PACIFIC FORUM

National Models for Managing Trade of Strategic Goods

By
Kyaw Si Thu

ISSUES & INSIGHTS

WORKING PAPER

VOL. 19, WP15 | October 2019

Pacific Forum

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

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

With the support of the US Department of Energy, the Pacific Forum hosts resident fellows who specialize in studying nonproliferation and disarmament at its office in Honolulu. The author thanks the staff and members of the Pacific Forum and the Council for Security Cooperation in the Asia Pacific (CSCAP) for their inspiration, guidelines and ideas in the areas of non-proliferation and for the opportunity to participate in Pacific Forum conferences and activities, notably its international dialogue dealing with Strategic Trade Controls.

David Santoro and Crystal Pryor played a special role as skillful leaders and supervisors during the writing of paper. I am grateful for the chance to research in the non-proliferation and export control fields as a research fellow.

EXECUTIVE SUMMARY

The largest country in mainland Southeast Asia with a population of 53 million and located strategically between China and India, Myanmar plays a significant role geographically, economically and politically in the most rapidly advancing region in the world. As Myanmar opens up, investment and trade have grown significantly. Trade policies have been, and continue to be, revised in line with regional and global commitments and in accordance with liberal principles.

According to UNSCR 1540, UN member countries have a responsibility to control the transfer, transit and production of WMD and related materials. As a UN member country, Myanmar should implement UNSCR 1540 for regional and international peace and security through the trade sector.

Today, Myanmar has the capability to produce high-tech, value-added commodities acting as a transit and transshipment area within ASEAN. Myanmar uses its own national export and import control system in border and overseas areas. But there are no specific or effective means for controlling and checking sensitive goods. For these reasons, this paper offers policy recommendations for the future control of the export and import of sensitive goods and a model for implementation of Myanmar's future strategic trade controls.

This paper investigates an "ideal system" to ascertain the driving force behind the creation of an export control regime in Myanmar. It draws on the experience of four countries' export control systems to understand and support effective ways of thinking when implementing a national export control system. Most importantly, this paper supports options for the decision-making process of which model is suitable for the current national system.

CHAPTER 1

Overview of Strategic Trade Controls and Potential Models

What are Strategic Trade Controls?

The term "strategic goods" refers to items that have a military use or can be used to develop a weapon of mass destruction (WMD). These items can be technology, knowledge, equipment, materials, software, or other relevant parts and components. A WMD is a chemical, biological, radioactive, nuclear or other weapon that can kill and bring significant harm to a large number of humans or cause great damage to humans and the biosphere.

Specifically, strategic items include military materials (e.g., weapons and related production facilities, firearms, combat vehicles, missiles and rockets, as well as auxiliary military equipment) and dual-use materials (e.g., machine tools, electronic equipment, computers, telecommunication equipment, cryptographic goods, sensors and radar, navigation and avionics equipment, marine equipment, and space and propulsion equipment).[1]

"Export Controls" entail implementing laws and related enforcement action to control the movement of goods with strategic importance out of the territory. The rationale behind export controls is to prevent illegitimate trade of sensitive goods, services, or technologies and prevent them from falling into the hands of terrorists or terrorist organizations, while allowing legitimate trade in these strategic items.

A Strategic Trade Control (STC) system includes the full suite of activities intended to regulate the flow of strategic goods: control lists, licensing requirements, customs efforts, information sharing (both internal and external to a state), enforcement activities, and efforts seeking to prevent the illegal flow of controlled goods.[2]

The importance of STC

Today, developing countries are trying to enhance trade. In particular, many industrial sectors in Southeast Asian countries have the capability to produce high-tech, value-added commodities. These commodities will have dual-use potential and their illegal flow is a tempting target for trafficking networks. Smugglers have tried to exploit countries that have poor control systems for the export and import of goods. Illicit trade is a threat to Southeast Asia. The

[1]Carl Baker, David Santoro, and John K. Warden, "Issues & Insights, Vol. 15, No. 12 - Implementing Strategic Trade Controls in Continental Southeast Asia," Pacific Forum, last modified June 14, 2019, https://www.pacforum.org/analysis/issues-insights-vol-15-no-12-implementing-strategic-trade-controls-continental-southeast.

[2]Catherine B. Dill and Ian J. Stewart, "Defining Effective Strategic Trade Controls at the National Level," *Strategic Trade Review* 1, no. 1 (Fall 2015), http://local.droit.ulg.ac.be/jcms/service/49/pdf/str01/1_Defining_Effective_Strategic_Trade_Controls_at_the_National_Level.pdf.

implementation of STC in Southeast Asian countries therefore plays an important role in international peace and security.

Brief explanation of STC implementation in Southeast Asia

Most of the developed countries have strong strategic trade management and control systems. Other countries are currently developing their STC systems. Singapore and Malaysia are Southeast Asian countries with strong and comprehensive export control systems.

Although Singapore is not the member of the multilateral regimes (i.e., the Nuclear Suppliers Group, Australia Group, Wassenaar Arrangement, or Missile Technology Control Regime) it has a national list of controlled goods that incorporates these regimes' control lists. Singapore's STC legislation on strategic goods is based on the 2003 Strategic Goods (Control) Act (SGCA) and its subsidiary legislation. Singapore has an inter-Ministry Committee on Export Controls that brings together the Ministries of Foreign Trade, Trade and Industry, Home Affairs, Defense, Transport, and the Attorney-General's Chambers and Singapore Customs. Singapore Customs is the sole government agency to administer all strategic trade control-related matters, enforce the SCGA, and conduct public outreach programs.[3]

Malaysia's 2010 Strategic Trade Act (STA) is similarly comprehensive and includes controls on trade-related activities, strategic items, and end-use and end-users. Controls on trade-related activities apply to listed and unlisted goods (catch-all controls),[4] as well as export, transit, transshipment, brokering, technical assistance, and intangible technology transfers and software. Control requirements for strategic items are determined using EU control lists for military and dual-use items, which the Malaysian government has adopted as the baseline for its STC program.[5]

The STA is under the direct control of the Ministry of International Trade and Industry (MITI). MITI established the Strategic Trade Secretariat (STS) to implement and enforce strategic export controls. The licensing authorities are MITI, the Atomic Energy Licensing Board (AELB), and Malaysia Communications and Multimedia Commission (MCMC). Royal Malaysian Customs, Royal Malaysian Police, Malaysian Maritime Enforcement Agency and MCMC are responsible for enforcement.[6]

Currently, the Philippines, Indonesia and Thailand are formulating their own national legislation on strategic export controls. The Philippines formulated national STC legislation

[3] George Tan, "Singapore's Journey Towards its Implementation of Strategic Trade Controls," *Strategic Trade Review* 02, no. 02 (Spring 2016), https://strategictraderesearch.org/wp-content/uploads/2017/09/6.-Singapore's-Journey-Towards-its-Implementation-of-Strategic-Trade-Controls.pdf.

[4] Lower dual-use items that are listed on the multilateral control list but can still make meaningful contribution to WMD program.

[5] Mohamed Shahabar Abdul Kareem "Issues & Insights, Vol. 2 No. 2 "Implementation and Enforcement of Strategic Trade Controls in Malaysia." Retrieved March 7, 2016 from https://www.str.ulg.ac.be/wp-content/uploads/2016/03/7.Implementation-and-Enforcement-of-Strategic-Trade-Controls-in-Malaysia.pdf.

[6] Badrah Binti Yussof, "Overview of the Malaysian Strategic Trade Act 2010," Retrieved from https://www.parlimen.gov.my/images/webuser/artikel/ro/bad/STRATEGIC_TRADE_ACT_2010__WMD%20(revised).pdf

called the Strategic Trade Management Act (STMA) in 2016. The STMA and its Implementing Rules and Regulations (IRR) were approved by the National Security Council's Strategic Trade Management Committee in August 2017. The IRR was published in the Official Gazette on September 25, 2018.[7] In the Philippines, the principal authority on all matters relating to STMA is the National Security Council. The Strategic Trade Management Committee (NSC-STMCom) is the main body to formulate and adopt strategic trade management policies and guidelines. To serve as the executive and technical agency, the Strategic Trade Management Office (STMO) was established under the administrative supervision of the Department of Trade and Industry (DTI).STMO administers and enforces all strategic trade control regulations.[8]

Indonesia has adopted an array of laws and regulations governing the export and import of strategic goods. Current regulations concerning STC have been formulated by the Indonesian government. These regulations are related to strategic goods and materials, including nuclear, chemical, and explosive materials and are currently used as the main regulatory references. They cover three essential aspects, namely control, licensing, and enforcement. Indonesia has also considered developing more comprehensive regulation on the control of transit and transshipment of goods, especially dual-use goods. In this regard, Indonesia is in the final stage of revising government regulations on the safe transport of radioactive materials, determining the security requirements that apply to the transport and shipment of nuclear materials and radioactive sources. This revision is to be conducted in parallel with the drawing up of a new law on nuclear security.

In Indonesia, several government institutions are responsible for strategic trade management. The Ministry of Trade and the Ministry of Industry are the primary institutions for issuing the licenses for almost all dual-use exports. For the export and import of military equipment, licenses are issued by the Ministry of Defense with the recommendation from the Armed Forces Strategic Intelligence Agency (BAIS) and the National Police Chief. The Directorate General of Customs and Excise in the Ministry of Finance is authorized for the enforcement of laws and regulations. One of the challenges for STC is inter-agency coordination. Government agencies are not coordinated in managing export and import in Indonesia.[9]

The government of Thailand aimed to enforce export controls on dual-use items, beginning January 2018. But Thailand's Cabinet approved a proposal to extend the effective date of the Notification for one year, from January 2018 to January 2019. The law "Trade Controls on Weapons of Mass Destruction Act (TCWMD)" Thailand's export control regulation on dual-use and military items, received Royal assent and was published in the Royal Gazette on April 30, 2019. Thailand's licensing agencies include the Defense Ministry's Defense Industrial Department, Ministry of Industry's Department of Industrial Works, Ministry of Public Health's Department of Medical Science, Office of Atoms for Peace, Office of the National Broadcasting and Telecommunications Commission, and Ministry of Commerce's Department

[7] http://www.officialgazette.gov.ph/download/201708aug/20170831-RA-IRR-10697-PRD.pdf
[8] Republic Act No. 10697 Law Phi. Retrieved 2015 from http://www.lawphil.net/statutes/repacts/ra2015/ra_10697_2015.html
[9]Andy Rachmiannto "Implementation and Enforcement of Strategic Trade Controls in Indonesia." Retrieved March 9, 2016 from http://www.str.ulg.ac.be/wp-content/uploads/2016/03/9.-Indonesia's-Approach-to-Strategic-Trade-Controls-The-Perspective-of-a-Developing-and-Archipelagic-Country.pdf

of Foreign Trade. Thailand's Customs Department in the Ministry of Finance is responsible for STC enforcement. In preparation for STC enforcement, Customs is receiving training on chemical inspection and STC enforcement from the World Customs Organization (WCO). For outreach programs, there are six methods of outreach in Thailand: company visits website and infographics, international cooperation, and events and public hearing on the TCWMD. The remaining challenges are human resources and legitimacy concerns.[10]

Cambodia has implemented a number of laws and regulations that are related to preventing WMD: controlling weapons, explosives and ammunition, combating counter-terrorism and giving detection and enforcement power to Customs agencies. Article 54 the Cambodia constitution includes prohibition of the production and stockpiling of nuclear weapons. Twelve different ministries are involved in STC implementation and law enforcement. They are the Ministry of National Defense; Ministry of the Interior; Ministry of Foreign Affairs and International Cooperation; Ministry of Justice; Ministry of Mines and Energy; Ministry of Industry and Handicraft; Ministry of Economy and finance; Ministry of Commerce; Ministry of Environment; Ministry of Agriculture, Forestry and Fisheries; Ministry of Health; and Ministry of Water Resources and Meteorology. The Cambodia Import-Export Inspection and Fraud Repression Directorate-General (CAMCONTROL) is one of the only agencies working together with Customs. The current challenge of Cambodian for STC implementation is receiving sufficient financial and technical assistance. [11]

Although Myanmar and Vietnam do not have an STC law, there has been a lot of improvement and potential for STC implementation. Myanmar is currently trying to set up a law for STC and will begin by establishing controls for dual-use items. Myanmar has enough existing laws, rules, and regulations to support the establishment of STC. The Ministry of Commerce is the focal ministry for issuing licenses. Some dual-use items are subject to the Ministry of Commerce and some to the Division of Atomic Energy under the Department of Technology Promotion and Coordination. Myanmar's current Export and Import Law (2012) is the most appropriate entry point for national legislation on dual-use items and control law. Myanmar gets financial, technical, and legal assistance on dual-use controls from the European Union. The United States also offers training and capacity building programs. Myanmar currently has a negative list for export and import (a list of items requires a license for export or import). A list of dual-use items will be included in the Export Negative list in the future. Myanmar also needs to establish an STC law and continue to cooperate with international organizations on this and other efforts.[12]

In Vietnam, the legal and regulatory framework includes a control list and enforcement measures for the import and export of goods. Current legislation in Vietnam related to strategic goods includes the Commercial Law (2005) and the Foreign Trade Management Law (2017). Vietnam's licensing authorities are the Ministry of Industry and Trade, Ministry of Cultural and Information, and Ministry of Industry. The General Department of Customs in the Ministry of

[10] The 25th Asia Export Control Seminar. Retrieved March 1, 2018 form https://supportoffice.jp/outreach/.../07Mr.DhdchyarbhonAbhimontejuchbudThailand.pdf

[11] Vantha Hoy (2018). Conference report of Seminar on Strategic Trade Controls in Southeast Asia. 2018, Section 8

[12] Phone Myint Naing, Myanmar (2018). Conference report of Seminar on Strategic Trade Controls in Southeast Asia. 2018, Section 7

Finance is the enforcement authority.[13]The Customs Department has prepared an industrial outreach and Commodity Identification Training (CIT) program. As an ongoing process, Vietnam is cooperating with the European Union's Partner-to-Partner (EUP2P) Programme and the United States' Export Control and Related Border Security(EXBS) for export controls. Vietnam faces challenges in STC similar to other countries in the region, including having no legal framework for STC. The control list is very complicated and technical for government officials of Vietnam to understand.

With regards to the implementation of STC, Laos and Brunei appear far behind the other ASEAN countries. Neither country has implemented STC or has existing legislation strategic goods. Nevertheless, Laos has made more progress than Brunei in undertaking export controls. Although Laos has no STC implementation, it has established an STC-Working Group (STC-WG) and a national control list. The STC-WG was set-up with 11 ministries. The Ministry of Industry and Commerce is the licensing authority and STC Focal Point. The Customs Department in the Ministry of Finance is the enforcement authority. Laos adopted the EU dual-use control list into a national STC list. This list is translated into Laotian. Challenges Laos faces are limited knowledge and understanding of STC and dual-use items, including the EU control list; how to identify the core agencies for STC; and limited human resources to work on STC.[14]

According to a press release from the European External Action Service, Brunei hosted an export control program on dual-use goods training in September 2016.[15] Representatives of the Prime Minister's Office of Brunei, Royal Customs, the Royal Brunei Police Force and the Posts Department participated in the training session which was run by the EU (P2P) Programme.

Aim and Objective

The objective of this paper is to propose an ideal system of STC management based on a comparison of existing national systems of selected countries, in particular for Myanmar to refer to in developing its own STC system. To identify an ideal system for strategic trade control management, four countries' export control systems were selected to compare in this paper: India, Thailand, the Republic of Korea and the United Kingdom. These countries were selected based on several factors, including (1) status as a major exporter/importer of high-technology and dual-use items, (2) the Ministry of Commerce acting as the focal point for licensing. Furthermore, India and Thailand are Myanmar's border countries and its largest import and export partners. South Korea is a major producer of dual-use items in Asia and its successful implementation of an STC system can encourage Myanmar. The United Kingdom has a long-standing, effective strategic export control system and could serve as a model for Myanmar.
This chapter covered the definition of strategic goods, export controls and an STC system, and explained the current status of STC implementation in Southeast Asia. Chapter 2 includes the challenges and difficulties of STC implementation in Asian countries, how multilateral export

[13] Export Control of Vietnam. Retrieved Jan 23, 2006 from http://supportoffice.jp/outreach/2011/asian_ec/5-2-4_Viet%20Nam.pdf
[14] Soudachanh Darounphanh, Laos (2018). Conference report of Seminar on Strategic Trade Controls in Southeast Asia. 2018, Section 7
[15] Export Control Program on Dual use Goods training. Retrieved September 5, 2016 from http://eueuropaeeas.fpfis.slb.ec.european.eu:8084/taxonomy/item/2087/9509/brunie-hosts-export-control-programme-dual-use-goods-training_tg

control regimes can harmonize member countries' export control systems, and the CSCAP guidelines for managing the trade of strategic goods. Chapter 3 offers an overview of the export control systems of India, South Korea, Thailand and the United Kingdom. Chapter 4 provides a comparison focusing on the different control lists used in these countries, their licensing and enforcement agencies, linkages between licensing and enforcement, different license types and review processes, and the use of an electronic licensing system. This paper concludes in Chapter 5 with a discussion of an ideal STC model and policy recommendations and that could be helpful for Myanmar in developing its own STC system.

CHAPTER 2

Guidelines for Effective Management of Strategic Goods

Asian countries have increasingly developed value-added manufacturing, service sectors, and highly developed transportation systems, including key transshipment hubs. Due to these developments, Asian countries must strengthen their national and regional strategic control (STC) systems.

Yet some Asian countries share challenges and difficulties in STC implementation. These include a lack of political will in the government; illegal trafficking of material, equipment and technology; limited budgets; lack of expertise on dual-use products; and the complexity of control lists and language barriers.[1]

To address these challenges, Southeast Asian countries should establish regulatory frameworks to detect violations by taking advantage of accepted standards and techniques. They should rely on the European Union dual-use control lists and the military control list, which and are widely used in the Asia Pacific and incorporate goods and technologies of the four multilateral trade control regimes.

All countries are affected by the proliferation of weapons of mass destruction (WMD), and by the potential for terrorism involving WMD. Fighting these threats, all the countries are responsible for taking action to prevent WMD proliferation. Therefore, United Nations Security Council Resolution (UNSCR) 1540 set an effective obligation on all member states to take active measures to prevent the proliferation of WMD. In addition to helping member states prevent proliferation, implementing UNSCR 1540 can also build capacity to address other security challenges and contribute to economic development.

To better prevent proliferation of WMD and dual-use goods, most countries emphasize national strategic trade controls and decided to adopt a national control list. They are seeking to join the multilateral export control regimes to coordinate and get assistance for their national export control lists.

A multilateral export control regime is an international body in which member states can coordinate and harmonize their national export control systems. Their regulations apply only to members and it is not obligatory that a country join. A multilateral export control regime can contribute to member countries by establishing control lists and guidelines that most potential suppliers subscribe to, help keep the most sensitive technology out of the hands of proliferators, and create global standards. There are four multilateral export control regimes: the Nuclear Suppliers Group (NSG), Australia Group (AG), Wassenaar Arrangement (WA) and Missile Technology Control Regime (MTCR).

[1] Implementing Strategic Trade Controls in Continental Southeast Asia. Retrieved Sep 24, 2015 http://www.files.ethz.ch/isn/194797/issuesinsights_vol15no12.pdf

NSG was formed in 1974 in response to India's first nuclear weapon test. It contributes to the nonproliferation of nuclear weapons through the implementation of guidelines for nuclear and related exports. NSG has 47-member countries. Forty-member countries have developed export guidelines that aim to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices. These guidelines cover nuclear material, technology and equipment, which may be considered dual-use.[2]

AG was formed in 1985 following a 1984 UN investigation that revealed Iraq had manufactured chemical weapons used in the Iran-Iraq War after many Western countries mistakenly supplied Iraq with dual-use chemicals. AG uses licensing measures to monitor and control the spread of technologies and materials that are of use in developing chemical and biological weapons.AG has43-member countries. All member states must have an effective and legal system by which national exports can be controlled.[3]

WA was established to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. WA also aims to prevent the acquisition of these items by terrorists. WA has 42-member countries. Members of the WA implement export controls on specific armaments and technologies. Export controls guidelines help prevent destabilizing accumulations of weapons and technologies in volatile regions around the world.[4]

MTCR was established in 1987. The purpose of MTCR is minimizing the risk of the proliferation of WMD delivery systems through the adherence of member states to common export policies and guidelines. Specifically, MTCR aims to restrict the proliferation of missiles, complete rocket systems, unmanned air vehicles, and related technology for those systems capable of carrying a 500-kilogram payload at least 300 kilometers, as well as systems intended for the delivery of WMD.MTCR works by consensus and partner states regularly exchange information about relevant national export licensing issues.[5]

A Memorandum "Guidelines for Managing Trade of Strategic Goods" from the Council for Security Cooperation in the Asia Pacific (CSCAP) published in March 2009is a good reference for managing the trade of strategic goods. In this memorandum, an effective management regime for strategic goods is based upon a common set of elements. These elements include comprehensive legislation, effective procedures for licensing and enforcement, associated incentives and penalties, fostering good inter-agency cooperation as well as mandatory and sustained outreach to industry.[6]CSCAP offers the following recommendations in the interest of establishing a regime in the region:

---

[2] http://www.nuclearsuppliersgroup.org
[3] http://www.australiagroup.net/en/index.html
[4] http://www.wassenaar.org
[5] http://www.mtcr.info/english/guidelines.html
[6] Guidelines for Managing Trade of Strategic Goods CSCAP Memorandum No.14.Retrieved January 22, 2009 from http://www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%2014%20--%20Guidelines%20for%20Managing%20Trade%20of%20Strategic%20Goods.pdf

For legislation, CSCAP suggests that each member states establish a comprehensive law or amend existing law to provide for controls on all activities by unauthorized individuals, organizations and groups regarding all strategic goods, software and technologies related to WMD and their delivery systems. National legislation should establish a unified control list that covers items related to all types of WMD and their delivery systems. Member states should also consider establishing a region-wide common control list.

CSCAP's recommendation for licensing procedures is that criteria should be established for a transparent licensing process that includes national security, foreign policy, trade promotion, and technology development considerations. An inter-agency license review process that involves all the concerned ministries/agencies should be established to ensure all relevant factors are duly considered in reaching each decision. In addition to the inter-agency license review process, a consolidated electronic database on exporters, importers, and foreign end-users involved in transactions relating to controlled items should be established.

In enforcement, all states should consider consolidating authority into a limited number of ministries/agencies with specific authority to serve as the nodal enforcement mechanism for strategic trade violations. Policies, laws, and regulations should support enforcement agencies. The agency empowered with inbound and outbound trade monitoring should develop a risk management system. Enforcement agencies responsible for risk management should strive to share information to ensure it is used for assessing transfer risk and aiding in investigations.

For industry-government outreach, CSCAP advises that effective outreach should be conducted to raise the awareness of companies and commercial individuals about their responsibilities under the country's export control system, including penalties for violations. Government and industry should institutionalize dialogue on the management of strategic goods trade. This should include events where government officials and industry representatives exchange views on WMD-relevant regulations and implementing procedures. Government and industry should create incentives to encourage compliance with the strategic trade system to promote trade.[7]

This chapter has tried to encourage countries to adopt a national export control system by seeking membership in the multilateral export control regimes and use the CSCAP guidelines and suggestions for effective management of strategic goods.

[7] CSCAP memorandum no 14. Guidelines for Managing Trade of Strategic Goods. Retrieved March 2009 from https://www.pacforum.org/sites/default/s3fs-public/legacy_files/files/attachments/150626_SantoroPresentation.pdf

CHAPTER 3

Observing India, Thailand, South Korea, United Kingdom's Export Control System

This chapter provides an overview of the export control systems of India, South Korea, Thailand and the United Kingdom. A country's export control system has four elements. These elements are legal and regulatory mechanisms, licensing, enforcement, and private sector engagement. Each of these will be discussed in turn for each of the four countries covered in this chapter.

India's Export Control System

Historical background

Since India gained independence, the government of India claims that it has a policy of responsibly controlling sensitive goods. As a Non-Aligned Movement (NAM) country, the India philosophy and approach toward export controls are in harmony with its outlook. In the year of its independence, India implemented the first controls over exports of the sensitive materials: monazite and thorium nitrate. At that time, the Prime Minister set out the basics for the future of strategic export controls.

When India started testing nuclear weapons, the United State imposed sanctions on India.[1] This is the first step to implement the export control in India. Ultimately, India negotiated with the United States and reached the India-US Nuclear Agreement (2005) and endorsed India's candidacy to the four multilateral export controls regimes, especially the Missile Technology Control Regime (MTRC), Australia Group (AG) and Wassenaar Arrangement (WA). To protect its security interests, India maintains export controls in accordance with the United Nations Security Council Resolution 1540 (UNSCR 1540). UNSCR 1540 further aligned India with global best practices.

At present, India is rapidly becoming a significant potential supplier of sensitive goods and still possesses nuclear arms. To control these goods, India has developed an impressive framework of export controls.[2]

Legislation

There are three relevant legal and regulatory mechanisms in India. These are the Weapons of Mass Destruction (WMD) Act (2004), the Foreign Trade Development and Regulation Act (1992, amended 2010) and the Chemical Weapons Convention (Amendment) Act (2012).

[1] Historical background of export control development in selected countries and regions. Retrieved April 6, 2016 from http://www.cistec.or.jp/english/service/report/1605historical_background_export_control_development.pdf

[2] India's export controls: current status and possible changes on the horizon. Retrieved July 10, 2011 fromwww.securustrade.com/india/exportconrol_Article_July_10_2011

The WMD Act is to regulate the export, re-transfer, re-export, transit, and transshipment of any items related to the WMD or missile delivery device and was designed to implement India's commitment to UNSCR 1540. One of the principal objectives of the Act is to prevent non-state actors from acquiring sensitive technologies that may be used for WMD.

The Chemical Weapons Convention Act prohibits the export and import of designated toxic chemicals or precursor substances unless the activity is conducted in accordance with relevant laws. It requires entities that wish to engage in activity involving CWC-listed chemicals to register with the Indian government.

The 2010 amendment to the Foreign Trade (Development and Regulation) Act (FT (D&R) Act) is the principal legal basis for India's strategic trade control system. The FT (D&R) Act, which came into existence in 1992, was somewhat in general in nature. The basic objective of this Act was to facilitate imports and exports, with the aim of subjecting only a very small list of items to licensing for foreign trade. The 2010 amendment of the FT (D&R) Act added a new provision for the control of dual-use items. The idea behind this amendment was to make the existing law stricter and punishment more stringent. The FT (D&R) Act empowers the Directorate General of Foreign Trade (DGFT) to license the export and import of items on the India Tariff Classification (Harmonized System) list.

On March 31, 1995, DGFT published a notification of a list of controlled items. This list was called the Special Materials, Equipment and Technology (SMET) list. This list did not include chemicals from the Chemical Weapon Convention (CWC) list or pathogens (biological materials). Therefore, on April 1, 2001, it was replaced by a new list called the Special Chemical, Materials, Equipment and Technology (SCOMET) list, which includes chemical and biological materials.

The SCOMET list is divided into eights distinct categories (Categories 0-7). This list does not fully correspond with the lists of the multilateral export control regimes. Although India controls all of the commodities found on the regime lists, it does not follow the regimes' classification conventions or those of the European Union (EU). The SCOMET list has a two-to-five-digit classification scheme in which the categories, specific numbering of items and technical descriptions are different from the EU list.[3]

Licensing types and procedures

India has developed a system for pre-licensing screening. The exporter is denied a license for violating laws such as the Foreign Exchange Regulation Act (1973) and the Foreign Exchange Management Act (1999).

All license applications are submitted to the Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce and Industry. Any application for the supply of SCOMET items is cleared by an Inter-Ministerial Working Group (IMWG). The review process before going to IMWG entails:

[3] India's System of Controls over Exports of Strategic Goods and Technologies," Ministry of External Affairs. Retrieved from http://mea.gov.in/disarmament/01da02.htm

- Pre-licensing screening
- Case-by-case evaluation on merit
- Credentials of the end-user
- Credibility of the stated end-use

For nuclear items (Categories 0 and 4), approval comes from the Department of Atomic Energy under the Prime Minister of India.

India restricts trade in non-listed items that appear to be destined for a WMD-relevant end-use ("catch-all controls"). In such cases, when a trader knows that the export will be used for WMD purposes, he or she must apply for an export license from DGFT, even if the item does not appear on the national control list. India's catch-all controls extend to individuals or entities facilitating the execution of a transaction (brokers and intermediaries) if brokers and intermediaries are aware that the transaction in question is related to a prohibited activity.[4]

Licensing and enforcement authorities

To implement and enforce its export control laws, India has developed an impressive institutional framework. DGFT is the nodal agency for the implementation of the export control system and the licensing of goods controlled under SCOMET.

DGFT is the principal licensing authority. It heads and handles the license applications for SCOMET items. Any application for the export of SCOMET items is cleared by an Inter-Ministerial Working Group (IMWG), with the DGFT chairing the meeting. The IMWG is a standing body and holds monthly meetings with relevant members of the IMWG before a license can be approved. The IMWG involves some permanent departments or ministries such as DGFT, the Ministry of External Affairs, Department of Atomic Energy in the Atomic Energy Commissions, Ministry of Defense Department of Space in the Space Commission, and National Authority of the CWC of Cabinet Secretariat. Licensing authorities are required to provide feedback to the company after the IMWG meeting informing the applicant that the license has been granted, denied, or deemed "no license required." They may ask for additional information when they find the information provided in the application is lacking.

Enforcement is the responsibility of the Department of Customs and Excise in the Ministry of Finance. The Department of Customs and Excise is mainly responsible for interceptions. For example, Customs officials use export and import licenses as evidence of legality. Other documents that are used for this purpose are bills of entry, shipping bills, or any other document prescribed under the Customs Act that has an importer Exporter Code (IEC) Number, issued by the DGFT. Officials are authorized to confiscate all goods, documents, and conveyances that they deem to be in evidence of an import and export control violation.

[4] Rajiv Nayan & Ian J. Stewart (2013). Export Control and India. Retrieved from https://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/pubs/India-export-control.pdf.

The Customs and Excise Department and other intelligence agencies such as the Special Intelligence and Investigation Branch from the Customs Department and the Directorate of Revenue Intelligence in the Ministry of Finance use an automated export control system.

Industry outreach

The Indian government has had to make special efforts to conduct industry outreach, although the rules and regulations have for a long time included provisions to protect industry's right to do fair business.

Two government agencies, DGFT and the Ministry of External Affairs, actively participate in India's outreach activities. DGFT plays a more pro-active role in outreach activities than any other agency. DGFT organizes outreach seminars and participates in outreach activities organized by the UNSCR 1540 Committee and international organizations like the Organization for Prohibition of Chemical Weapons. The DGFT helps industry to comply with export controls by making all relevant notifications, rules, and regulations available online.

Indian companies are quite active in participating in outreach activities organized by different organizations and agencies. Business associations such as the Federation of Indian Chambers of Commerce and Industry (FICCI), the Confederation of Indian Industries (CII), and the Indian Chemical Council are becoming active in terms of outreach activities. In addition, representatives of Indian business associations also participate in activities organized by the UNSCR 1540 Committee and international organizations.

In summary, India is moving forward as an important country for the control of sensitive goods and technologies. Due to the development of the country's economy, the production and acquisition of goods and technology that have potential end-uses in WMD programs have rapidly increased. Nowadays, India is a significant potential supplier of sensitive goods. To control these goods, India has legal and regulatory mechanisms, licensing, and enforcement. Moreover, India joined the MTCR, AG and WA. The Indian government is implementing all of the guidelines from the multilateral export control regimes in its domestic controls and has fully harmonized its national control list with those of the regimes.[5]

South Korea's Export Control System

Historical background

South Korea's export control system was founded in 1987 when the country signed a Memorandum of Understanding on the Protection of Strategic Goods and Technology with the United States, which was an agreement to prohibit unauthorized exports of the Coordinating Committee on Multilateral Export Control(COCOM)-controlled items from the country to Communist- bloc destinations. After the Korean War (1950-1953), the economy of South Korea was devastated. In the 1980s, however, South Korea's economy grew, and the country reached a stage of technological development to produce high-tech products. The country has practiced an export-oriented economic system to expand into new markets. South

[5] Export Controls and India-King's College London. Retrieved 2013 from https://www.kcr.ac.uk/sspp/departments/warstudies/.../csss/.../india-export-control-pdf

Korea's government implements export controls to assist the international trade of domestic companies and to prevent the illegal export of strategic items, thereby keeping companies from breaching the guideline of the multilateral export control regimes.

At the international level, South Korea's national security interests were projected as a political commitment to the non-proliferation of strategic items, which led to South Korea becoming one of the original participants in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies, which was founded in 1996. South Korea also joined the other multilateral export control regimes: NSG in 1995, the AG in 1996, and MTCR in 2001.[6]

At present, South Korea is a major producer of strategic items and serves as a global trans-shipment point. South Korea has facilitated the implementation of export controls, with agencies such as the Ministry of Trade, Industry and Energy (MOTIE) assisting companies to enhance the country's competitiveness in the global market. For example, MOTIE has helped prepare exporting companies for the increasing demands of enhanced export controls.

Legislation

South Korea's current export control system is based on four pieces of primary legislation. These are the Foreign Trade Act (1986), the Defense Acquisition Program Act (2006), the Nuclear Safety Act (2011) and the Prohibition of Chemical and Biological Weapons Act (2006). While each of these laws regulates a different type of item, the Foreign Trade Act serves as the main pillar of South Korea export controls. It regulates who issues export permits and how the licensing procedures should be conducted.[7]

South Korea divides export destination countries into two groups. Group A consists of countries that have joined the four multilateral export control regimes and are parties to the CWC and Biological and Toxic Weapon Convention (BTWC). Group B consists of all other countries.

There are two lists for strategic items: Annex 2 (dual-use items list) and Annex 3 (the munitions list). Export of the items in these two lists is subject to control under the four export control laws.

Licensing types and procedures

South Korea grants four types of licenses. These are "export licenses," "situational licenses" (also known as "catch-all licenses"), "transit and transshipment licenses," and "brokering licenses." Each license is issued by the organization responsible for the designated items except for the situational license, which MOTIE issues.

---

[6] Historical background of export control development in selected countries and regions. Retrieved April 6, 2016 from http://www.cistec.or.jp/english/service/report/1605historical_background_export_control_development.pdf

[7] South Korea Export Control Information. Retrieved from http://www.bis.doc.gov/index.php/all-articles/220-eco-country-pages/1449-south-korea-control-infromation

An export license is the general form of license for strategic items exported from South Korea. It can be an individual export license or a comprehensive export license. Furthermore, there are general comprehensive licenses and special comprehensive licenses. The former applies to the countries in Group A and the latter applies to the countries in Group B.

An exporter is required to obtain a situational license if it becomes aware from the government or directly that the importer intends to use an exported item which is not listed as a "strategic item" in the manufacture, development, use, or storage of WMD or a WMD delivery system if it falls under the catch-all clauses.[8] Catch-all clauses in South Korea legislation focus on potential misuse in WMD Programme.

A transshipment license (which covers the movement and loading of goods from an arriving means of transport to another departing means of transport within the same Customs jurisdiction) is required by anyone who is to transit or transship strategic items or items subject to a situational license through South Korean harbors or airports.

A brokering license (which covers any action conducted by any person who is residing in South Korea to transfer strategic items from one foreign country to another), when the transactions involve contracts for trade or other forms of transaction (including free transfer) are subject to controls.

Licensing and enforcement authorities

In South Korea's export control system, MOTIE, the commissioner of Defense Acquisition Program Administration (DAPA), and the head of the Nuclear Safety and Security Commission (NSSC)are the main licensing authorities. Each issue export licenses for different categories of strategic items.

MOTIE oversees licenses for the export of dual-use items and general defense industry materials. The commissioner of DAPA authorizes licenses for the export of major defense industry materials and any dual-use items where the importer intends to use it for a military purpose. The head of NSSC issues licenses for exports of Annex 2 dual-use items which are solely for nuclear use.

South Korea practices inter-agency coordination through the Council of Control of Exportation and Importation of Strategic Items. MOTIE can organize a meeting of the Council and the heads of relevant administrative agencies from NSSC, the Ministry of Unification, the Ministry of Foreign Affairs and the Ministry of National Defense for consultation among the organizations. The Council may request the intelligence, investigation or prosecution agencies (the National Intelligence Service, the Prosecution Service, the Korea National Police Agency and the Defense Security Command) to conduct an investigation or render assistance, if necessary, for any items on its agenda.[9]

[8] South Korea's Export Control System, SIPRI Background Paper. Retrieved 2013 from http://www.sipri.org/publicactions/2013/sipri.../south-koreas-export-control-system
[9] South Korea's Export Control System, SIPRI Background Paper. Retrieved 2013 from http://www.sipri.org/publicactions/2013/sipri.../south-koreas-export-control-system

Another practice that can be found in South Korea is identification services (identification of which items are subject to export control). Three agencies provide identification services. The Korea Strategic Trade Institute (KOSTI) provides an identification service for dual-use items. NSG Trigger list items are provided by the Korea Institute of Nuclear Nonproliferation and Control (KINAC). DAPA offers identification services for major defense industry materials within its department.

The Korea Customs Services (KCS) is the enforcement agency for exports and imports and Customs clearance of strategic items. KCS has authorized import duties and internal taxes on imported goods and prevents smuggling. All goods that are related to exports must go through an export Customs procedure, although KCS can omit an inspection process for export goods. However, some goods in its export process may be examined as part of the agency's risk-management process.

Industry outreach

To achieve efficient implementation of national export controls by reaching out to the business community and the public, MOTIE established the Korea Strategic Trade Institute (KOSTI)in 2007. KOSTI plays a leading role in facilitating national export controls. KOSTI provides educational courses for companies, the government and the academic community. For companies, KOSTI offers courses on export control regulations and the use of Yestrade. Yestrade was established in 2005 and provides various services and acts as a single window for compliance. It can help with classification and export licenses, statistics, E-education, etc. KOSTI also offers courses on the identification of strategic items for police and Customs officers. In 2012 KOSTI started a program for college and graduate students who are studying in relevant fields such as engineering.[10]The establishment of KOSTI is an example of how the government can play a role as an implementing facilitator by raising awareness of export controls among exporting companies and by assisting the companies to increase their compliance capacities. The next section will discuss Thailand's export control system.

South Korea has successfully implemented export controls and is further improving its system. The establishment of the Yestrade Online system is one of the most important achievements for effective implementation of the national export control system.

Yestrade can raise industry awareness by providing comprehensive information on export controls and save processing time by providing online license applications, licensing, and classification. The next section will discuss Thailand's export control system.

Thailand's Export Control System

Historical background

The model for economic growth currently being pursued by the Thai government is particularly advantageous to the country's exporters and foreign investors. Thailand's government

[10] Yonghwan Hyun (KOSTI) (2018). Conference report of Seminar on Strategic Trade Controls in Southeast Asia.2018, Section 4

encourages export by supporting selected industries through various promotions, incentives, and programs to improve their competitiveness in foreign markets. The Thai government promotes export through certain trade agreements, incentives, and indirect financial assistance. There are also domestic laws in place that control and restrict the export of certain goods outside Thailand.[11]

Legislation

In Thailand, the main governing legislation for import and export of goods is the Export and Import Act (1979). The Export and Import Act was enacted to protect Thailand's economic stability, public health, national security, peace, public order and good morals of the people.

Legislation related to export control of dual-use goods at the national level are:

1. The Customs Act (1926)
2. The Hazardous Substances Control Act (1992)
3. The Export and Import Control Goods Act (1979)

The "Trade Controls on Weapons of Mass Destruction Act (TCWMD)" will become the law for Thailand to control WMD. This Act was published in the Royal Gazette on April, 30, 2019 and will become effective on January 1, 2020.[12]

The Ministry of Commerce (MOC) is the government authority in charge of overseeing the Export and Import Act. The Thai Customs Department in the Ministry of Finance is the designated authority to intercept the import and export of restricted goods and ensure that all relevant laws and regulations are properly followed.

Licensing types and procedures

Under the Customs Act, any goods which are intended for export from Thailand are subject to normal export procedures. Any person who imports or exports a prohibited or restricted good, as determined by the Customs Department or as listed under the Export and Import Act or other relevant laws, is committing a criminal offense and is subject to penalties.

The Ministry of Industry has the power to announce the names and types of hazardous substances to be controlled under the Hazardous Substance Act. Export of hazardous substances requires control through the provision of adequate information, appropriate instructions on the use of the hazardous substances, packaging, and transportation. The exporter must comply with various notifications issued by the relevant government agencies controlling the export of each specific hazardous substance out of Thailand.[13]

---

[11] Thailand's Export Control Regimes. Retrieved Oct 3, 2012 from https://www.tilleke.com/resources/thailands-export-control-regime

[12] Thailand Introduce Export Control of Dual-use goods. Retrieved Jun 25, 2015 from http://tax.thomsonreuters.com/.../thailand-introduces-export-control-of-dual-use-goods/.

[13] Hazardous Substance Act. Retrieved from http://www.chemsafetypro.com/Topics/Thailand-Hazardous-Substance-Act.html.

The production, import, export, or possessions of hazardous substances are classified into the following four types:

- Must comply with the specified criteria and procedures (Type 1)
- Must notify the competent authority and must also comply with the specified criteria and procedures (Type 2)
- Must obtain a permit and a registration certificate (Type 3)
- Production, importation, exportation, or possessions is prohibited (Type 4)

Companies are required to monitor whether their exports are covered under two lists. List I is a list of Export Control Classification Numbers (ECCN), which is largely based on European Union regulations. The goods on this list require a specific license (on a shipment-by-shipment basis) before they can be exported.

List II is broader and based on harmonized system (HS) classification codes. Companies exporting goods on List II do not need an export license but must follow certain procedures before exporting. These procedures include registration with the Foreign Trade Department and self-certification that such goods are not subject to dual-use controls.

Licensing and enforcement authorities

In Thailand's export control system, the MOC, Ministry of Defense, Ministry of Industry, Ministry of Science and Technology, Ministry of Finance and Ministry of Health are responsible licensing agencies. MOC is empowered to impose export controls on certain goods as well as issue ministerial regulations and notifications mandating that certain goods require an export license or are subject to restrictions for export.

The Department of Customs in the Ministry of Finance is responsible for enforcement. The Department of Customs is empowered to stop the import and export of restricted goods and ensure that all relevant laws and regulations are properly followed.[14]

Industry outreach

In 2018, Thailand improved its outreach programs in six ways: human resources, company visits, website and infographics, international cooperation, events, and will hold a public hearing on the TCWMD Act. For human resources, licensing officers and senior ministry officials form a TCWMD Team and offer training to promote understanding of export control legislation. Thailand receives assistance from international organizations including the European Union's Partner-to-Partner Export Control Program, the US Department of Energy and Malaysia's Ministry of International Trade and Industry.

Thailand's implementation of STC is active and comprehensive. It is building its STC program step-by-step by receiving assistance from international and regional organizations. The new

[14] Emerging Export Control Regimes in ASEAN & Best Practice for ICP: Challenges and Pitfalls. Retrieved from https://supportoffice.jp/outreach/2011/malaysia/1-3_Mr._Tan_Brayan_Cave.pdf.

TDWMD Act will effectively support its export control program. The next section will describe the United Kingdom's export control system.[15]

The United Kingdom's Export Control System

Historical background

The United Kingdom's export controls were started in 1939, when the Import, Export and Customs Powers (Defense) Act was enforced. This was emergency legislation passed at the outbreak of World War II, making it a criminal offense to export specific goods to enemy countries. This emergency legislation was amended by the Import and Export Control Act (1990).

The Import and Export Control is now the main UK legislation on export controls for military and dual-use items. The government has a range of secondary legislation such as the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order (2003); Trade in Goods (Control) Order (2003); Trade in Controlled Goods (Embargoed Destination) Order (2004); and Technical Assistance Control Regulation (2006).

In recent developments, the UK government established a Department for International Trade (DIT) in 2016 and set up the Export Control Organization (ECO) as a government regulatory body for military and dual-use exports.

At the same time, the government established an Export Control Joint Unit (ECJU), which is hosted by DIT. ECJU includes three departments DIT, the Foreign & Commonwealth Office (FCO) and the Ministry of Defense (MOD). These three departments are responsible for export license assessment.

The United Kingdom's export control can help to ensure that goods exported from the United Kingdom do not contribute to the harmful proliferation of weapons of mass destructions and that conventional weapon and are not used for internal repression or to commit serious violations of international humanitarian law.[16]

Legislation

The statutory framework for export controls is set out in the Export Control Act. In particular, the Act sets out the purpose for which controls can be imposed. This Act includes the power to impose controls on exports from the UK, controls on the transfer of technology from the U.K, control on the provision of technical assistance overseas; and controls on the acquisition disposal or movement of goods or activities which facilitate such acquisition, disposal or movement. The Act also specifies the parliamentary procedures that must be followed in

[15] Sari Pichsinee, Thailand (2018). Conference report of Seminar on Strategic Trade Controls in Southeast Asia.2018, Section 7.

[16] Historical background of export control development in selected countries and regions. Retrieved April 6, 2016 from http://www.cistec.or.jp/english/service/report/1605historical_background_export_control_development.pdf

making secondary legislation and requires the Secretary of State to publish guidance on the operation of the controls and to submit an annual report to parliament.[17]

The Secretary of State has made a number of individual Orders under the Export Control Order 2008, which came into force in 2009, so that domestic legislation on strategic controls can be found in one place. The 2008 Order is now the main piece of domestic export control legislation. It covers export and transfer controls, technical assistance controls and trade (trafficking and broking) controls.

Licensing Types and procedures

The UK licensing system aims to support responsible trade. It protects the UK's international security and restricts sensitive technologies and capabilities. The UK has a comprehensive licensing system. The different types of licenses in the UK are:

- Standard Individual Export License (SIEL)
- Open Individual Export License (OIEL)
- Open General Export License (OGEL)
- EU General Export Authorizations (GEA)
- Standard Individual Trade Control License (SITCL)
- Open Individual Trade Control License (OITCL)
- Open General Trade Control License (OGTCL)
- Open General Transshipment License (OGTL)

SIELs generally allow shipments of specified items to a specified consignee up to the quantity specified by the license. SIELs are generally valid for one year only and the items must be returned to the UK before the license expires.

An OIEL is a license that is specific to an individual exporter and covers multiple shipments of specified items to specified destinations. OIEL is tailored and flexible license and is generally valid for a period of five years. The exceptions are OIEL for the transfer of military items and to destinations in other EU member states, which are valid for three years but may be renewed at the exporter's request; and dealer-to-dealer OIEL, which allow firearms dealers to export certain categories of firearms and ammunition solely to another firearms dealer in the EU, and which are valid for three years.

OGEL is pre-published licenses that permit the export of specified controlled goods by any qualifying company or person, removing the need for exporters to apply for an individual license, provided the shipment and destinations are eligible under the OGEL and that the terms and conditions set out in the license are met. A number of OGELs were republished as a result of updates to the UK Strategic Export Control Lists or due to changes to the general terms and conditions or permitted destination. In addition to OGELs, which establishes an EU-wide regime for the control of exports of dual-use items, software, and technology, includes six

[17] United Kingdom Strategic Export Control Annual Report 2015. Retrieved 2016 from http://www.sipri.org/sites/default/files/UK_15_pdf

General Export Authorizations (GEA). These EU GEAs, which permit the export of certain specified dual-use items to specified non-EU destinations, are valid in all EU Member States, and are the EU equivalent of UK OGELs. The EUGEAs are as follows:

- EU001-Export to Australia, Canada, Japan, New Zealand, Norway, Switzerland, Liechtenstein, and the United States
- EU002 - Export of certain dual-use items to certain destinations
- EU003 - Export after repair/replacement
- EU004 - Temporary export for exhibition or fair
- EU005 - Telecommunications
- EU006 - Chemicals[18]

An SITCL is specific to a named trader and covers involvement in the trading of a specified quality of specific goods between a specified overseas source country and between a specified consignor, consignee and end-user in an overseas destination country. SITCLs are normally valid for two years.

An OITCL is specific to a named trader and convers involvement in the trade of specific goods between specified overseas sources and overseas destination countries and/or specified consignors, consignees and end-users. OITCLs are generally valid for two years.

An OGTCL is a pre-published license that permits the supply of specified goods from specified source countries to specified destination countries, subject to the specific terms and conditions of the license.

An OGTL is similar to an OGEL. It is related to transit rather than export and is subject to specific terms and conditions.

Licensing and enforcement authorities

DIT in the Secretary of State for International Trade is the licensing authority for strategic exports in the United Kingdom. The Secretary of State for International Trade makes the formal decision to issue or refuse export license applications and, where necessary, to suspend or revoke extant licenses in accordance with applicable legislation and announced policy.
The FCO, MOD and Department of International Development (DFID) in Her Majesty's Principal Secretary of State for International Development have advisory roles, providing the DIT with advice and analysis on foreign policy, human rights, defense and international development policy by assessing all applications on a case-by-case basis against the Consolidated EU & National Arms Export Licensing Criteria, known as the Consolidated Criteria, and other relevant policies. Compliance with international commitments and sanctions

[18] Until the UK leaves the EU, the UK will remain a member of the EU with all of the rights and obligations that membership entails. Common Position 2008/944/ CFSP, which governs the control of export of military technology and equipment, is given effect in the UK through the Consolidated EU & National Arms Export Licensing Criteria.

regimes and respect for international humanitarian law in the country of final destination are also considered.[19]

The Department of Business, Energy& Industrial Strategy (BEIS) plays a key role in the government's biological, chemical and nuclear non-proliferation policy, for example, by making sure the government continues to meet its obligations under the CWC. BEIS assesses goods for proliferation concerns.

Her Majesty's Revenue and Customs (HMRC) is responsible for the enforcement of strategic export controls and trade sanctions. HMRC has a team that develops and manages strategic export controls, trade controls and sanctions enforcement policy. HMRC also has two specialist operational teams carrying out criminal investigations and intelligence management in this area. Checks of intra-EU transfers of controlled goods, Customs export declarations, and supporting documentation for exports from the UK are conducted by HMRC staff at the National Clearance Hub, which is the single national website that handles the movement of third-country goods and processes goods transiting the EU.[20]

HMRC assesses any breach of strategic export controls and takes a range of enforcement actions based on the factors surrounding each individual case. HMRC pursues investigations with a view to prosecution in cases where serious and deliberated breaches of export controls occur.

Industry outreach

Compliance inspectors in the ECO continue to audit companies and individuals holding OIEL and OGEL both for exports and trade activities. The compliance team focuses on developing risk procedures to more effectively deploy resources. These audits establish whether the terms and conditions of the license are being adhered to.

HMRC participate in bilateral outreach and capacity-building events. These activities strengthen links with other enforcement agencies in the field of strategic exports and improve the capacities of international partners.

In summary, the UK's export control implementation via legislation, licensing types, licensing authority and enforcement authority is comprehensive and can serve as a good example for other countries. ECJU can make assessments and enforce the implementation of export controls. ECJU can cooperate with the UK licensing and enforcement authorities to process all export licenses, thereby reducing time and delays in issuing licenses. The creation of ECJU has centralized expertise and removed duplication, thus providing a high-quality service to businesses.

This chapter has provided an overview of selected countries' export control systems. The next chapter will include a comparison of significant differences in licensing and enforcement in the selected countries' STC systems. This comparison includes the use of a single agency or

[19] United Kingdom Strategic Export Controls Annual Report 2017. Retrieved from http://www.assets.publishing.serves.gov.uk/.../FCO_Stratergic_Export_Controls_Annual_Report_2017.pdf
[20] United Kingdom Strategic Export Controls Annual Report 2016.

multiple agencies in licensing, individual and general licenses, and an electronic system, as well as licensing and enforcement agencies.

CHAPTER 4

Comparing significant differences in licensing and enforcement in selected countries' STC systems

This chapter will compare three aspects of licensing and enforcement in the STC systems of India, Korea, Thailand, and the United Kingdom:

(1) Control lists and licensing agencies
(2) License types and review process
(3) Electronic systems in licensing procedures

Control Lists and Licensing agencies

Scope of Control Lists

Export control lists are derived from various international commitments including foreign policy, national defense and security interests. An effective control list provides comprehensive coverage over dual-use items and technologies and military items and covers not only strategic items but also how they are produced. The list must be regularly updated to keep pace with technological innovation.

Most countries follow the European Union (EU) control list and the lists from multilateral control regimes in their national export control list. The multilateral export control regimes can provide control lists and guidelines for member countries and other countries that do not have national control lists for strategic goods and technologies.

Two of the four countries, South Korea and the United Kingdom are the members of the multilateral export control regimes. Each country's control lists mirror the multilateral export control lists. South Korea's control lists are based on the Nuclear Supplier Group (NSG) trigger list. The United Kingdom's control lists are similar to the EU dual-use control list. The EU Dual-use Regulation provided a common legal basis for dual-use export controls across the EU and is applied by the 28-member states through their national implementation and enforcement systems.

India is not a member of NSG. But the India Special, Chemical, Organisms, Materials, Equipment, and Technologies (SCOMET) list includes the items listed on the MTCR and NSG annexes. Although India controls many of the commodities found on the regimes' lists, it does not follow the regimes' classification conventions or those of the EU. The list of SCOMET items contains eight categories, from Category 0 to Category 7. Each of the categories is further divided into five-digit codes.

South Korea has two lists for strategic items Annex 2 lists dual-use items, including items from the NSG trigger list with a solely nuclear use, while Annex 3, which came into effect in 2008, lists conventional munitions (identical to the Wassenaar Arrangement munitions list). Items in

the list are assigned a five-character alphanumeric code. South Korea's current coding method is similar to that used in the EU list of dual-use items.

The UK's strategic export control lists are derived from various international commitments including foreign policy, national defense and security interests. They are compiled mostly from the work of various international export control and non-proliferation groups or regimes. The UK strategic control lists are drawn from international regimes. The UK control lists are divided into ten categories, from Category 0 to Category 9. It is similar to the EU dual-use control list. In the European Union's export control system, the legal basis for dual-use trade controls is Regulation (EC) No 428/2009. The EU dual-use list is a compilation of all the multilateral regimes' control lists. The EU dual-use list is divided into ten categories (Categories 0 to Categories 9) and 5 sub-categories (denoted A to E), with each unique item identified by at least a further 3-digit numeric code.

Thailand's Trade Controls on Weapons of Mass Destruction Act (TCWMD Act) is currently being revised at the Office of the Council of State. Thailand's dual-use items list of Annex 1 is being updated based on the 2016 version of the EU list. Thailand, however, is not a member of any multilateral export control regimes. Thailand's exports are covered by two lists. The first list is a list of goods that are considered dual-use items. This list is based on the 2012 EU dual-use list and uses EU dual-use codes. Goods falling under an EU dual-use code will need an export license from the Ministry of Commerce. The second list is a list of goods that may be considered dual-use based on the Harmonized System code (HS codes). In case the goods fall under the second category, no export license is required. However, the exporter will need to make a self-certification to the Ministry of Commerce that their goods under the said HS codes are not dual-use items before they can export them out of Thailand.

In summary, adopting control lists is a necessary process in implementing STC to specify strategic goods that need an export license. The United Kingdom will still practice EU control even after it leaves the EU. India's SCOMET list does not fully correspond with the lists of the multilateral export control regimes. Although India controls many of the commodities found on the regimes' lists, it does not follow the regimes' classification conventions or those of the EU. In South Korea, items in the list are assigned a five-character alphanumeric code; the fourth (alphabetic) character and the fifth (numeric) character indicate the relevant export control regime. South Korea coding method is thus similar to that used in EU lists of dual-use items. Thailand will fully adopt its control lists following the EU lists in the future.

Licensing Agencies for Export Control

Two of the four countries in this paper have a single agency that is responsible for export licensing; some have an additional agency that may provide technical review, oversight and concurrence. Of the selected countries, India and the United Kingdom have a single agency and an inter-agency organization or working group.

In India, all export licensing is handled through the Directorate of Foreign Trade chairing meetings of the Inter-Ministerial Working Group (IMWG).

The UK's system for licensing of strategic exports is operated by a single export licensing and enforcement community. The Department of International Trade (DIT) has overall responsibility for the export licensing process. DIT is responsible for the statutory and regulatory framework of controls and takes the formal decision to grant or refuse an export license in any individual case where necessary, and the decision to suspend or revoke extant licenses in accordance with relevant legislation and announced policy. Moreover, the U.K has an Export Control Joint Unit (ECJU) which can be hosted by the DIT for export license assessment.

In contrast, South Korea and Thailand have multiple licensing authorities. South Korea has three licensing authorities: The Ministry of Trade, Industry and Energy (MOTIE), the commissioner of Defense Acquisition Program Administration (DAPA) and the head of the Nuclear Safety and Security Commission (NSSC). Each can issue an export license for a different category of strategic item. South Korea is similar to the India and United Kingdom in that it has inter-agency coordination via the Council for Control of Exportation and Importation of Strategic Items. Meetings of the Council can be organized by MOTIE and the heads of relevant administrative agencies.

In Thailand, there are six main licensing agencies. The MOC is in charge of overseeing the Export and Import Act and controls dual-use items. For arms, ammunition and strategic materials, approvals come from the Ministry of Defense. For hazardous substances (explosives, flammable substances, oxidizing agents and peroxide, toxic substances, substances causing diseases, radioactive substances, mutation causing substances, corrosive substances, irritating substances and chemical or otherwise which may cause injury to persons, animals, plants, property, or the environment), Thailand set up a Hazardous Substance Committee (HSC) based on the Hazardous Substance Act. This Committee was found as a governing body that assigns various aspects of governance to three main ministries: the Ministry of Industry, the Ministry of Public Health (MOPH) and the Ministry of Agriculture and Cooperatives (MOAC), based upon chemical usage. Radiological and nuclear items are controlled by the Ministry of Science and Technology. The other two ministries are the Ministry of Finance and Department of Medical Sciences in the Ministry of Public Health. The former is responsible for controlling the import, export, transit, transshipment and re-export goods under the Customs Law while the latter controls the imports and exports of microorganisms, pathogens and animal toxins.

This section reviewed systems with a single licensing agency versus multiple licensing agencies. Having one agency that processes both arms and dual-use export license applications provides a single point of entry to the system for exporters who may be unsure of what licenses to apply for. But such a system has some weaknesses, such as shortages of expertise and limited human resources. In contrast, while multiple licensing agencies have more expertise and human resources, they can have delays in the licensing process. Establishing a standing body (an inter-agency organization or working group) is one of the best practices for an effective export control system, whether single licensing agency or multiple.

Enforcement Agencies for Export Controls

Export control enforcement is another area of structural difference between the selected countries. Two of the four countries have one agency in charge of enforcing export controls:

The Customs Department is the main enforcement body in the United Kingdom and South Korea.

For example, in the United Kingdom, Her Majesty's Revenue and Customs (HMRC) is the sole agency responsible for the enforcement of strategic export controls and trade sanctions. HMRC assesses any breach of strategic export controls and takes a range of enforcement actions based on the factors surrounding each individual case. Moreover, HMRC pursues investigations with a view to prosecution in cases where serious and deliberate breaches of export controls occur.

Similarly, South Korea has the Korea Customs Service (KCS), which imposes import duties and internal taxes on imported goods and prevents smuggling; it also conducts surveillance of beaches of the Foreign Trade Act in support of national export controls.

In India and Thailand, enforcement responsibilities are shared between relevant agencies. Specially, the Directorate General of Foreign Trade and the Customs Department in the Ministry of Finance share responsibility for the enforcement of export controls in India. These two agencies cooperate in suspension and cancellation of the Import Export (IE) Code and investigations related to possible criminal violations of export controls. The IE Code is a registration required for persons importing or exporting goods and services from India. The IE Code is issued by DGFT in the Ministry of Commerce and Industries.

In Thailand, the Ministry of Finance's Customs Department is the designated authority that will intercept the import and export of restricted goods and ensure that all relevant laws and regulations are properly followed. In preparation for STC enforcement, Customs is receiving training on chemical inspection and STC enforcement from the WCO. Thailand also established a Committee on the Export Administrative of Dual-use Items in 2015. This Committee has two subcommittees. The first one is for dual-use identification and risk management. The second is for driving the integration of trade management of dual-use item.

To facilitate an export control system, linkages between licensing and enforcement agencies are important to increase training, improve interagency coordination and enhance prosecution. For example, HMRC of the United Kingdom works together with DIT to help raise awareness of export controls through outreach to business and capacity building events, sharing intelligence, utilizing resources in coordinated risk assessment exercises and conducting joint training seminars.

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

The most successful example of cooperation between agencies is found in South Korea with its online system. For example, KCS created the automated system UNI-PASS for Customs clearance and cargo system operations. UNI-PASS and Yestrade are linked by dispatching resident employees to Customs for on-site classification.

License types and review process

Several differences exist between the selected countries' licensing systems, including whether they have individual licenses or general licenses and whether they have general licensing consultation with other government agencies.

The United Kingdom and South Korea use "Individual licensing" and "General Licensing." The UK uses OIELs that permit the export of specified items to specified countries. An OGEL or other types of Open General License is only published when the exporters are followed with the Consolidated EU and National Arms Export Licensing Criteria.

There are six EU General Export Authorizations (EUGEAs) under the dual-use regulations. These permit the export from the EU of certain specified dual-use items to specified destinations, subject to the terms and conditions of the licenses. They are equivalent to OGELs and are available for use by any exporter in the EU, including the United Kingdom (as of 2018).

South Korea uses a comprehensive license and special comprehensive license. Comprehensive licenses are issued after MOTIE certifies that a company has incorporated an internal compliance program into its business operations that allows it to abide by export control regulations. A comprehensive export license permits exports of certain items without an individual license for a given period when deemed not to undermine international peace and security and applies the countries that have joined the four multilateral export control regimes and are parties to the CWC and the BTWC. Special comprehensive license is the license that can apply all other countries.

The licensing types and procedures of India and Thailand are different from the other selected countries. They do not have an individual and general licensing system. In India, all applications for license for export of SCOMET items are considered on merits by the IMWG in the DGFT. Once the case is approved by the IMWG, permission letter is issued to the exporter for obtaining export authorization from the concerned regional office of the DGFT. Technology and service exporters are under the Importer-Exporter Code. This code may be withdrawn, suspended, or canceled if an exporter violates the conditions of the license or relevant Indian laws.

Although Thailand does not have a general licensing scheme, goods intended for export from Thailand are subject to normal export procedures under the Customs Act. Companies are required to monitor whether their exports are covered under two lists (Dual-use items of Annex 1 and HS code of Annex 2). The goods on List I requires a specific license (on a shipment-by-shipment basis) before they can be exported. Companies exporting goods under List II do not need an export license but must follow certain procedures before exporting. These procedures include registration with the Foreign Trade Department and self-certification that such goods are not dual-use.

Electronic systems in licensing procedures

To facilitate license consultations, some of the selected countries allow agencies to access a single electronic licensing system when reviewing licenses. For example, the United Kingdom's

SPIRE licensing system allows companies to submit export license applications electronically and permits all agencies involved in the export control application review process to access the system to review and comment on applications. The system also allows exporters to check the status of their applications electronically and to use completed applications as templates for future applications.

Similarly, the South Korean government created "Yestrade" to allow exporters and Customs brokers to determine whether their items are strategic items. Yestrade was developed by MOTIE and is operated by KOSTI. Yestrade can also help companies exercise export controls voluntarily by providing relevant information online about classification, export licensing procedures, global trends and domestic regulations governing strategic items. Moreover, the Korea Customs Service (KCS) created the automated system UNI-PASS. These two systems can share information such as license information and Classification Information between them.

India and Thailand have also developed electronic licensing systems to facilitate license reviews. However, unlike the United Kingdom's electronic system that permits all agencies involved in the license application review process to access the system, in Thailand, only MOC can use the Electronic Export Control System (currently called e-TCWMD). This electronic system will provide the information of e-preregistration system, e-self classification system.

Similarly, India's DGFT is authorized to license and regulate electronic transmissions of strategic technologies designated on the SCOMET list. India's Customs department has a large staff that is assisted by a fully automated IT system (Automated Customs Risk Management System) to assist with training and operations.

The establishment of an online licensing system is an important part of effective export controls to facilitate awareness between government and industries of export practices. An online system can assist companies with compliance capacities.

This chapter reviewed the similarities and differences between the licensing types, licensing authorities and electronic systems of the selected countries. Some countries in this chapter use a single licensing authority and some use multiple licensing authorities.

CHAPTER 5

Conclusion: An Ideal STC Model

A national strategic trade control program is a fundamental requirement for the development of a comprehensive national nonproliferation regime as it provides the necessary mechanisms to control the flow of strategic goods and technologies in and out of the country. Successful implementation of strategic trade controls is based on an increased level of political will with a corresponding increase in executive function devoted to the institutionalization of those controls, information sharing between states and various responsible stakeholders within a state, and implementation on a practical level. Even with capacity-building initiatives, there may not be sufficient resources to allocate to implement appropriate and effective non-proliferation controls.

The comparison of the four countries' strategic export control systems carried out this paper will contribute to Myanmar and other countries which do not have experience in strategic trade control implementation. The comparison of the current export control systems of India, South Korea, Thailand, and the United Kingdom showed that three important areas vary between these countries: licensing and control lists, licensing types and review processes, and electronic systems for licensing procedures.

The comparison of these countries showed that successful implementation of strategic trade controls is based on the government interest and inter-agency coordination. On the most basic level, governments need to draft export laws and adopt a standard set of export control procedures. These policies are the foundation upon which everything else is built. These regulations should be in-depth and comprehensive. To cultivate a culture sensitive to the need for export controls, however, merely having strongly worded policy is not enough. The ultimate goal is for companies to do more than just obey the law.

Governments need to develop sustainable infrastructure designed to control sensitive exports without unduly limiting trade. Moreover, governments need to establish and reinforce an export control "culture" that emphasizes nonproliferation security over specific sales and company contracts. Without the government's support and positive reinforcement, individual companies might not take the initiative to proactively limit sensitive trade on their own.

Governments should make a concerted effort to engage companies and government enterprises. Governments should do this by acting as a liaison to companies to facilitate a better understanding of the laws. The government should establish programs geared towards training companies and company representatives through workshops and seminars and needs to provide assistance by disseminating information. It should be prepared to respond to inquiries or problems in a timely and efficient manner. Officials need to construct user-friendly aide and resources to assist companies with adhering to the regulations. These resources need to be provided in a variety of forums, such as seminars and workshops, hardcopy print, and electronic resources.

Each government needs to collaborate with experts in the nonproliferation, commerce, and border security fields to develop appropriate export control licensing policies. They then need to train government and industry officials regarding these policies to make sure they are properly executed. For example, the government needs to work hand-in-hand with the Customs and border security guards to ensure that the items listed on the export declaration are identical to the actual items being shipped. This ensures that undeclared or illegal exports are not permitted to leave the country under false pretenses.

An Ideal STC model

An ideal model for an export control system can be created through the following steps. The first step is receiving technical assistance via training and workshops for STC from an international organization like the Verification Training, Research, and Information Center (VERTIC) or the European Union (EU). The EU P2P Export Control Programme has a specific program providing STC education and training to all Southeast Asian states.

The second step is to draw up comprehensive laws or amend existing laws to establish mechanisms for monitoring strategic goods and technologies. Legislation should include a "catch-all" provision that allows each state to regulate any transaction regardless of whether the good or technology in question is on a control list.

The third step is creating a single national control list that can cover all military items, dual-use items and WMD. Most of the Asia-Pacific countries and selected countries in this paper rely on the EU control list, which incorporates goods and technologies from the four multilateral trade control regimes.

For export controls to be effective, the government should establish a single licensing agency to regulate arms and dual-use exports licenses. This agency should have the authority to set up inter-agency organizations (e.g. ECJU in the UK and IMWG in India) to make licensing decisions and take administrative and enforcement measures. For licensing issues, all the decision-making should come from this inter agency-organization with applications provided by the relevant departments.

The government is also responsible for building an online system in which all relevant agencies, stakeholders, and companies can participate to share information and facilitate awareness of export practices. Moreover, the government must also assist companies with compliance capacities and to avoid illegal trade. Companies should participate in the government's implementation of an Internal Compliance Program (ICP) (a set of processes and procedures within an institute or enterprise to assure adherence to national export control laws and regulations) and establish a group of experts to connect and provide expertise for the government's strategic trade control efforts. In the future, these companies will have the potential to be supporting organizations for the government's implementation of an export control system, such as by providing expertise or technical assistance.

The above elements such as a single licensing authority, a single control list and an electronic system should be implemented in Myanmar's STC system. The current government process of Myanmar's export and import sector is that Ministry of Commerce in Myanmar is responsible

for issuing the licenses of imports and exports and Department of Customs in the Ministry of Planning and Finance is in charge of enforcement. The current laws and regulations that are drawn from these ministries will become an entry point for STC legislation. Moreover, these two ministries coordinate on imports and exports through an online system. Therefore, when Myanmar implements an STC system, this current bureaucratic process, laws and regulations will serve as a good foundation and it will be easy to begin STC implementation.

ABOUT THE AUTHOR

Kyaw Si Thu received a BA (Honors)English in 2011 and an MA English in 2014 from Magway University in Myanmar. After receiving his degrees, he served as a freelance tutor for Magway University's distance education program while preparing for civil service examinations. Kyaw Si Thu become a staff officer in the Department of Trade, Ministry of Commerce, Myanmar in August 2016. In this role, Kyaw Si Thu's responsibilities are to arrange internal meetings and Joint Border Trade Committee (JBTC) meetings. He is also responsible for reviewing recommendation letters for Memorandum of Understanding (MoU), Memorandum of Agreement (MoA), and agricultural product contracts. Kyaw Si Thu has been a resident Nonproliferation Fellow with the Pacific Forum, a non-profit, foreign policy research institute based in Honolulu, Hawaii, since December 2017, and will return to his position at the Department of Trade in December 2018.

Kyaw Si Thu's research interests are economics and trade, especially how domestic companies and industries can participate in government trade promotion programs. Kyaw Si Thu (kyawsithumoc@gmail.com) is currently writing a research paper covering national models for managing the trade of strategic goods. This research paper will provide policy recommendations for Myanmar's future implementation of a strategic trade control system.