



**2020 Seminar on Strategic Trade Controls in Southeast Asia
Pacific Forum**

Virtual Event via Zoom

July 27 - 28 | August 5 - 6, 2020 (US)

July 28 - 29 | August 6 - 7, 2020 (Asia/Europe)

The Pacific Forum, with support from the US State Department’s Export Control and Related Border Security Program, held a virtual Seminar on Strategic Trade Controls in Southeast Asia on July 27 and 28, and August 5 and 6, 2020 via Zoom. Over 90 people from the Indo-Pacific representing relevant government department and ministries, private sector, industry associations, academia, and civil society organizations joined the online seminar.

The four-day virtual seminar focused on four substantive topics: (1) the adoption of Strategic Trade Controls (STCs) for non-proliferation and internal security; (2) post-COVID-19 supply chains and trade facilitation; (3) ASEAN and STC; (4) the World Customs Organization, STC and the exploration of maturity models. Following presentations and discussions on these, Southeast Asian countries—Philippines, Malaysia, Singapore, Thailand, Vietnam, Cambodia, Laos, Myanmar, and Indonesia—offered updates on the adoption of STC in their respective jurisdictions.

Key Findings

Key findings from each of the sessions and updates on the adoption info STC in Southeast Asia are described below.

I. Strategic Trade Controls for Non-proliferation and Internal Security

Growing momentum frames the discussion and adoption of STC regimes from the lens of global non-proliferation threats and internal security. Lessons from Syria and Iran revealed how dual-use goods were procured and transported via third parties to build unconventional weapons systems. Southeast Asia is a target-rich environment for proliferation schemes, especially with the presence of terrorist organizations. STCs can build upon conventional weapons controls to hamper the trade and transit of strategic commodities, too.

With its growing tech start-up sector, connectivity, and increasing flow of Foreign Direct Investment (FDI), Southeast Asia is becoming an attractive destination for sensitive goods. There is a growing threat of “re-entry” and the use of Special Economic Zones as primary points for transit or transshipment in the region. Countries may benefit from reorienting STC toward an internal security focused approach where organized crime and internationally linked illicit activities are elevated as a national security priority.

The emerging technology sector offers both risks and opportunities in the region which mandates the formation of regionally streamlined policies. Regional security institutions such as the ASEAN Regional Forum should be maximized to discuss the growing relationship between STC and non-proliferation to mitigate regional threats and improve information sharing.

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Aside from the non-proliferation and internal security angles, ASEAN member states must also continue to raise awareness of the positive-sum benefits of STCs for local economies to fast track adoption. FDI remains a key driver for the economic development in Southeast Asia, thus, bridging the gap between national security and economic prosperity is paramount for STC to succeed.

II. POST-COVID-19 Supply Chains and Trade Facilitation

During the workshop, a poll question was asked about the impact of the COVID-19 pandemic on the global supply chain. Almost three quarters (72 percent) of participants think that the manufacturing *and* technology supply chains in their respective countries will be affected by the COVID-19 pandemic, while 26 percent said that only their manufacturing supply chain is vulnerable. No one responded that there would be no impact on their supply chains.

The post-COVID-19 environment will see increasing attempts among states to focus on nationalized and resilient supply chains and diversify their strategic supply chains away from single market dependencies. E-globalization will also accelerate, transforming supply chains into digital supply networks. This will spark flexible avenues for collaboration and interconnectedness, permitting end-to-end visibility, agility, and optimization. With deepening US-China strategic competition and the devastating impacts of COVID-19, private companies are looking for new sites for investments. Southeast Asia appears to be a viable candidate.

However, attracting high-value FDI will be competitive as states continue to explore resiliency and diversification strategies. Countries in Southeast Asia with well-developed STC policies will have a competitive advantage. Companies that boast secured supply chains and technology management will also be highly competitive in attracting high-value FDI. COVID-19 can upend such opportunities, especially for companies that do not possess robust STC compliance systems.

STC policies need to be responsive to the rapid evolution in supply chain management and e-globalization. Intangible technology controls in global research and development, in areas such as additive manufacturing, will be essential. With digitization of a globalized market, cybersecurity and technology control plans are becoming central in internal compliance schemes. There will be increasing motivation to pursue these measures as Southeast Asia shares deep concerns regarding nefarious economic practices and technology theft. Greater integration between compliance and cybersecurity among companies that are involved in supply chains will be a critical requirement under the new normal. As investments in the tech arena flow in the region, Southeast Asia will also face the difficult task of balancing academic freedom and research with managing technology transfer.

III. ASEAN and STC

ASEAN has become an important driver for intra-regional discussion on STC. It has facilitated discussions in harmonizing international obligations into national legislation while establishing institutional links through security and economic dialogues. Yet regional organizations have a limited role in pushing for the adoption of a region-wide STC regime. Fiscal and bureaucratic

limitations, diverging economic and stakeholder interests, and lack of leadership serve as fundamental roadblocks.

ASEAN's focus on STC depends on the convergence of economic and security policies. Although internally, ASEAN has demonstrated an appetite to develop or adopt STC with certain provisions embedded in its ASEAN Economic Community Vision 2025, external incentives remain the primary motivator. Currently, almost all ASEAN member states have adopted or expressed an intention to adopt the EU Control List of Dual-Use Items. A brief survey shows a patchwork of STC models that can be characterized as either using existing legislation, enacting new legislation, or a hybrid model of the two. Striking a regional legal framework will be nearly impossible. The prospects for STCs harmonized across ASEAN will be contingent upon member states elevating the issue on a regional scale. Without solid buy-in from countries like Indonesia, it is unlikely ASEAN will arrive at such a stage.

Elevating the STC agenda in ASEAN will require robust technical capability and strong political will. Thus, the need to situate STC within the paradigms of national security and economic interests presents the way forward. For the economic dimension, ASEAN states must seriously consider developing STCs that emphasize similar definitions and the adoption of common good practices and appropriate procedures. When it comes to security considerations, experts projected that progress in this aspect will be minimal. An ASEAN-wide approach to preventing WMD, dual-use, and conventional weapons proliferation with the adoption of the UNSCR 1540 and the Arms Trade Treaty will demonstrate adherence to minimum standards. Basic information sharing will be grounded on threat perceptions to attain enforcement objectives. The potential convergence of economic and security policies in ASEAN could provide a conducive pathway to improved STC adoption.

The prospects of integrating STC into the ASEAN Economic Community in the near- to medium-term is not highly feasible. As an export-driven economic bloc, ASEAN must internalize that adopting STC is a fundamental prerequisite in securing FDI, especially for technology and knowledge-sensitive industries. In the short-term, ASEAN must encourage greater Customs cooperation in dealing with strategic goods through the ASEAN Experts Committee on Customs Matters and the ASEAN Director-General of Customs meeting. These engagements will help promote the use of the ASEAN Single Window by monitoring the movement of strategic items; encouraging ASEAN to adopt a single and common control list; adopting similar approaches to transit and transshipment; and enhancing cooperation and information sharing on illicit trade and enforcement of Customs and law.

IV. Customs and STC Maturity Models

Customs is critical to enforcing STCs, and STCs are gradually becoming a focus of Customs work. Licensing and regulatory authorities should work closely with Customs to ensure effective STC enforcement. Under its Strategic Trade Control Enforcement Program (STCE), the World Customs Organization (WCO) embarked on a global training and capacity building program in 2013. In 2014, it produced a foundational STCE Implementation Guide and training curriculum, which was updated in 2019. The WCO has conducted 14 STCE Expert Accreditation Workshops producing

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over 100 trainers from more than 50 countries. The WCO has also conducted a series of global STCE operations focused on the identification and interdiction of strategic goods. Operation Cosmo in 2014 was the first global strategic trade control enforcement exercise and engaged 89 countries. Operation Cosmo 2 in 2018 was the largest WCO operation of all time, with 114 participating countries. However, some participating countries and regions were largely dormant during the operation, leading to a decision to conduct more focused regional operations. Operation ASEAN Cosmo in 2020 saw active participation by Thailand and Cambodia, but other countries in the region remained dormant.

Maturity models define a progression toward a fully mature system. They are useful tools for assessing STC systems and can help leading agencies step forward and conduct a system-wide analysis of national STC institutional maturity. They also provide pathways toward increasing the ability of a system to control dual-use and strategic items. The use of maturity models in the development of STC systems requires a national STC champion with mandated support from relevant agencies to benchmark the status of their country's STC development. In response to a poll conducted during the seminar asking whether a maturity model approach can be used to assess baseline improvements in regional STC implementation, a majority of 56 percent agreed, 7 percent disagreed, and 37 percent did not know what a maturity model was.

A maturity model-based approach provides evolving roadmaps to inform continued STC development. Assistance providers can help at all stages of this process, from benchmarking and scenario-based exercises to consultations on how to prioritize future capacity building and system development activities. The successful use of maturity models in the STC context demonstrates that all systems must first leverage interagency cooperation, especially sharing of licensing and shipping data; second, develop and share technical feedback resources; and last, seek complementarity of interagency purpose through enabling legislation and/or implementing regulations.

The WCO STCE maturity model assesses the establishment of STC institutions using a tiered-system approach: unsupported, nascent, established, and enabled. It is a self-assessment tool that functions as a checklist and adopts a common language that clarifies a states' needs regarding STC implementation and capacity building. The STCE maturity model is not exclusively Customs focused, but also encourages the integration of other agencies in the national implementation plans, training, and assistance. It recognizes that STC requires a whole-of-government approach with the participation of interagency units in the area of enforcement and regulation. To aid states in understanding the STCE maturity model, the WCO provides enforcement and industry outreach.

The US Export Control and Related Border Assistance (EXBS) Program has provided practical assistance in Southeast Asia to harmonize national export control systems with international standards and facilitate information sharing. EXBS program efforts have contributed to core areas such as legislation and regulations, licensing, enforcement, government-industry cooperation, and interagency coordination. Meanwhile, the EU P2P program's maturity model provides an assessment of how to conduct outreach based on the maturity and specific STC-related needs of participating countries. Since 2010, the EU P2P program has been providing bespoke assistance in Southeast Asia.

V. Progress on STC implementation in ASEAN countries

Overall, countries in Southeast Asia are making modest progress in legislating and implementing STC regimes in their respective jurisdictions. The majority of ASEAN member states are using the EU dual-use control list as a fundamental reference in their adoption of STC. Economic benefits, in particular the flow of FDI, are a key driver for ASEAN member states to draft, legislate and implement STC. Yet due to the increasing exports of dual-use items and high-tech goods, particularly from Singapore, Malaysia, and Indonesia that could be utilized for nefarious purposes, the lack of robust and streamlined STC could become a roadblock in attracting high-value FDI. With Southeast Asia's growing tech sector, concerns regarding academic freedom and research ventures vis-à-vis trade controls are also emerging. Development in the region of STC mechanisms that evaluate strategic goods—those intended for research purposes but that can be weaponized by malicious actors—is a contentious area worth further examining. As the region becomes a competitive site for investments given the current US-China strategic competition, there is also a general concern about how to devise mechanisms to balance trade facilitation and controls.

COVID-19 has become a major factor in delaying STC-related efforts. The global pandemic has hampered ongoing initiatives of ASEAN member states, preventing industry outreach, diverting manpower and resources, and more broadly, shifting government priorities to combat the outbreak. Despite this, STC-focused departments and institutions, specifically their working groups and interagency committees, have continued to fulfill their mandate by using novel resources such as the Internet and social media. Participants from relevant governments and industry associations expressed their appreciation of the four-day seminar as a vital platform to keep them abreast of the latest developments regarding STC across Southeast Asia during the current public health crisis.

VI. Key STC updates in Southeast Asia

Cambodia

- Ongoing updates on Cambodian legislative frameworks and decrees will expand coverage on dual-use and strategic trade controls. In the absence of a specific trade act or strategic trade law that covers prohibited and restricted goods, STC enforcement falls under the Sub-Decree No. 17.
- Cambodian policymakers initiated the establishment of short and long-term plans by the Customs Technical Working Group on STC. There are plans to enhance risk-management systems for all Customs officers.

Indonesia

- Implementation of the Indonesia Single Window Mechanism where importers are subject to prohibition and restriction examination and administrative control mechanisms.
- Cooperation on counterterrorism includes joint operations with Interpol, WCO, the national agency on counter-terrorism, and the police department.
- Release of Indonesia report on the implementation of UN Security Council Resolution 1540.

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Laos

- Since March 2018, Laos has committed to an 18-month roadmap to adopt and implement dual-use control, but progress in the past months has been limited due to COVID-19. The EU P2P program has provided support for the Laos roadmap to adopt dual-use controls; support capacity building; and assist in creating legal and implementing frameworks in the pre and post-implementation stage. The EU P2P program provided a study visit to Malaysia to learn the implementation of infrastructure on dual-use controls.
- Established an inter-agency working group to finalize a legal draft of the Implementing Rules and Regulations due by September 2020. Upon the adoption and implementation of the decree, the rest of the roadmap will be finalized.

Myanmar

- Drafting of the legal framework by the Ministry of Commerce is due in mid-2022. The Department of Trade and the Ministry of Commerce has established a working group with 15 relevant government departments and a core team. Updates on the licensing process for dual-use are on-going while raising awareness via industry outreach has been postponed.
- International cooperation with Japan's Ministry of Economy, Trade, and Industry; the EU P2P program; and Pacific Forum is underway.
- After an EU workshop and training covering awareness of brokering controls, trends, and methods of illicit trade as well as the role of Customs in STC, transit and transshipment controls, and enforcement, an implementation process will be conducted.
- After EU training, a review of the control list will be conducted.
- COVID-19 presents challenges for ongoing cooperation with relevant agencies. Financial and technical assistance were cited as barriers to progress.

Malaysia

- Issued the Strategic Trade Regulation 2019 on compounding offenses. Implemented Internal Compliance Programme enhancement on transaction screening, corrective action, and intangible technology. Published the 2019 Intangible Technology Transfer (ITT) Guidelines focusing on ITT transfer and a 2020 Revised Strategic Item list. Integrating ITT updates in the Strategic Trade Act 2020.
- Proliferators continue to acquire knowledge or training on ITT with an increasing focus on domestic dual-use and Chemical, Biological, Radiological, and Nuclear (CBRN) production systems. Academia needs enhanced understanding of ITT controls to balance freedom of research with legitimate restrictions.

Philippines

- Adopted the National Strategic Good List based on the EU list that includes Catch-All Controls. Registration, licensing, and authorization of strategic goods are ongoing. Established interagency protocol on enforcement with the oversight of the National Security Council–Strategic Trade Management Committee.
- Issued Strategic Management Office (STMO) guidelines for industry. Ongoing industry management through online channels as well as facilitation of trade licenses. Produced a Strategic Management Office Roadmap that aims to focus on the regulation of all entities exporting dual-use goods by 2022; expansion of the regulation to include all strategic goods

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by 2025; and expansion to include brokering related services, technical assistance and imports by 2028.

Singapore

- Provided the latest control list October 1, 2019. Updated its transit list, transshipment list and brokering list, and revised its bulk and individual permits. Published new “Catch-All” guidance and launched the Networked Trade Platform (NTP).
- Drafting of the Strategic Goods Control Order 2020 remains in progress.

Thailand

- The enforcement of Weapons of Mass Destruction related items Act B.E. 2562/2019 took effect in January 2020. Preparation of related subordinate legislation on the Weapons of Mass from the Department of Foreign Trade and the review of policy controls on dual-use items within the Ministry of Commerce are underway.
- Customs is awaiting updates/clarification from the Ministry of Commerce on STC-related matters, especially the prohibition of the export of arms and munitions and luxury goods to North Korea, Iran, and the prohibition of export and transit of Arms and Munitions to Central Africa.
- Related agencies such as licensing, enforcement, and intelligence assist with all STC issues. Customs continues to use pre-existing pieces of legislation for the control of dual-use strategic commodity exports. Customs implements a risk management system for release and inspection.

Vietnam

- Creation of a decree on non-proliferation of Weapons of Mass Destruction that serves as the primary starting point in the implementation of STC. The control list of goods for exports focuses on the prohibition of weapons, ammunition, explosive materials, military-technical equipment, as well as toxic chemicals.
- The classification of commodities is subject to ministerial management or purely commercial. Licensing authorities work with relevant ministries and agency to facilitate non-automatic export licensing; temporary imported and re-export; and transshipment.
- Customs adheres to the export license, supervising the transshipment or transit of goods. It applies risk management techniques for enforcement, investigation, and prosecution of violations.
- Facilitating voluntary compliance requires active industry outreach to the representatives of the private sector in the policymaking process. Vietnam will face challenges as export commodities become more dual-use and sensitive. It will continue to adapt to the new international integration with opportunities afforded by Free Trade Agreements.

For more information, please contact Crystal Pryor [crystal@pacforum.org]. The findings reflect the view of the organizers; this is not a consensus document. This event was funded [in part] by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.