise General Department; the Ministry of Commerce's CAMCONTROL General Department; the Ministry of Environment; the Ministry of Agriculture, Forestry and Fisheries; the Ministry of Health; and the Ministry of Water Resources and Meteorology. As in Myanmar, development of Cambodia's STC system is an ongoing process.

#### *Republic of Indonesia*

Indonesia has adopted an array of laws and regulations that can govern the export and import of strategic goods. Current laws and regulations formulated by the Indonesian government that relate to strategic trade controls are:

1. Law of Customs (2006)
2. Law on Defense Industry
3. Law on Trade
4. Law on Nuclear Energy
5. Law Regarding the Use of Chemical Materials and Prohibition on the Use of Chemical Materials as Chemical Weapons

6. Law on Terrorism
7. Several regulations on Small Arms and Light Weapons (SALW)
11. Presidential decree regarding Explosives Materials;
12. Presidential decree on ratification of Convention of Biological Diversity
13. Decree of Minister of Trade regarding General Provisions on Export (describing categories of goods differentiated as regulated goods, controlled goods and prohibited goods)
14. Decree of Minister of Finance regarding Customs Provisions on Export

The above laws are related to strategic goods and materials, including nuclear, chemical, and explosive materials, and are currently used as the main regulatory references for controlling strategic goods. They cover licensing and enforcement. Indonesia has considered developing more comprehensive regulations to tighten controls on the transit and transshipment of goods, especially dual-use goods.

Indonesia's regulatory framework has been developed based on three general principles: (1) export of goods that may harm the health, safety, security, environment, or morals of the nation, or are contrary to international treaties are controlled; (2) only companies having approval from the government as Registered Exporter, Importer Manufacturer, or Registered Importer can export or import controlled goods; and (3) the export and import of hazardous goods are subject to verification or technical examination by an inspector appointed by the Minister of Trade to confirm the type of goods and the correctness of the documents. Indonesia's three general principles of controlling strategic goods should be considered for Myanmar's STC system.

#### *Lao People's Democratic Republic*

Laos has been learning how to implement an STC law with the help of international organizations. Laos has adopted the EU dual-use control list (Annex I to Regulation (EC) No 428/2009). Government agencies involved in the implementation of STC law are the Ministry of Industry and Commerce (licensing authority and STC focal point); the Ministry of Foreign Affairs (UNSR 1540 focal point); the Ministry of Science and Technology (Chemical, biological, radiological and nuclear-CBRN focal point); the Ministry of Finance's Customs Department (enforcement authority); the Ministry of Health; the Ministry of Agriculture and Forestry; the Ministry of Energy and Mines; the Ministry of Public Work and Transport; the Ministry of National Defense; the Ministry of Public Security; and Ministry of Post and Telecommunications. The development of Laos' STC system is an ongoing process, as in Myanmar. But Laos has moved beyond Myanmar in the sense that Laos has already adopted the EU dual-use control list.

#### *Federation of Malaysia*

Malaysia passed its Comprehensive Strategic Trade Act in 2010. It covers controls on trade-related activities, strategic items, and end-use and end-users. It provides for controls on the export, transshipment, transit, and brokering of strategic items, including arms and related materials, and other activities that will or may facilitate the design, development, or production of weapons of mass destruction and their delivery. The EU control lists for military and dual-use items are used for identifying strategic items. All transactions of strategic items require an

end-user and end-use statement. The laws and regulations governing strategic trade items, unlisted items, and restricted activities are the Animals Act (1953), the Atomic Energy Licensing Act (1984), the Chemical Weapons Convention Act (2005), the Customs Act (1967), the Pesticides Act (1974), the Plant Quarantine Act (1976), the Prevention and Control of Infectious Diseases Act (1988), and the Protection of New Plant Varieties Act (2004). Some of the information in Malaysia's Strategic Trade Act is relevant for implementation of Myanmar STC system. Specifically, Myanmar should develop procedures for controlling end-use and end-users and brokering of strategic items, including arms and related materials.

### *Kingdom of Thailand*

Licensing agencies of Thailand include the Defense Ministry's Defense Industrial Department, the Ministry of Industry's Department of Industrial Works, the Ministry of Public Health's Department of Medical Sciences, the Ministry of Science and Technology's Atoms for Peace Office, the Office of the National Broadcasting and Telecommunications Commission, and the Ministry of Commerce's Department of Foreign Trade. The Ministry of Finance's Customs Department is the responsible enforcement agency. Thailand's control list is based on the EU dual-use control lists.

In sum, some ASEAN member countries have implemented an STC law while others are in the process of doing so. Myanmar is currently in the early stages of implementing an STC law. Based on the suggestions of international organizations, Myanmar needs to develop control lists for dual-items by cooperating with government ministries.

### **Myanmar's current trade system and legal framework**

There are two kinds of trading systems in Myanmar: 1) conventional trade and 2) border trade. Conventional trade is further categorized as overseas trade, air trade, or transit trade. Myanmar primarily engages in overseas and border trade. There are 24 border trade zones for trade with the neighboring countries of India, China, Laos, Bangladesh, and Thailand. The Department of Trade in the Ministry of Commerce (MOC) is the competent authority for issuing licenses for Myanmar's exports and imports.

Myanmar currently has a "negative list" that includes goods such as Myanmar pearls, chemicals and related substances, medicines, and cosmetics. The negative list is a list of items for which exporters and importers must apply for an export or import license. Out of total 11,167 items on HS Code 2017 Version, 3,345 items related to live animals and its product, plants, seeds, rice, oil, jewelry, raw mineral products, chemicals, fertilizer, explosive goods, forestry products have been classified as export negative list items<sup>6</sup>. Meanwhile, there are 4,818 items for the import negative list. Negative list items which require license for export and import are being liberalized.

While Myanmar has no control list for strategic goods, it is assumed that the export negative list is serving as a substitute. Still, these items have not been officially deemed to strategic based on the multilateral export control regimes (Nuclear Suppliers Group, Australia Group,

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<sup>6</sup><https://www.commerce.gov.mm/sites/default/files/Export%20Negative%20List%20%282017%20Version%29.pdf>

Wassenaar Arrangement and Missile and Technology Control Regime). Items that may be strategic goods are expressed in the following table sourced from Myanmar's negative list.

**Table (1): Myanmar's Export Negative List based on HS 2017 code**

HS Chapter No.	Category	Total items by HS code (Prior to 2017)	Items remaining on Negative list (2017 – present)	Liberalized Items
27	Natural gas and related substances	94	94	0
28	Inorganic-chemicals and related substances, radioactive materials (hydrogen fluoride-hydrofluoric acid, sodium sulphide)	227	227	0
29	Organic-chemicals	465	465	0
31	Fertilizers (ammonium sulphate, ammonium nitrate)	31	31	0
38	Chemicals (insecticides, industrial fatty alcohol)	161	141	20
73	Radiator and substances	271	0	271
84	Machinery and apparatus for isotopic separation	1315	121	1194
93	Military weapons and arms	30	30	0

The above table shows the original items on the export negative list prior to and after liberalization in 2017. The eight chapters in the table are those from the negative list released by MoC that could include strategic (dual-use) items. Chapter 38 is chemicals – 20 chemicals were liberalized. Significantly, radiators and related substances (Chapter 73) were fully liberalized from the negative list. Under Chapter 84, 121 items out of 1315 were liberalized. Other chapters of the HS code have not been liberalized (i.e., removed from the negative list). Finally, although military weapons and arms are expressed in the export negative list, they are regarded as prohibited items for trade in Myanmar (a license may not be issued). In the future, additional negative list items will be liberalized. But not all items are liberalized. Strategic items will remain on the negative list due to security concerns, even as Myanmar proceeds with overall trade (export) liberalization.

## *Procedures for export and import*

Export and import licenses must be obtained from MoC, which is attempting to release a list of dual-use items that require a license. Currently, exporters need to have a recommendation letter from the relevant ministry before applying for a license for items on the negative list. After releasing a dual-use control list, items on this list will also require recommendation letters.

In the Myanmar Export/Import Procedures,<sup>7</sup> the procedure for registering as either an exporter or importer is the same, though the respective licenses granted are different. A company is to register itself as either an exporter or importer with the Directorate of Investment and Company Administration (DICA). After registering with DICA, a company must register itself with the Department of Trade at MoC. Registrations with the Department of Trade are limited to a five-year period and cost 250,000 Kyats (approximately US\$166).

There are four types of entities which may apply for export licenses:

- Limited companies
- Joint venture corporations
- Cooperatives registered under the Co-operative Societies Law (1992)
- Foreign firms registered under the Myanmar Investment Law (2016)

According to the Myanmar Special Companies Act (1950), foreign companies may be registered in the country as limited companies or in a joint venture. Otherwise, foreign companies may apply for permission to register as exporters or importers under the Myanmar Investment Law (2016).

## *Necessary documents for exporters and importers*

Exporters and importers must complete the necessary documents for their goods. All items to be imported or exported are processed based on the WCO's 6-digit HS codes. HS lines of commodities are mainly released by the Department of Customs (DoC) in the Ministry of Planning and Finance. MoC has been working together with DoC on the existing negative list and will release a dual-use negative list in the future. While MoC has decided to release a dual-use negative list, it has not decided whether this will be a separate list or incorporated into the existing export negative list.

To import goods into Myanmar, a company must provide an import declaration form called "CUSDEC-1 Import Declaration Form" as well as "CUSDEC-4 Customs Valuation Form." According to the Myanmar Export/Import Procedures, importers require the following additional documents:

- Import license
- Invoice
- Bill of lading, air consignment notes, or truck note
- Cargo release order

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<sup>7</sup> <https://www.commerce.gov.mm/en/dot/article/exportimport-procedure>

- Terminal handling report
- Packing list
- Technical standard and health certificate (when required)
- Recommendation from concerned ministry (when required)

The importer must show the documents to Customs officials when the imported goods arrive in Myanmar.

To export goods from Myanmar, a company must provide an export declaration form called “CUSDEC-2 Export Declaration Form” as well as the “CUSDEC-4 Customs Valuation Form.” According to the Myanmar Export/Import Procedures, exporters must submit the following additional documents:

- Export license
- Invoice
- Bill of lading
- Packing list
- Sales contract
- Shipping instructions
- Letter of credit or general remittance or exemption certificate
- Sample of goods
- Fumigation certificate (when required)
- Phyto sanitary certificate (when required)
- Recommendation from concerned ministry (when required)

The exporter must present the documents to Customs officials before the exported goods leave Myanmar.

As trading systems become more developed, they need to be managed for national and international security reasons. In this process, internal agencies such as MoC (Department of Trade), Ministry of Planning and Finance (Department of Custom), Ministry of Agriculture, Irrigation and Livestock (Department of Agriculture), Ministry of Education (Division of Atomic Energy) and Central Supervisory Board (Ministry of Industry) are cooperating. The major challenge to implementing an STC law is releasing a list of dual-use items. Therefore, Myanmar officials have been studying the principles and practices of international organizations. Based on the suggestion of the EU P2P program, Myanmar can establish a law for dual-use export controls based on its existing laws and acts.

### ***Myanmar’s Current Legal Framework***

Myanmar has laws, acts and regulations that can support implementation of STC and a dual-use control law. Some legislation can support licensing and some enforcement.

The essential law governing the authorization of licensing is contained in the Imports and Exports Law (2012).<sup>8</sup> This law is administered by MoC which, from time to time, issues

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<sup>8</sup> Myanmar’s Imports and Exports Law.



necessary orders, notifications, and directives pertaining to all export/import matters including issuance of licenses and permits. Currently, traded goods in Myanmar are controlled by this law and MoC is the focal ministry for issuing licenses. All processes related to exporting and importing goods rely on this law. It does not specifically target STC or dual-use goods items. Nevertheless, it is suitable for the implementation of national legislation for a STC system. Sections 4, 5, 6 and 8 of the Imports and Exports Law can cover strategic goods and restrict, prohibit, and ban exports and imports. Also, the penalties and prohibitions of trade stipulated in the law can be useful for the establishment of an STC law.

The Pesticide Law (1990)<sup>9</sup> does not directly relate to dual-use or strategic items, but because some pesticides are dual-use, the law could be used to support a new STC law once MoC releases a dual-use control list. The Pesticide Law establishes two processes: registration with the Ministry of Agriculture, Livestock and Irrigation and licensing at MoC for exports and imports. The Ministry of Agriculture, Livestock and Irrigation has the responsibility to inspect export and import agricultural goods before registration.

The following laws are not concerned with strategic goods but can cover enforcement and penalties for any violations of strategic good controls in transit or transshipment.

The Sea Customs Act (2015)<sup>10</sup> prohibits and restricts the transshipment of goods by the competence of the Ministry of Planning and Finance. It can also provide for restricting export or import without a Customs permit or trade license and establish penalties for trade.

The Land Customs Act (2015)<sup>11</sup> establishes a Customs permit for export, import, or transiting goods by the competence of Ministry of Planning and Finance. It establishes penalties for trading without a Customs permit.

The Atomic Energy Law (1998)<sup>12</sup> is an appropriate law to support implementation of a new STC law. The Atomic Energy Law covers the international trade of dual-use items including nuclear, radioactive, and related materials. It establishes the legal framework for the inspection of exports and imports of nuclear materials, radioactive materials, and related items. For these items, exporters and importers can get a registration certificate and receive a license from the Ministry of Education. The Atomic Energy Law can also support prohibitions and penalties for export control violations.

The Prevention of Hazards from Chemical and Related Substances Law (2013)<sup>13</sup> is not specifically concerned with dual-use items but includes obligations for registration and licensing of exports and imports. This law stipulates that letters of recommendation for the export and

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(2012) <http://www.myanmar-embassy-tokyo.net/eco2017/Trade/The-Export-and-Import-Law-English-last.pdf>

<sup>9</sup> Pesticide Law (1990) [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=103623](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103623)

<sup>10</sup> Sea Customs Act (2015)

[https://www.myanmarcustoms.gov.mm/pdf/Sea%20Customs%20Act%20\(27.7.2015\).pdf](https://www.myanmarcustoms.gov.mm/pdf/Sea%20Customs%20Act%20(27.7.2015).pdf)

<sup>11</sup> Land Customs Act (2015)

[https://www.myanmarcustoms.gov.mm/pdf/Sea%20Customs%20Act%20\(27.7.2015\).pdf](https://www.myanmarcustoms.gov.mm/pdf/Sea%20Customs%20Act%20(27.7.2015).pdf)

<sup>12</sup> Atomic Energy Law (1998) <http://extwprlegs1.fao.org/docs/pdf/mya63437.pdf>

<sup>13</sup> Prevention of Hazards from Chemical and Related Substances Law (2013)

[https://www.myanmartradeportal.gov.mm/kcfinder/upload/files/Chemical%20Law\\_Eng.pdf](https://www.myanmartradeportal.gov.mm/kcfinder/upload/files/Chemical%20Law_Eng.pdf)

import of chemicals are granted by the Central Supervisory Board in the Ministry of Industry. This law can support enforcement of an STC law because some chemicals may be dual-use. Prohibitions, protections, and penalties expressed in the law can be used for enforcement.

### *Agencies for implementing STC Law*

Myanmar government officials are responsible for providing the legal framework to establish an STC law, release a dual-use control list, and enforce the law on strategic goods. To create a law, they need to have more cooperation, share relevant information in a timely manner, and exhibit transparency among government officials and domestic agencies. The main internal agencies to cooperate in implementing dual-use control laws are listed below.

MoC: the focal ministry for formulating and implementing an STC law, releasing a dual-use control list, cooperating with other agencies, and licensing exports and imports. MoC provides procedures, rules, and regulations for import and export trade liberalization. MoC's Division of Trade Policy releases all procedures on trade and the Division of Export and Import licenses exports and imports.

DoC (Ministry of Planning and Finance): the main department cooperating with MoC to include items on the export and import negative list. The responsibility of DoC is to check and inspect the documents and import/export declaration forms before goods are imported or exported for trade.

DoA (Department of Agriculture, Ministry of Agriculture, Irrigation and Livestock): inspects pesticides and gives letters of recommendation. It cooperates with MoC on licensing. MoC cannot issue a license to an exporter or importer of pesticides without a letter of recommendation.

Department of Technology Promotion and Coordination (Ministry of Education): responsible for inspecting and licensing radioactive materials, sensitive items, nuclear materials and other related equipment. The Division of Atomic Energy in the Department of Technology Promotion and Coordination is the main licensing authority for sensitive items. MoC and MoE cooperate to establish the STC law.

Central Supervisory Board (Ministry of Industry): provides registration certificates for import, export, production for the purpose of commercial affairs, transportation, research, wholesale purchase and distribution, storage, retail purchase and distribution, and the use of chemical and related substances.

Input from all of the above agencies is necessary to establish a STC law. MoC, DoC, and DoA are mainly concerned with licensing, but some of the regulations expressed in each of their laws can support enforcement. DoE and the Central Supervisory Board are mainly concerned with enforcement.

Myanmar's capacity to implement an STC system is adequate because Myanmar has enough existing laws and agencies to be able to implement an STC law and MoC has been trying to release dual-use control list. Nevertheless, MoC needs to think about the procedures for

exporting strategic goods and technologies and better manage the inspection of these goods by cooperating with other relevant agencies and foreign experts.

## **Conclusion and recommendations**

Myanmar's trade system has developed and the rate of exports, especially agricultural products, has increased. Value-added products, electronics accessories, and advanced technologies are mainly imported. In light of the increasing trade volume and developing trade system, plus Myanmar's geographical location between high-technology producers such as India and China, control of strategic goods that could contribute to weapons of mass destruction and trade system regulations are necessary for trade security, economic growth, and national and global security.

Best practices for a strategic trade control system include legislation, licensing, enforcement and government-industry outreach. A transparent and comprehensive legal framework needs to cover the proliferation of sensitive dual-use goods and enable regulation of their export, re-export, transit and transshipment. Myanmar has several laws that can support an STC legal framework. Yet, as of early 2019, a comprehensive STC law has not been submitted to the Parliament. The Ministry of Commerce (MoC) will be the focal ministry for licensing and will release and update a control list for strategic goods. Effective STC enforcement requires the cooperation of several other government agencies including the Ministry of Education (MoE), Ministry of Planning and Finance (MoPF), Department of Customs (DoC), Department of Agriculture (DoA) and Department of Industry. For government-industry partnership, the Myanmar government should put more effort into educating industry about its obligations and encouraging compliance. With regards to technical assistance, Myanmar needs cooperation and information exchange with domestic and international partners.

Myanmar has received several STC capacity-building programs from the UNSCR 1540 Committee, World Customs Organization, European Union P2P programme, and United States. UNSCR 1540 provides effective guidelines for a comprehensive strategic trade control system that includes all activities intended to regulate the flow of strategic goods (control lists, licensing requirements, information sharing, and enforcement activities) and also binds states to implement trade controls on strategic goods that can contribute to the proliferation of Weapons of Mass Destruction (WMD). The EU P2P Export Control Programme provides STC implementation training. Similarly, non-governmental organizations such as the University of Georgia's Center for International Trade and Security and the Pacific Forum provide training, workshops, and programs on STC.

ASEAN countries should adopt comprehensive laws or amend existing laws to establish mechanisms for monitoring strategic goods and technologies, establish regulatory frameworks to detect violations by taking advantage of accepted standards and techniques and give themselves means to enforce strategic trade controls.<sup>14</sup>

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<sup>14</sup> Carl Baker, David Santoro, and John K. Warden, "Why implementing strategic trade controls is in ASEAN's interests," *PacNet* Number 54, September 2015, <[https://www.pacforum.org/sites/default/s3fs-public/legacy\\_files/files/publication/Pac1554\\_0.pdf](https://www.pacforum.org/sites/default/s3fs-public/legacy_files/files/publication/Pac1554_0.pdf)>

## **Challenges to implementation**

MoC has an obligation to implement Myanmar's comprehensive STC law. In improving implementation, there are several issues that MoC may face. First, Myanmar needs to have good political relations at the international level and the political will to proceed with implementation. In most countries, it has been found that implementation of non-proliferation controls improves if the level of political will increases. The second issue relates to information sharing, both between government and between responsible stakeholders within the country. The third relates to implementation on a practical level. Even if capacity-building initiatives are enhanced, it may be difficult to move forward because there is not enough infrastructure for STC implementation. For example, labs in government organizations and universities as well as officers, teachers, and students acknowledge and interest regarding STC. The fifth challenge MoC faces is the relationship between the civilian government and the military. Implementing a comprehensive STC law includes licensing and enforcement for not only dual-use items (products, equipment, materials, technologies, parts, and software that have both commercial/civilian and potential weapons/military applications) but also military items including arms, military equipment, and items specially designed for military use. So, Myanmar is facing difficulties in releasing control lists for comprehensive STC law because of weak of cooperation, lack of interest, and weak information sharing.

To improve implementation of an STC system, the Myanmar government should develop a comprehensive plan that includes licensing, legislation and enforcement, and industry outreach. In the short-term, the focal ministry should meet with government officials to release a dual-use control list for licensing and an STC law based on international advice for legislation and enforcement and design an outreach plan with relevant agencies. In the medium-term, MoC should set up high-level official meetings for drafting control lists and an STC law and for conducting outreach to authorities and industry. In the long term, MoC should release a dual-use control list; revise the drafted law, and support and facilitate industry and dialogue with industry.

## ABOUT THE AUTHOR

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