



Strategic Trade Controls in Southeast Asia: A Pandemic Update

Edited by

Crystal Pryor and Ellise Fujii

ISSUES & INSIGHTS

SPECIAL REPORT

VOL. 21, SR5 | December 2021

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

EXECUTIVE SUMMARY	IV
COMPLIANCE IN CRISIS: THE IMPACT OF COVID-19 ON STRATEGIC TRADE CONTROLS Bryan R. Early	1
THE COMPELLING LOGIC OF INTEGRATING MARKETS: A CASE FOR COMMON STRATEGIC TRADE CONTROLS Scott Jones	12
THE ROLE OF ASEAN IN REGIONAL STC DEVELOPMENT Seema Gahlaut	17
MATURITY MODEL-BASED APPROACHES TO STRATEGIC TRADE CONTROL SYSTEM DEVELOPMENT Todd E. Perry	24
ASEAN STC IMPLEMENTATION: STRATEGIES IN THE IMPLEMENTATION OF THE PHILIPPINE STRATEGIC TRADE MANAGEMENT ACT Lorenz Anthony T. Fernando; Janice Sacedon-Dimayacyac; Domina Pia S. Salazar	35
UPDATES ON MYANMAR'S STC SYSTEM Phone Myint Naing	48
GENERAL OVERVIEW ON IMPLEMENTATION OF STRATEGIC TRADE CONTROLS IN VIET NAM Thu Pham	52
HOW INDONESIA CUSTOMS CONTROL STRATEGIC ITEMS Alfian Chaniago	58
ABOUT THE AUTHORS	65

EXECUTIVE SUMMARY

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 27-28, and August 5-6, 2020 via Zoom. Over 90 people from the Indo-Pacific region representing relevant government departments and ministries, private sector, industry associations, academia, and civil society organizations joined the seminar. Following the conference, several experts in attendance were invited to submit short analytical commentaries for compilation into this volume. Key themes from this conference, along with a summary of each paper contribution, are outlined below.

The seminar focused on four substantive topics: (1) the adoption of Strategic Trade Controls (STCs) for nonproliferation 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 topics, representatives from several Southeast Asian countries—Philippines, Malaysia, Singapore, Thailand, Vietnam, Cambodia, Laos, Myanmar, and Indonesia—offered updates on the adoption of STC in their respective jurisdictions.

Panelists discussed the uneven STC implementation within the Southeast Asian region as evidenced by Singapore, Malaysia, Philippines, and Thailand's recent adoption or calibration of regulations while others, such as Vietnam, Cambodia, and Brunei have been slower to implement a more robust system. The region's history of non-alignment, past experience with export controls as a coercive mechanism, prioritization of economic growth, and the view that STC can be used for technological denial fuels skepticism. ASEAN is a late entrant to the development of free trade zones and regional economic integration. Although it seeks to attract international investment, relaxed oversight, susceptibility to smuggling, and a lack of transparency inhibit growth. Some participants suggested connecting STC with the World Customs Organization Authorized Economic Operator scheme as it can exist without a national STC system already in place.

Previous studies have shown that there is no negative effect stemming from the implementation of STCs, yet it can be argued that these studies have data limitations and that some use less-than-ideal methodologies. In fact, participants argued that the biggest impact of STC for developing countries seems not to be on exports, but on high-tech imports, access to Western markets, and garnering the trust of suppliers. STCs function to compel a company's compliance by imposing reputational risks and penalties and can also provide opportunities; logistics companies can charge for strategic goods declarations, manufacturers can use bulk licenses to expedite delivery, and cybersecurity companies can better guarantee safe and inclusive supply chains. Companies should be shown that implementing Internal Compliance Programs (ICPs) are an investment. Setting up an ICP is only a fraction of annual revenue but allows access to a wider pool of technology, trade, and consumers, while non-major suppliers that import from the EU or the US can access more advanced technologies if they have safeguards established by ICPs.

Experts also discussed the impact of various international STC regimes, implications of the significant delays in the full implementation of the ASEAN Economic Community, and

potential costs for countries that do not have a comprehensive STC management system in place. They also touched on the difficulties of controlling emerging technologies and a related lack of uniform standards. Participants highlighted the increasing difficulty in distinguishing between strategic trade and dual-use technologies, and noted that the US is moving toward protecting its strategic interests in the multilateral regimes while pushing others to incorporate broader national security considerations into technology controls. ASEAN is increasingly concerned about a regression into Cold-War style of export controls.

Bryan Early's contribution to this special report, "Compliance in Crisis: The Impact of Covid-19 on Strategic Trade Controls," examines the critical role of STC implementation, especially in preventing the proliferation of weapons of mass destruction. In light of individual countries' obligation to implement appropriate and effective STCs, Early examines the adverse impact of COVID-19 on STC compliance.

Scott Jones' piece, "The Compelling Logic of Integrating Markets: The Case for Common Strategic Trade Controls," highlights the fractious nature of ASEAN's STC implementation and the resulting threat to both regional and international proliferation. Deepening regional economic ties require harmonization of both economic and security policies. Therefore, Jones concludes that ASEAN should establish and coordinate common STC standards.

Seema Gahlaut's paper, "The Role of ASEAN in Regional STC Development," contextualizes the function of regional organizations in promoting international nonproliferation obligations. Gahlaut highlights these organizations' ability to transcribe international obligations into regional standards and provide institutional links between nonproliferation mandates and economic and security dialogues.

Through his paper, "Maturity Model-based Approaches to Strategic Trade Control System Development," Todd Perry establishes the utility of maturity models within the STC matrix and their ability to emphasize STC-related capabilities that states should acquire if seeking to create interagency-based STC proliferation risk reduction systems. Perry concludes that maturity models are an important part of the development and strengthening of STCs and in the mitigation of WMD proliferation.

The second half of this report moves from global and regional trends to a focus on national STC systems. Lorenz Anthony T. Fernando, Janice Sacedon-Dimayacyac, and Domina Pia S. Salazar examine the STC management system in the Philippines in "ASEAN STC Implementation: Strategies in the Implementation of the Philippine Strategic Trade Management Act." As the authors illustrate, the Philippines has taken major strides to establish a strategic trade management regime, embodied in the 2015 Philippine Strategic Trade Management Act. The authors detail the importance of the Act and the role of the Philippine Strategic Trade Management Office in its implementation.

Moving to Myanmar, Phone Myint Naing focuses on the successes and failures of Naypyidaw's pursuit of STCs in his "Updates on Myanmar's STC System." Crucially, although the Myanmar government has been implementing an STC system since 2016, it has been unable to prioritize it. COVID-19 has further complicated this process and thus the nation has fallen behind in legislation, licensing processes, industry engagement and interagency cooperation.

Through her paper “General Overview on Implementation of Strategic Trade Controls in Viet Nam,” Thu Pham highlights Hanoi’s willingness to cooperate with international partners to counter WMD proliferation. Pham also illustrates the challenges that Vietnam faces as it moves from the production of commercial goods to high-tech products.

Finally, Alfian Chaniago provides insight into Jakarta’s STC management in his piece “How Indonesia Customs Control Strategic Items.” Chaniago illustrates that while Indonesia is not a member of international trade control regimes and does not have specific STC regulations, it has mechanisms in place to control strategic items. Chaniago then explores the role of the Directorate General of Customs and Excise in the implementation and enforcement of STC.

Taken as a whole, the region is moving toward improved STC implementation. Nonetheless, Southeast Asian countries face challenges ranging from global tensions over critical technologies and supply chains to domestic lack of resources or political will. The dialogue between relevant government departments and ministries, private sector, industry associations, academia, and civil society organizations within the United States and Southeast Asia must continue if we are to achieve our shared goals of economic growth and development while preventing the proliferation of WMD and related materials.

COMPLIANCE IN CRISIS: THE IMPACT OF COVID-19 ON STRATEGIC TRADE CONTROLS

By Bryan R. Early

Introduction

The effective implementation of strategic trade controls (STCs) plays a critical role in global efforts to prevent the proliferation of weapons of mass destruction (WMDs). All countries have an obligation to implement appropriate and effective STCs under United Nations Security Council Resolution (UNSCR) 1540. Significant variation exists, though, in the degree to which countries have fulfilled that obligation. The COVID-19 pandemic poses two distinct crises of compliance: harming corporate compliance within countries that possess full-fledged STC systems and hampering governments' efforts to improve their compliance with UNSCR 1540's obligations. Both manifestations of the COVID-19 crisis could have adverse, long-term impacts on global nonproliferation efforts. While these challenges call for greater cooperation and investments in helping countries overcome the obstacles to adopting effective STCs, the rifts between the US, European Union (EU), and China suggest that the crises COVID-19 created may persist after the acute threat from the virus has passed.

Global STC Adoption Before the COVID-19 Pandemic

STCs are policies that governments adopt to regulate the trade and transfer of goods and technologies that can be employed as weapons or used to create weapons. STCs apply to dedicated munitions and to dual-use goods and technologies that have peaceful commercial applications in addition to weapons-related uses. Governments employ STCs for a host of purposes, including to promote national security, promote regional and international peace and stability, prevent human rights abuses, and to comply with international obligations. STCs allow governments to regulate transactions involving dual-use goods and technologies to ensure that such trade occurs when deemed safe while preventing transactions that run counter to their national and international security interests. UNSCR 1540's adoption in 2004 led to a dramatic increase in the number of countries around the world that have STCs. Widespread adoption has occurred unevenly, however, especially in developing countries. Even countries that have

adopted STCs need to make ongoing reforms and improvements to their systems to keep up with ever-evolving proliferation threats.

UNSCR 1540 calls upon states to prevent the transfer or acquisition of WMDs by non-state actors via making such transactions illegal, requiring the physical protection of sensitive materials and technologies, and requiring the adoption of STCs. The UNSCR 1540 Committee monitors the degree to which UN member states have implemented the resolution's obligations via periodic comprehensive reports, the last of which was issued in 2016. The 2016 comprehensive report noted steady progress in improving global implementation of UNSCR 1540's STC-related requirements since 2011.¹ The report found that of the total number of potential 1540-related measures that member states' need to implement on a global basis, though, only 48% had been adopted.² Compliance was also uneven across the world, with countries in Latin America, Africa, and Asia tending to have lower levels of compliance. With parties like the US and EU continuing to provide STC-related foreign assistance over the past five years and the 1540 Committee's continued active outreach,³ the positive trends in global STC development should have continued through 2020. The legal-regulatory development of governments' STCs systems also tends to outpace the implementation and enforcement of STCs.⁴ Resource limitations hamper many developing countries' capacities to implement their STC policies.⁵ This means that governments often have STC laws on the books that are not being implemented or, at the very least, not to their full effect. All this suggests that while international efforts to promote the adoption of improved STCs have been successful, substantial work remains to realize UNSCR 1540's ambitious goals.

¹ 1540 Committee. United Nations Security Council. 2016. "Report of the Security Council Committee established pursuant to resolution 1540 (2004)," p. 22-24. New York: United Nations. Available at: <https://undocs.org/en/S/2016/1038>.

² 1540 Committee 2016: 9.

³ Early, Bryan and Mark Nance, and M. Patrick Cottrell. 2017. "Global Governance at the Energy-Security Nexus: Lessons from UNSCR 1540." *Energy Research & Social Science* 24(February): 94-101; 1540 Committee. United Nations Security Council. 2019. "Review of the implementation of resolution 1540 (2004) for 2019." New York: United Nations. Available at: <https://undocs.org/en/S/2019/986>.

⁴ 1540 Committee 2019.

⁵ Stinnett, Douglas, Bryan R. Early, Cale Horne, and Johannes Karreth. 2011. "Complying by Denying: Explaining Why States Develop Nonproliferation Export Controls." *International Studies Perspectives* 12(3): 308-326; 1540 Committee 2016: 14.

The Economic and Security Impact of COVID-19

The COVID-19 pandemic has harmed countries' economies, disrupted global trade relationships and business operations, and exacerbated political and economic tensions between the US and the People's Republic of China. COVID-19 has negatively affected countries all over the world, but those losses have been experienced unevenly.⁶ The pandemic has caused large-scale unemployment, caused many firms to go out of business, and had devastating effects on numerous economic sectors. Notably, national economic losses caused by COVID-19 do not appear directly correlated with how badly the disease affects individual countries, with multiple countries experiencing economic downturns despite not experiencing severe outbreaks. The economic crises experienced by countries are furthermore creating budgetary shortfalls for governments that can limit their ability to address the hardships caused by the pandemic and other public policy priorities.⁷

Beyond the general adverse effect on countries' economies, COVID-19 has disrupted global supply chains and international travel. While significant attention was given to supply-chain problems in the medical field (such as shortages in personal protective equipment and ventilators), the pandemic also created delays in the production and distribution of other products, like building materials, computers, and replacement parts.⁸ This led to scarcity-induced price spikes in the cost of items and critical shortages, harming the supply chains of downstream manufacturers, retailers, and consumers. Many countries have experienced

⁶ United Nations Industrial Development Organization (UNIDO). 2020. "Coronavirus: the economic impact – 10 July 2020." New York: United Nations. Available at: <https://www.unido.org/stories/coronavirus-economic-impact-10-july-2020>.

⁷ Organization for Economic Cooperation and Development (OECD). 2020b. "The impact of the coronavirus (COVID-19) crisis on development finance." June 24. Available at: <http://www.oecd.org/coronavirus/policy-responses/the-impact-of-the-coronavirus-covid-19-crisis-on-development-finance-9de00b3b/>.

⁸ Gahlaut, Seema. 2020. "Compliance in the time of COVID-19," April 27. Washington, DC: Stimson Center. Available at: <https://www.stimson.org/2020/compliance-in-the-time-of-covid-19/>; Organization for Economic Cooperation and Development. 2020a. "COVID-19 and international trade: Issues and actions." June 12. Available at: <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions-494da2fa/>. Also, see: Gorey, Jon. 2020. "Building resentment: Renovating? Lumber, labor, and patience are in short supply." *Boston Globe*, October 25. Available at: <https://www.bostonglobe.com/2020/10/21/real-estate/building-resentment-renovating-lumber-labor-patience-are-short-supply/>; Chin, Monica. 2020. "The pandemic has made it harder to buy a new laptop." *The Verge*, June 4. Available at: <https://www.theverge.com/2020/6/4/21279633/laptop-pc-shortages-supply-chain-coronavirus-covid-19-pandemic>; Moreschi, Angie. 2020. "Coronavirus pandemic causing car repair delays." *WPXI News*, Nember 17. Available at: <https://www.wpxi.com/news/investigates/coronavirus-pandemic-causing-car-repair-delays/HBTAXTI4FRD2LGVN3YBT5WDK6I/>.

shortages of both strategic and non-strategic goods upon which their citizens, firms, and governments rely. The pandemic also resulted in significant reductions in international travel, as both the public and businesses perceived the risks of traveling to be too high, and governments imposed travel restrictions to halt COVID-19's spread.⁹ Some governments adopted restrictions that specifically applied to travel involving countries experiencing severe outbreaks. As a result, countries around the world are now substantially less connected in terms of trade and travel than they were before the pandemic. COVID-19 has thus disrupted international flows of both goods and people upon which the global economy relies.¹⁰

Another salient effect of COVID-19 was to drive an even deeper wedge between the US and China both politically and economically. Efforts to assign and avoid blame by the states' leaders have increased political tensions.¹¹ COVID-19 also exacerbated their pre-existing trade dispute, as the US sought to force China to adopt concessionary trade policies and prevent it from illicitly acquiring and misusing US technologies. COVID-19 expanded the tensions to include travel restrictions between the two countries and stymied reconciliation via a potential grand trade bargain.¹² US President Donald Trump has also adopted a strategy of bellicose posturing toward China part of his re-election strategy.¹³ So whereas China and the US previously had common interests on nonproliferation issues they could work on together, neither side is likely to cooperate in the foreseeable future. Rather than working with China as a partner on implementing STCs, the US (via actions taken by the Department of Commerce in the spring of 2020) has increasingly made China a target of them.¹⁴ Issues related to controlling strategic

⁹ OECD 2020a.

¹⁰ OECD 2020a.

¹¹ Christensen, Thomas. 2020. "A Modern Tragedy? Covid-19 and U.S.-China Relations." *Brookings Institution*, May. Available: https://www.brookings.edu/wp-content/uploads/2020/05/FP_20200511_covid_us_china_christensen_v3.pdf.

¹² Edel, Charles and Mira Rapp-Hooper. 2020. "The 5 Ways U.S.-China Competition Is Hardening." *ForeignPolicy.com*, May 18. Available at: <https://foreignpolicy.com/2020/05/18/united-states-competition-coronavirus-pandemic-tensions/>.

¹³ Tan, Huileng. 2020. "U.S.-China tensions will likely get worse ahead of November election, experts say." *CNBC*, May 21. Available at: <https://www.cnn.com/2020/05/21/us-china-tensions-will-likely-get-worse-ahead-of-november-election-experts-say.html>.

¹⁴ Klein, Nicholas, Thomas Reynolds, and Thomas deButts. 2020. "BIS announces three new rules that place significant restrictions on exports to China." *DLA Piper*, May 7. Available at: <https://www.dlapiper.com/en/us/insights/publications/2020/05/bis-announces-three-new-rules-that-place-significant-restrictions-on-exports-to-china/>.

goods and technologies and providing for information security, such as has been observed with Huawei and Bytedance, could also become a contentious flashpoint between the two states.¹⁵

COVID-19 has thus resulted in several significant trends that have implications for STC policies. The first is that individuals and firms all over the world are struggling as a result of COVID-19, making them more willing to cut corners or pursue risky business strategies they otherwise would not. The second major trend is that businesses have had their supply chains and business relationships disrupted, meaning that they will be looking for new partners and customers—and under desperate circumstances. Third, COVID-19 has changed the procedures for how many businesses operate. A significant number of employees have shifted to working remotely, creating or enhancing certain types of proliferation vulnerabilities. Fourth, COVID-19 has disrupted governments' workflows, as officials have begun working remotely more, health and safety considerations have impacted security and customs policies at borders, and budgetary shortfalls have affected government personnel. And, lastly, the world's leading great powers are increasingly at odds with one another on strategic trade-related issues with the potential for their conflict to embroil other countries in their deepening tensions. As I argue below, these trends potentially pose two distinct compliance crises for STCs at the business and governmental levels.

The STC Compliance Crises Created by COVID-19

The COVID-19 pandemic has made it more difficult for governments to implement their existing STCs effectively and made it harder for governments to adopt or upgrade their STC systems. The first crisis of compliance relates to individuals and companies becoming increasingly non-compliant with STCs during COVID-19 and governments being limited in their ability to prevent it. For STC policies to work effectively, the members of a country's business community need to understand their STC obligations and buy in to compliance. Through their industry outreach programs, governments are responsible for educating businesses about their STC compliance obligations. Governments must also then efficiently manage their systems for licensing controlled strategic goods and technologies, monitor and investigate noncompliance, and punish violations. In well-run STC systems, investments made

¹⁵ Edel and Rapp-Hooper 2020.

in government-industry outreach minimize noncompliance and allow governments to focus on identifying and punishing the small number of violations that do occur. Most governments do not invest sufficient resources in their STC systems to be able to address the problem of widespread noncompliance effectively.

COVID-19 has created circumstances in which widespread noncompliance with STCs is more likely to occur and in which governments face numerous constraints to their ability to respond effectively. Research has demonstrated that individuals and firms experiencing economic hardships are more likely to engage in illicit economic activities.¹⁶ COVID-19 has had devastating economic effects on businesses in nearly all sectors of countries' economies, potentially making firms more accepting of the risks involved in engaging in illicit commerce. COVID-19 has also massively disrupted many companies' supply chains and business relationships, forcing them to find new customers or business partners in trying conditions.

COVID-19 may facilitate the deceptive tactics¹⁷ that proliferators exploit to circumvent strategic trade controls. The inability to travel internationally may make it harder for companies to validate the legitimacy of new business partners. That so many businesses have adopted remote-work strategies also means that it is more commonplace to correspond with partners working from home or nontraditional workplaces. Under normal circumstances, such circumstances might raise "red-flags" about the legitimacy of end-users, but now they are commonplace. COVID-19-related disruptions may also make it easier for proliferators to hide otherwise suspicious transactions by claiming that the pandemic is making them rely on unusual shipping routes, shipping partners, and delivery locations. COVID-19 has thus made it easier for illicit proliferators, who are adept at exploiting deception, at fitting in with legitimate commercial partners, hiding their true identities and their potentially malign end-uses of transactions involving controlled items. The pandemic has forced many companies to seek out new business partners under trying circumstances, while simultaneously making it easier for proliferators to shield the illicit nature of their transactions from discovery.

¹⁶ Elgin, Ceyhun. 2012. "Cyclicality of Shadow Economy." *Economic Papers: A Journal of Applied Economics and Policy* 31 (4): 478–90; Early, Bryan and Dursun Peksen. 2019. "Searching in the Shadows: The Impact of Economic Sanctions on Informal Economies." *Political Research Quarterly* 72(4): 821–834.

¹⁷ Anderson, Glen. 2016. "Points of Deception: Exploring How Proliferators Evade Controls to Obtain Dual-use Good." *Strategic Trade Review* 2(Spring): 4-24.

The extent to which companies are made more vulnerable to exploitation by proliferators because of COVID-19 will vary. Small- and medium-sized enterprises (SMEs) have tended to be more adversely impacted by COVID-19.¹⁸ Large corporations with established STC internal compliance programs (ICPs) generally had lower risks of noncompliance pre-pandemic. SMEs, in contrast, are more likely to lack ICPs and have fewer resources devoted to STC compliance, which places them generally at greater risk of exploitation. Given the hardships imposed on them by COVID-19, SMEs will be more vulnerable to exploitation by proliferators when offered deals that appear “too good to be true” when their survival is at risk. For even well-intentioned firms, pandemic-induced hardships may force companies to engage in cutbacks in the resources they devote to corporate compliance. Procedures for complying with STCs and sanctions may also be more relaxed due to the disruptions caused by employees working remotely and typical ICP policies being more loosely enforced. Rather than employing “Know Your Customer” screening procedures for vetting new partners¹⁹ and avoiding suspicious transactions, some firms will be more likely to take advantage of whatever opportunities arise. Proliferators can exploit the fact that COVID-19 may have diminished some firms’—and especially SMEs’—commitment and capacity to comply with STCs.

Lastly, remote work may create additional vulnerabilities for protecting intangible technologies subject to STCs. As workers increasingly engage in work from home, the ability for unauthorized disclosures of sensitive information can potentially increase due to theft or illicit transfer by employees or by external hacking and theft. It is not clear whether many companies effectively adapted the technology control plans that may have been a part of their ICPs when COVID-19 forced their employees into working remotely. If companies began relying on cloud-based computing strategies to manage their remote-working projects, there might be additional vulnerabilities introduced to their information security depending upon where the information is transferred and stored.²⁰ These factors place companies at greater risk from both

¹⁸ UNIDO 2020.

¹⁹ US Bureau of Industry and Security (BIS). 2015. “Know Your Customer: Best Practices for Industry Compliance and Due Diligence.” Washington, DC: US Department of Commerce. Available at: <https://www.bis.doc.gov/index.php/documents/pdfs/1320-know-your-customer/file>.

²⁰ Gahlaut 2020.

traditional forms of industrial espionage and more targeted risks of government-directed hacking operations.

COVID-19 has also potentially handicapped governments from effectively dealing with widespread noncompliance among their businesses. Many governments have dealt with COVID-19 by adopting remote-work policies that may have diminished their officials' access to the resources needed to do their jobs. Officials may not have access to computers and protected intranet systems for accessing sensitive information, and their regular channels for conducting interagency cooperation may have been disrupted. This can create challenges for properly vetting STC license applications. It may also lead to delays in the processing of applications, creating disincentives for firms to apply for STC licenses. COVID-19 has also hampered officials' ability to investigate reports of suspicious transactions and to conduct on-site audits. For those governments that engage in end-use verification checks, COVID-19 is likely to have severely limited the use of that compliance tool as well. Concerns about the health and safety of frontline officials, like Customs officers, may also limit the extent to which they are conducting intrusive examinations of goods being exported, transited, or transshipped out of their countries.²¹ All of these factors could limit the efficacy of governments with STC systems at detecting transactions involving illicit proliferation, even as the number of such violations may be increasing. Budgetary shortfalls created by COVID-19 are more likely to cause governments to cut their budgets devoted to overseeing their STC systems rather than boosting them.

The second major crisis for compliance with global STC compliance is at the national level, where COVID-19 has disrupted some governments' ongoing efforts to adopt STCs or enhance their existing STC systems. As noted above, many countries around the world are still in the process of adopting comprehensive STC systems for the first time, or their systems require enhancements to meet UNSCR 1540's requirements fully. The COVID-19 pandemic delayed numerous countries' ongoing efforts to adopt new STC-related legislation, as responding to the pandemic emerged as the most important political priority. On a practical level, working to adopt new STC laws and regulations becomes more difficult for government officials that are

²¹ Gahlaut 2020.

working remotely. Many officials may not have the at-home resources to conduct the necessary interagency coordination to work on complicated STC legal-regulatory issues. Under the auspices of UNSCR 1540's assistance provisions, many of the governments working to adopt STC reforms rely upon international technical support funded by the US (the Export Control Related Border Security and INECP Programs) and EU (the P2P Export Control Programme).²² Having access to expert technical expertise helps governments ensure that their STC reforms reflect international best practices and will work effectively. The travel and health considerations created by COVID-19 have made it more difficult to provide international assistance and conduct multilateral events used to support STC-development. While strategies for employing remote assistance have been adopted, the pandemic significantly interrupted the flow of such activities.

Regaining the pre-COVID-19 inertia for adopting STC-related improvements may be difficult for some countries as other priorities—including those related to the disease—have moved to the forefront of their attention. The fact that there may not be a clear endpoint for the disruptions posed by COVID-19 further suggests that governments may deprioritize efforts at improving their STC systems. Budgetary shortfalls could create additional barriers for states seeking to establish new STC systems, as they may lack the resources to fund those programs. While the disruptions caused by the pandemic are not insurmountable, they have slowed down positive trajectories with respect to improving numerous countries' STC systems.

More Conflict, Less Cooperation: Why these Compliance Crises will Persist

Greater levels of investment and higher levels of cooperation between the US, EU, and China will be needed to address the dual crises in STC compliance, but neither appears forthcoming in the current international environment. As highlighted above, proliferators can exploit the hardships being experienced by businesses around the world and the challenges that governments also face in enforcing STCs. Proliferators can also continue taking advantage of the states that lack comprehensive, effective STCs—as COVID-19 has stymied developments to redress proliferation vulnerabilities in many countries. COVID-19 thus poses crises of

²² Viski, Andrea. 2017. "United States and European Union Strategic Trade Assistance: A Comparative Analysis." *Strategic Trade Review* 3(5): 93-110.

compliance on two different levels that proliferators can exploit in taking advantage of the lack of STCs or their ineffective enforcement.

The responses from the leading states in the international system, who all have a stake in preventing proliferation and protecting against WMD terrorism threats, should be to redouble their efforts at supporting global STC-development efforts. Beyond the fact that COVID-19 has economically hurt leading assistance providers, like the US and EU, the political circumstances surrounding counter global proliferation efforts are currently fraught with tension. The US has sought to prevent its cutting-edge technologies from Chinese appropriation, using both sanctions and STCs against China in actions that have become flashpoints in US-Chinese relations.²³ The US has also sought to prevent China from emerging as an independent technological leader in the international system in the realm of creating 5-G wireless infrastructure.²⁴ The growing divide between the US and China over these issues will inevitably force other governments to have to pick sides on some of those issues. Rather than working to control dangerous and destabilizing goods and technologies on the basis of common interests with the US and China, countries' policies will increasingly be viewed as reflecting political and commercial preferences for one or the other. All this runs counter the OECD's explicit call for states "...to *avoid further escalation in ongoing trade tensions*" in order to prioritize an effective global response to COVID-19-related challenges.²⁵ The global consensus around nonproliferation objectives has also been shaken by the US' aggressive counterproliferation strategy against Iran. In August of 2020, the US made a failed bid at forcing the UN sanctions to "snapback" against Iran under the auspices of the Joint Cooperative Plan of Action (JCPOA) nuclear agreement that the US exited in 2018. This controversial effort resulted in the US rather than Iran becoming more isolated²⁶ and embittered relations between the US and its formerly cooperative partners.

²³ Pham, Sherisse. 2020. "New sanctions deal 'lethal blow' to Huawei. China decries US bullying." *CNN*, August 18. Available at: <https://www.cnn.com/2020/08/17/tech/huawei-us-sanctions-hnk-intl/index.html>.

²⁴ Edel and Rapp-Hooper 2020.

²⁵ OECD 2020b.

²⁶ Atwood, Kylie. 2020. "US isolated as allies and opponents reject its bid to snapback UN sanctions on Iran." *CNN*, August 20. Available at: <https://www.cnn.com/2020/08/20/politics/pompeo-un-formal-snapback/index.html>.

Since the COVID-19 outbreak, relations between the leading states in the international system have thus diminished the prospects for robust multilateral cooperation to address global nonproliferation challenges. In particular, the break between the US and its European allies over the JCPOA represents a troubling trend for their continued close cooperation on nonproliferation issues elsewhere. While the incoming administration of president-elect Joe Biden will reverse course on numerous nonproliferation policies adopted by the Trump administration, recalibrating those policies and rebuilding cooperative relationships with US allies will take time. Rising US tensions with China further divide countries on STC-related issues. While contemporary STC challenges require the world's leading states to cooperate and make nonproliferation a continued global priority, that appears unlikely to happen in the immediate future. The crises for STC compliance that COVID-19 created thus may not end after the pandemic does.

THE COMPELLING LOGIC OF INTEGRATING MARKETS: A CASE FOR COMMON STRATEGIC TRADE CONTROLS

By Scott Jones

While the international community has developed a considerable nonproliferation legal structure and associative normative proscriptions, the proliferation of weapons of mass destruction (WMD) and advanced conventional weapons remains an acute and relentless threat. The diffusion of dual-use technology and accompanying manufacturing capabilities, both factors in and drivers of globalization, has greatly complicated trade control efforts. To minimize negative economic impacts while addressing security concerns, states have endeavored to calibrate trade controls multilaterally. In some instances, governments have deliberately combined trade coordination and strategic trade control policies with regional economic partners. Indeed, depending upon the degree of economic integration, a parallel single market for strategic items is both logical and compelling.

The countries of Southeast Asia pose a unique proliferation challenge as both an emerging source of and trade hub for dual-use items.¹ This challenge is exacerbated by the disparate levels of strategic trade control development and implementation.² At the same time, the region is seeking formal economic integration through the ASEAN Economic Community (AEC), thereby further facilitating regional trade flow. Regional economic and security efforts should likewise encompass strategic trade controls to ensure implementation across the region and prevent weak links from being exploited.

Regional Integration: Intertwined Economics and Security

The 10 members of the Association of Southeast Asian Nations (ASEAN) combine with India, Japan, Australia and China in constituting a mega-region that accounts for nearly 40 percent of

¹ See, for example, Stephanie Lieggi, “Dual-Use Technology in Southeast Asia: Nonproliferation Challenges for the Next Decade,” *Strategic Trade Review*, Vol. 1, No. 2, 2017.

² See, “Special Section: Strategic Trade Controls in Southeast Asia,” *Strategic Trade Review*, 2016 Vol. 2., Iss. 2, pp. 72-139.

the world's gross domestic product in purchasing power parity terms. By design, ASEAN is seeking to accelerate regional economic integration through the ASEAN Economic Community (AEC).³ Measured in terms of intra-regional trade and investment growth and supply chain integrations, ASEAN is the fastest-growing region in the world. It also faces and poses similar security threats, such as terrorism and disparate levels of strategic trade control development.

ASEAN has also endeavored to develop security policy and coordination capacities through, for example, the ASEAN Political and Security Committee (APSC) and the ASEAN Regional Forum (ARF). Nevertheless, ASEAN coverage of strategic trade controls has been limited and perfunctory. In light of the AEC, it is time for ASEAN to address trade controls as ASEAN to ensure that member states adopt the necessary legal and procedural means for effective controls.

Upon the completion of the Single Market in 1992, European Union (EU) and member state officials realized that economic integration introduced proliferation risks precisely because export control development was unevenly distributed across Europe. In a free trade market, proliferators could acquire dual-use items in one jurisdiction and exit the community in a jurisdiction with less sophisticated controls. Consequently, the EU enacted its first dual-use regulation, which established common standards and a common control list, in 1994.⁴

In 1991, the Court of Justice of the European Union (CJEU) determined that economic integration introduced a unique set of security dynamics in which regional trade in strategic items should be cooperatively managed. The Court's determination was based on a case involving the seizure of French-origin integrated circuits in Luxembourg en route to Russia. The seizure occurred because the item was "inaccurately declared in order to conceal its

³ The AEC is ultimately designed to create a single market and production base within ASEAN. The AEC will allow for the free movement of goods, services, skilled labor, and investment among the 10 ASEAN member nations and to facilitate the freer flow of capital.

⁴ See, A.G. Micara, "Current Features of the European union regime for Export Control of Dual-Use Goods," *Journal of Common Market Studies*, 2012 vol. 50, no. 4, pp 578-593. See also, B. Leslie, "Dual Use Goods and the European Community: Problems and Prospects in Eliminating Internal Border Controls on Sensitive Products," *Boston College International and Comparative Law Review*, 1994, vol. 17, no. 1, pp. 193-211.

strategic nature and to permit its transit to Russia.”⁵ As a result of the case, the EU Commission submitted a Proposal for an EU-level Regulation on the control of exports of certain dual-use as well as nuclear goods and technologies.⁶

Regional Strategic Trade Controls: Theme and Variation

Legally, ASEAN is unlike the EU. ASEAN is an intergovernmental organization. The EU, in contrast, is a supranational organization in which its member states have agreed, in certain areas such as trade, to pool their sovereignties. They are similar to the degree that both organizations seek to integrate the economies of their member states into a single market and production platform. From a strategic trade control perspective, the EU case is an instructive model to the degree that ASEAN continues to pursue AEC Blueprint 2025.

At its essence, the EU dual-use export control regime is simply a set of common procedural guidelines and an accompanying integrated control list, the latter of which some ASEAN states have already adopted. The common procedural framework, the Regulation, provides states with a common legal template upon which national control systems are based. Lacking similar institutions, ASEAN could nevertheless consider drafting a common set of guidelines and leveraging the deployment experiences of more advanced member states such as Singapore. ASEAN could also assist in coordinating external strategic trade control assistance to less developed strategic trade control jurisdictions.

An ASEAN-level strategic trade control initiative need not require significant institutional changes. Intermittently, the ASEAN Regional Forum (ARF) has addressed nonproliferation, disarmament and strategic trade controls. In 2005, at its First Inter-Sessional Meeting on Non-Proliferation and Disarmament, the ARF canvassed the idea of establishing common approaches to strategic trade controls to strengthen both regional security and economic growth. For example, the Information Note observed that “[S]everal States argued that strong

⁵ Judgment of the Court of 4 October 1991, “Criminal proceedings against Aimé Richardt and Les Accessoires Scientifiques SNC. Reference for a preliminary ruling: Cour de Cassation – Grand Duchy of Luxembourg. Free Movement of Goods - Community Transit – Strategic Material. Case C-2367/89. *European Court Reports 1991 I-04621*.

⁶ See, COM (92) 317. See also, Hamed Alavi and Tatsiana Khamichonak, “A European dilemma: The EU export control regime on dual-use goods and technologies,” *DANUBE: Law, Economics and Social Issues Review*, 2016, Vol. 7, No. 3, pp. 161-172,

export controls facilitated trade and the peaceful use of related materials, especially when coordinated with modernizing and automating their customs and other trade controls.”⁷ Subsequent ARF meetings focused on strategic trade control best practices, such as the government of South Korea sponsored ARF Export Licensing Experts Meeting in Singapore, 16-18 November 2005. The ARF could adopt a permanent committee on strategic trade controls for ASEAN member states.

Conclusion

At present, ASEAN member states are variously and independently pursuing strategic trade control development while seeking to integrate their economies through ASEAN. Under such circumstances, disparate levels of strategic trade control development will continue to pose a regional and international proliferation threat. It is therefore incumbent upon ASEAN to ensure that member states establish and coordinate common strategic trade control standards.

Standards could include legislative templates that include coverage for export, transit/transshipment, technology and brokering controls based upon a common control list, harmonized licensing forms (including end-user certificates), and secondments between ASEAN partners. ASEAN could also leverage existing information sharing platforms, such as the ASEAN Single Window, to strengthen and harmonize regional strategic trade control development efforts.⁸

As one of the fastest growing and most dynamic economic regions, Southeast Asian economies are force-multiplied through ASEAN. Further integration should include practical discussions concerning regional and international security, including strategic trade controls. As noted in the case of the EU, the trajectory of deepening economic integration necessitates

⁷ The meeting also stressed the importance of regional cooperation. General agreement emerged that ARF Members, the ASEAN Secretariat, and CSACP should work together to promote implementation of resolution 1540 (2004) and other nonproliferation regimes in the region. The ASEAN Secretariat made a very positive statement on the extent to which it is prepared to work with ARF members, CSCAP, and the 1540 Committee to advance implementation of the resolution in the region. Also during the meeting, CSCAP made a presentation on its CSCAP Memorandum No. 14, “Guidelines for Managing Trade of Strategic Goods.”

⁸ See, George Tan, “ASEAN Single Window – Ready for STM?” < https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/attachments/130829_GeorgeTan.pdf>.

unprecedented but compelling adoption of policies that secure both economic and security policy harmonization.

The Role of ASEAN in Regional STC Development

By Seema Gahlaut

The Role of Regional Organizations in Non-proliferation

In general, it is widely accepted that regional organizations can help in promoting the implementation of international non-proliferation obligations in two ways. First, regional organizations can establish the legitimacy of the proposed actions by: (a) translating international obligations into national measures that Member States can take to fulfill some, if not all, of these obligations, and (b) providing a local imprint on what are usually capacity-building programs funded by foreign trade and/or security partners. Second, they help provide institutional linkages of non-proliferation mandates with ongoing economic and security dialogues by: (a) focusing on local knowledge and priorities for deeper implementation, i.e., particularizing global mandates for local (national and regional) actions, and (b) reinforcing the idea that implementation and enforcement of non-proliferation measures is not a new, standalone function, but one that is intertwined with cooperative economic and security activities. This is both within the region and with extra-regional partners. Regional organizations, thus, can become a focal point for intraregional discussions on regional strategies and common implementation/enforcement requirements.

Within the broad field of non-proliferation, it is clear that other than the European Union, most regional organizations have been able to fulfill only the legitimacy function of Strategic Trade Controls/Management (STC). They have provided platforms to reiterate the importance of international best practices and mandates on STC, such as the United Nations Security Council Resolution (UNSCR) 1540.¹ Possible good news from ASEAN is the explicit inclusion of export controls in the *Vision 2025* document. (See more on this in later sections of this article.)

¹ UNSCR 1540 cover major international treaties – NPT, CWC, BTWC, IAEA by name. It also covers several related agreements by referring to functions or actions that UN Member States must undertake, such as FATF guidelines on financing of proliferation and of terrorism, CPPNM guidelines on the transportation of WMD-relevant materials, UN guidelines on transport of dangerous goods, and multilateral export control regimes for understanding how control list(s) can be established and maintained, etc.

Reasons for Limited Role of Regional Organizations (ROs) in STC

Institutional and financial factors work in tandem to curb the role regional organizations can play in promoting STC implementation and enforcement. At the institutional level, most ROs see the promotion of intraregional economic cooperation as their primary task. As such, trade and economy-focused units within ROs resist activities that appear to be focused on curtailing trade, e.g., “export controls,” “strategic trade regulations,” or “licensing or permit requirements.” On the security side of the equation, units within ROs that deal with security issues tend to think in terms of counter-terrorism, defense cooperation, and regional security challenges. STC issues, straddling both economic/trade and security domains, remain without an anchoring unit within a RO and fall through the cracks. To the extent that STC issues are discussed, for instance, as part of transnational crimes, the focal points from Member States are often diplomatic personnel from foreign affairs ministries. While they may be experts on international mandates and requirements, they often have little influence over the ministries or departments that are responsible for licensing or enforcement. Often, they are unable to articulate the international mandates in ways that other agencies find compelling enough to change their existing procedures or mindsets.

At the national levels, there is often little or no internal budget for STC-related activities. Foreign assistance, in most cases, provides the resources to conduct STC dialogue, outreach, or training activities. But to those unconvinced about the need for STC--whether at the RO or national levels--the assistance underscores the non-indigenous (foreign) origin of any STC work and a reason to be skeptical about the STC enterprise as a whole. Lack of local resources at the RO and national levels also means that no unit or ministry has an incentive to take the lead in organizing discussions and proposing ideas for STC cooperation or coordination.

STC Development in Southeast Asia

In four countries, whom I classify as Group A (Singapore, Malaysia, Philippines and Thailand), the adoption of a visible STC framework demonstrates that there is a certain level of domestic consensus on the need for STC. Accordingly, national governments have backed this consensus with budgetary allocations for implementation and enforcement. Group A countries, as well as those in Group B (Vietnam, Indonesia, Cambodia, Myanmar and Laos) also continue to have

ongoing dialogue(s) with major trading partners on how to strengthen their national STC frameworks – whether through the writing of National Action Plans or nominating their officials for STC training programs at home or abroad. Almost all ASEAN states appear to be aware of the utility of transparency.² Both Groups A and B share information about the current status of their legal and regulatory frameworks, industry engagement strategies, and enforcement challenges and initiatives at regional and international STC events. Group A countries also focus on transparency at home and provide information, outreach, and training to their industry and academia. Many stakeholders within these countries understand and acknowledge the linkages between broader non-proliferation treaty obligations and national STC systems.

Beyond these STC-specific issues, an ecosystem potentially favorable for regional STC cooperation appears to be emerging. Several measures/initiatives that underscore common ways of thinking about institutions for trade facilitation have been established. Among these are:

- National Single Window(s)³;
- Guidance on establishing Special Economic Zones (SEZs)⁴;
- ASEAN-wide Self-Certification Scheme (AWSCS)⁵;
- ASEAN Customs Transit System (ACTS)⁶;
- ASEAN Mutual Recognition Arrangement on Type Approval for Automotive Products (APMRA)⁷;
- Mutual Recognition Agreements (MRAs) on Authorized Economic Operator (AEO) certifications granted by national customs agencies⁸; and

² Brunei remains absent or silent on STC issues and discussions.

³ See information at <https://asw.asean.org/index.php/about-asw>

⁴ A 2015 estimate suggests that there are more than 1,000 economic zones in the ASEAN. These include “893 industrial parks, 84 special economic zones, 2 eco-industrial parks, 25 technology parks, and 1 innovation district.” The SEZ guidelines do not talk about trade security issues, but as in other parts of the world, there is growing awareness that the special status of these zones does not put them above security concerns. See <https://asean.org/wp-content/uploads/2016/08/ASEAN-Guidelines-on-SEZ-Development.pdf>

⁵ See https://asean.org/storage/2012/05/SCAROO33_anx11b_ag05.1.3d_AWSC-Infographics-14042020.pdf

⁶ See <https://acts.asean.org/>

⁷ See <https://tinyurl.com/y5x56oxx>

⁸ Singapore and Thailand signed one in 2018. See

<http://www.wcoomd.org/en/media/newsroom/2018/july/singapore-and-thailand-sign-an-aeo-mutual-recognition-arrangement.aspx?p=1>

- Proposal to develop an ASEAN database on trade routes and framework for enhancing supply chain efficiency.⁹

STC development in ASEAN Group A countries, demonstrates a growing degree of harmonization: similar definitions, commonly accepted good practices, and appropriate procedures. Presentations from officials of Group B countries in regional and international fora underscore how their planning for baseline STC implementation and enforcement is following the same overall definitions and practices. They understand the “why” and certain aspects of “what” needs to be done—but their challenge appears to be “how to begin” and “how much to attempt.”

How has this become possible?

This gradual harmonization of concepts and good practices has been a result of outreach and assistance on UNSCR 1540 implementation. To the extent that this assistance has reiterated the benefits of a comprehensive legislation, covering Chemical, Biological, Radiological and Nuclear (CBRN) technologies and delivery systems at one go, Group A countries in ASEAN appear to have accepted this. In the case of the Philippines and Thailand, the comprehensive legislation covers imports as well, which Resolution 1540 does not require. But the logic of trade and its comprehensive monitoring appears to have motivated these countries to voluntarily regulate imports of dual use items.¹⁰ Similarly, each country has devised differing mechanisms for the same crucial STC functions: to get interagency inputs (information, intelligence, technical assessments) to the licensing staff; to improve coordination between licensing and enforcement agencies on the one hand, and among various enforcement agencies on the other. All of these countries have adopted “EU-plus” control list(s), which include conventional weapons and munitions in some cases, as well as other unilateral items of concern. STC-focal points in each of these countries are exploring strategies for better implementation and enforcement of ITT and brokering controls, and for industry outreach and engagement with the academia.

⁹ See <http://aadcp2.org/development-of-asean-database-on-trade-routes-and-framework-for-enhancing-supply-chain-efficiency/>

¹⁰ For instance, how can a country regulate re-exports without having a method of tracking imports of that item into the country?

Group B countries, similarly, are focused on first-level issues: if they are not in a position to establish a comprehensive STC law/control list at this time, how can they begin to fulfill some of their international obligations by updating and/or linking the various existing regulations? How can they establish or re-specify lists covering different industry sectors such as CBRN and finance? How can terrorism-relevant laws be expanded to cover WMD-terrorism or financing of dual-use trade for terrorism purposes? How do we integrate conventional weapons imports and exports with imports and exports of dual use technologies? Or how to bring together government agencies currently overseeing these varied issue-areas to discuss tweaking of procedures: to allow information sharing and coordination, even in the absence of an overarching STC mandate from the political leaders?

However we choose to frame and assess STC development in ASEAN, it is clear that thus far, ASEAN as an institution has provided minimal input. The questions we need to ask are: would strengthening of STC implementation and enforcement need ASEAN to play a role? And if so, will ASEAN be able to play the expected role – as a locus for intra-regional discussions on a regional approach to STCs or for coordinating capacity-building programs whether funded/supported by fellow-ASEAN states or by foreign partners?¹¹

STC and ASEAN Economic Community (AEC)

The Chairman’s Statement of the 34th ASEAN Summit, Bangkok, 23 June 2019 (originally published 23 June 2019), listed a range of issues of importance to Member States. These included a Nuclear Weapon Free Zone (NWFZ) in Southeast Asia, trafficking, transnational crime, border management, mutual legal assistance in criminal matters/extradition, cybersecurity, and “Cross-pillar, cross-sectoral activities.”

The AEC Vision 2025 in ASEAN Political- Security Blueprint for 2025, Paragraph B.5.4 states:

“Promote disarmament and non-proliferation of weapons of mass destruction while enhancing ASEAN capacity to address deliberate/accidental release of hazardous substances/agents of weapons of mass destruction.”

¹¹ Here, one could argue that the appointment of a person (or a unit within ASEAN Secretariat) as the ASEAN regional coordinator on 1540 might provide the institutional base for ASEAN community to operationalize the *AEC Vision 2025* mandate on export controls.

This appears to be an implicit response to the 1540 mandate on CBRN security (Operative Paragraph 3a and 3b) and STC (Operative Paragraph 3d), and establishes an ASEAN mandate to:

- i. Promote the universalization of existing international instruments and (their) effective implementation ... while enhancing regional and multilateral cooperation in this area,
- ii. Enhance cooperation in addressing the *proliferation of WMD by encouraging the adoption and implementation of effective export control regulations* in accordance with relevant international obligations and practice

An ASEAN-wide approach to preventing WMD and conventional weapons proliferation?

Given the “export control” mandate from *AEC Vision 2025*, it may be possible for the ASEAN community to build upon issues of common concern among most Member States. These include money laundering; terrorism and proliferation finance; DPRK, Syria and Iran sanctions; concerns about regulating emerging technologies, and cybersecurity threats to CBRN security and dual-use trade (with reference to both data and infrastructure).

In the near to medium term, ASEAN states can initiate dialogue on developing minimum standards on dual-use as well as conventional weapons trade. They can also initiate basic information-sharing among themselves on ATT implementation. Finally, to the extent that it will help them benchmark their progress on UNSCR 1540 implementation, they could also identify essential good practices that Group B countries can institute, even in the absence of comprehensive STC laws.

The dialogues on STC can follow the practice of multilateral export control regimes: articulation of specific national, sub-regional and region-wide threats stemming from dual-use and conventional weapons proliferation, based on national and bilateral data. States can also share information on relevant enforcement cases from STC/CBRN/terrorism/finance domains to demonstrate which good practices started the investigation (discovery) and what sources/types of information were used to follow the violation through investigation,

prosecution, and penalty phases. This would generate interest from frontline officers (licensing, enforcement, outreach and 1540 points of contact) who are often disinterested in high-level diplomatic declarations or do not have the time or knowledge to link these declarations to their day-to-day tasks.

A designated unit of the ASEAN Secretariat can become the hub for such dialogues. It can help organize the dialogues and become a repository of materials generated by STC experts from ASEAN and outside. This will allow interested agencies from across Member States to access information when they want to understand either big-picture issues (rationale for having STCs, benefits of STCs and the costs of not having STCs) or details of STCs (rationale for specific good practices and the mechanisms to institutionalize them).

In sum, there appears to be a positive concatenation of events, developments, and perspectives on STC within ASEAN—at national and regional levels. Those Member States who have taken the lead and established comprehensive STC systems (or have begun to do so) now have firsthand experience of the best (and worst) ways of translating international mandates into national actions. They can share these insights with those Member States who have yet to start on the journey. The latter, in turn, can raise questions about new ways of fulfilling the mandates. Such dialogues can happen at bilateral and multilateral levels. In either case, a unit within the ASEAN Secretariat can be a facilitator, a “library” of expertise, and a focal point for germinating new initiatives. But it will depend on the willingness of ASEAN political leadership to follow the declarations of intent about non-proliferation and export controls with action.

MATURITY MODEL-BASED APPROACHES TO STRATEGIC TRADE CONTROL SYSTEM DEVELOPMENT

By Todd E. Perry¹

Over the past two decades, “maturity models” used to systematize and streamline individual- and organizational-level evolutionary performance capabilities have been applied in a growing range of fields. Progress toward increasingly advanced capabilities in any domain can be difficult to standardize or “model” since differing circumstances within these domains can drastically impact desired results. In the area of Strategic Trade Controls (STCs), there are often so many paths toward fully mature or “enabled” organizational capabilities that interpretations of what constitute effective outcomes can be highly contested. This is especially the case with interpreting United Nations Security Council Resolution (UNSCR) 1540’s STC-related provisions, which require states to prevent the transfer of WMD-related materials, equipment, and technology (data and know-how) to non-state actors. Additional interpretive challenges of the resolution result in part from the absence of specific multilateral treaty-based requirements beyond those contained in the resolution itself. These challenges can, however, be overcome by the fact that a growing number of national STC stakeholders agree to the importance of key foundational STC functional capabilities which, when taken together, form the basis for any maturity model-based STC framework. The agreement on the importance of these foundational capabilities is based upon decades of national experience and is predicated upon the fact that relationships between these capabilities form a common denominator among many states seeking to establish and strengthen their STC systems.

With the corresponding aims of benchmarking these STC prerequisites and describing them within the broader evolutionary context of STC organizational development or “maturation,” this article begins by providing a list of four fundamental and complementary STC capabilities. The article then provides examples of how organizations involved in strategic trade on the basis

¹ Todd E. Perry [or ‘The author’] is the US Special Coordinator for UNSCR 1540 in the Department of State’s Bureau of International Security and Nonproliferation. The views expressed in this article are his own.

of these capabilities can contribute to the strengthening and maturation of overall national *systems* of control. In other words, STCs cannot mature without efforts by organizational leaders to not only prioritize and sequence steps toward STC organizational maturity, but also to make sure that these steps will eventually enhance overall system effectiveness. The article concludes by reviewing the use of tools and exercises that can facilitate national-level and regionally based discussions about how to achieve these STC system-related maturation objectives.

Foundational Strategic Trade Control-Based Capabilities

Whichever STC pathway toward higher levels of maturity is chosen by national authorities, there is a consensus among STC experts that the main components of any STC system need to be based upon four foundational STC capabilities: legal-regulatory development (on an organizational and system-level scale); export licensing (or permitting); government-industry and government-academia (and internal governmental) outreach to holders of WMD-related goods and technology; and enforcement. Many possible enforcement sub-functions designed to detect goods that have fallen outside of regulatory control have been developed over the past decade. Most of them represent national and multilateral responses to proliferators' successful strategic trade-related procurements. From a maturity model-based perspective, the use of any one of these sub-functions, alongside the use of corresponding administrative and criminal penalties for the licensing of exports, demonstrates a foundational national capability to enforce STCs. They include cargo screening, targeted inspections of outbound shipments, industry compliance audits, and investigations of activities (including financial activities) suspected of enabling strategic trade-related transfers to proliferators.

System Performance Measures

In addition to the above four foundational capabilities, there are a number of proven system performance measures that countries can adopt when moving toward fully enabled levels of STC maturity. The performance measures listed below are not “foundational” capabilities; systems of control can work without these improvements. But without them, system loopholes will eventually emerge and therefore increase the risk of proliferation failures. The following illustrative list of system-level maturity measures are drawn from the experiences of dozens of mature national systems of control. They indicate how STC authorities can engineer

interactions between STC organizations responsible for the implementation of the four foundational capabilities and strengthen national systems of control accordingly:

- **Information sharing.** One of many information sharing modalities is the sharing by licensing officials of licenses and related licensing trend analysis across relevant industry sectors with customs officials or other officials responsible for monitoring outbound shipments. Another is the sharing by customs administrations or other national authorities responsible for tracking and if necessary, inspecting, examining, and investigating shipments or technology transfers of information about outbound shipments with licensing authorities and other relevant enforcement organizations.
- **Availability of technical expertise.** There are technical challenges associated with identifying commercial goods that may be of use to WMD manufacture, and added challenges related to the assessment of end-user proliferation risks associated with these “dual-use” goods. Therefore, licensing and enforcement officials enjoy and, most optimally, share the support of engineers, scientists, and legal experts from private and/or governmental organizations who are familiar with the regulatory classification, industrial use, and WMD purposes of these goods and related technologies. Technical experts can also be of use to STC systems by assessing risks associated with intangible technology transfers of potential use in WMD manufacture. These transfers can be between countries or through one country’s acquisition of a company’s (or a university’s) technical knowledge or manufacturing capabilities, i.e., Foreign Direct Investment (FDI). This last factor—the ability to assess the proliferation risks of FDI, if any—is not yet a commonly accepted aspect of STC system development. But its potential impact on proliferation risk assessments can warrant inclusion in a country’s prioritization of industry and technology assessments within the maturity model-based approach. This is particularly true where a system of control already regulates goods or knowledge that are being targeted for acquisition by foreign investors.
- **Integrated and harmonized STC norms.** STC legislation and related regulations produce more mature systems of control if they address and define the roles and responsibilities of all elements of a national STC system. This includes the roles governments play in their interactions with private industry, academia and governmental agencies that hold technology or maintain manufacturing capabilities like national laboratories and research institutes. This is not to say that individual

governmental functions enabled by corresponding laws and regulation cannot or will not collaborate with other STC stakeholders in the absence of a legal mandate to do so. But experience suggests in the STC domain that legal authorities and accompanying regulatory measures that designate the roles and responsibilities of all relevant STC stakeholders in relation to each other are more likely to succeed than ones that do not.

- **Cross-functional non-proliferation cooperation.** Another common characteristic of STC system-level maturity is the extent to which strategic trade authorities interact with authorities responsible for other national non-proliferation functions outlined in UNSCR 1540, including the physical security of material associated with the manufacture of WMD and their means of delivery. A common blind spot for both governmental STC and material protection authorities is a failure to recognize the risk that sensitive goods and materials might be stolen by states or terrorist organizations through intermediary non-state actors, even when the manufacturers and technology holders targeted by proliferators have no intention of engaging in international trade. Authorities within a fully mature system of control will task appropriate organizations to catalog and share lists of all relevant goods and technology within its borders and map all associated industrial and technological enterprises regardless of ownership. This allows a country to simultaneously address gaps in physical protection implementation and to scope and scale its industry outreach strategies in ways that diminish the possibility of theft linked to illicit trade.

The Connection Between Organizational- and System-Level Maturity

With both the above foundational capabilities and illustrative performance measures in mind, how might governments use maturity models to sequence system-strengthening actions and prioritize those actions most likely to reduce risk? The maturity model found in the *Strategic Trade Control Enforcement (STCE) Implementation Guide* of the World Customs Organization (WCO) provides the best—and so far, only—set of recommendations within the broader domain of strategic trade management. It establishes the means to identify implementation gaps using a maturity model-based approach and lists four levels of STC enforcement maturity: **unsupported, nascent, established, and enabled**. The Guide also urges members to address these gaps using a stepwise approach that identifies within the customs organizational domain which elements of STC-related measures need to be put in place to move from a “nascent” to

a fully “enabled” level of maturity. In addition, the WCO Guide underscores the importance of overall *system*-level maturity by noting that a customs administration can only be “enabled” if it is part of an STC system constructed on the foundations of the four previously mentioned capabilities.

Since the above illustrative performance measures are contingent upon a range of state-level functions, there is no way to standardize their use within the maturity model context. Once the four foundational requirements are in place, it is up to individual governments to “mature” their STC systems using these and other performance measures that reduce risk within their own national contexts. Still, all countries should recognize that the absence of any of the four foundational capabilities will prevent the adoption of the kinds of system-level performance measures most readily able to reduce proliferation risks.

To demonstrate just how differently performance measures might be prioritized and applied in a maturity model setting, it is worth considering two very different national systems, which both face obstacles to full system enablement due to the absence of one or more foundational capabilities. In the first system example, national laws are in place that allow for the licensing of strategic items, data or know-how. Its licensing *organizations* are fully “established,” but they do not have industry outreach strategies in place that address all known potential sources of strategic goods or technology. And while administrative and criminal penalties are in place that address unauthorized exports, this licensing system is not fully enabled since it has no enforcement measures in place needed to determine when or if strategic goods have fallen outside of regulatory control.

The second system example is characterized by absence of STC-specific legal-regulatory norms and licensing practices featured in the first but includes robust anti-terrorism laws that can be used to punish non-state actors that contribute to proliferation. This system includes enforcement capabilities managed by a customs administration with “established” abilities to detect transferred or transshipped strategic goods. The customs administration, however, cannot be fully “enabled” since there is no systematized means to legally define strategic goods or to prevent subsequent suspect transfers because of the absence of an over-arching STC-

related legal-regulatory infrastructure and the absence of a systematic approach to industry outreach.

Regardless of the maturity levels assigned to the main STC-related organizations under both of these scenarios, analysts might reasonably debate which of these hypothetical systems are more mature than the other. While some would conclude that the first example with traditional “export control” licensing functions in place represents a more mature system, others might argue the assessment of system-level maturity should revolve around the kinds of proliferation risks faced under both scenarios before coming to judgment. Indeed, both systems could be seen as reducing risk notwithstanding the absence of one or more foundational capabilities if, under the first example, authorities were attempting to deal with internal supplier regulation-related proliferation risks, while under the second example, authorities were attempting to address trans-shipment-related proliferation risks. The overall point, though, is that neither system will be enabled to further mitigate the kinds of risks that it faces in the absence of its missing foundational capabilities, which are all essential to STC system-level maturity as outlined in Figure 1 below.

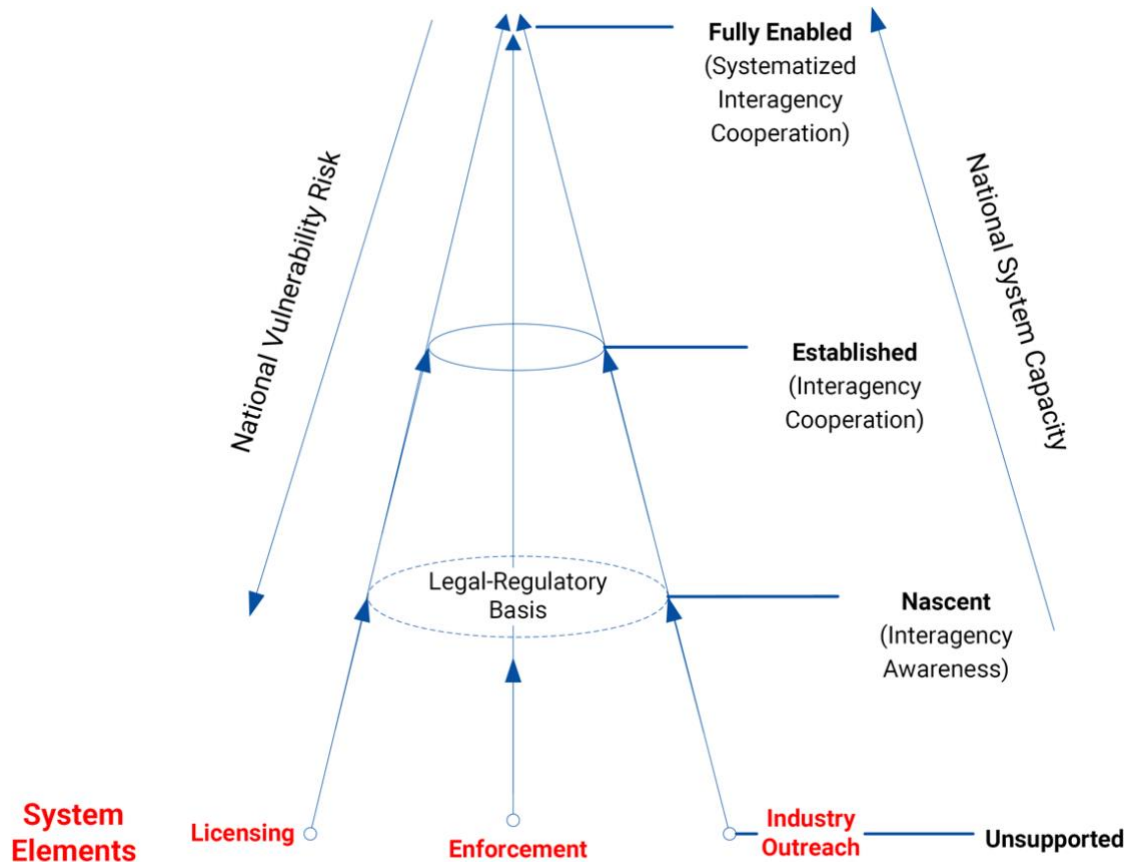


Figure 1. Foundational Strategic Trade Control System Capabilities

The Key Catalyzing Role of Assistance and Peer-to-Peer Partnerships

There are many additional reasons, including inadequate bureaucratic and financial resources, to explain why countries fail to move beyond a given level of system-based maturity. In most instances where resources are available, a failure to adopt core capabilities and follow-on risk reduction strategies arises from a lack of senior-level national leadership. Governmental technical experts may understand the appropriate scope of controls and the foundational capabilities that enable them, but they are often not positioned to do more than recommend that their governments fund and support strengthened STCs. This makes it incumbent upon assistance providers and peer reviewers of all systems to explain to potential assistance recipients and partners the entire spectrum of core capabilities needed for mature STC systems. Whether or not assistance providers or partners formally uses a maturity model approach per se, sharing knowledge about the entire spectrum of system capabilities is a vital aspect of

assistance- or partnership-based outreach. One way to accomplish this is for an outreach program or for that matter a UNSCR 1540 Committee member to describe the STC provisions in the 1540 so that assistance recipients fully appreciate the context within which partner interactions take place.

Pacific Forum, as US Member Committee of the Council for Security Cooperation in the Asia Pacific (CSCAP), has collaborated with ASEAN states for over a decade to develop just such an understanding within the region through a series of participant-guided UNSCR 1540 seminars.² U.N.–supported UNSCR 1540 Coordinators in the Organization for Security Cooperation in Europe (OSCE), Organization of American States (OAS), and the Caribbean Community (CARICOM) regions also contribute to the development of such understandings by regularly engaging government officials through their participation in regionally based outreach programs. Like the Pacific Forum seminars, these U.N.–supported regional seminars help participants develop—mostly through discussions with each other—an understanding not only of the foundational capabilities needed to establish STCs, but also of the various ways to sequence and adopt measures to effectively implement 1540’s STC-related provisions.

The Use of Inclusive STC System Planning Approaches

To address the concern that countries—when initially engaged through outreach—might not be aware of how their initial STC-related actions might inadvertently address only one aspect of nationally perceived proliferation risks, assistance providers are increasingly using scenario-based exercises designed to include all potential national strategic trade control system organizational stakeholders. In this way, scenarios that match a country’s overall level of system development can raise these stakeholders’ collective awareness of national STC system gaps. For example, if an assistance provider devises scenarios that posit the theft of proliferation-relevant goods within a country followed by an attempt by smugglers to transfer these goods to proliferators outside of a country’s borders (or even to other parties within the country in the case of non-state actor proliferation), the risks associated with the absence of one or more of the four foundational STC capabilities are laid bare for all participants to see. Under the

² Pacific Forum has received funding for these seminars variously from the U.S. Department of Energy’s International Nonproliferation Export Control Program (INECP) and the U.S. Department of State’s Export Control and Related Border Security (EXBS) program.

scenario-based exercise approach, the ability of each participating organization’s technical experts to brainstorm about missing STC capabilities can help national authorities develop a plan of sequenced and prioritized actions leading to improved system performance and to corresponding advances in system-level maturity.

Another planning approach that is helpful for countries in the process of initiating national-level discussions about the creation of STCs is to request assistance from the UNSCR 1540 Committee in the development of 1540 National Action Plans (NAPs). Although not explicitly based on the maturity model approach, NAPs provide the opportunity for countries to sequence and prioritize the creation of capabilities and accompanying performance measures of their choosing. The European Union hosts similar planning exercises based upon all 1540 provisions with each of its national partners on a regional basis. The International Atomic Energy Agency (IAEA) also uses a NAP-like planning tool when engaging states seeking to develop Integrated Nuclear Security Support Plans (INSSPs). Whether in the STC, nuclear security, or any other 1540-related field, any inclusive national planning process that provides all relevant stakeholders with a transparent and structured means to identify operational gaps can help advance organizational *and* system-level maturity objectives. These approaches can also help assistance requesting countries and assistance providers alike with roadmaps that help align assistance with demonstrated national needs.

In countries at more mature levels of STC development, where STC systems have evolved in ways that nevertheless omit foundational capabilities in one or more areas, peer-to-peer scenario-based engagements have also succeeded in helping authorities recognize STC system gaps. One tool used along these lines is so-called tabletop exercises (TTXs), which are carefully scripted scenarios based upon explicit host state-provided assumptions about risk. TTXs are designed to help participants “stress test” their systems so that missing foundational capabilities and other operational gaps can be identified. For states with lower levels of STC system maturity, 1540-based peer-to-peer reviews (PPRs) also serve as a tool for two or more countries to compare notes on various aspects of the resolution’s implementation, usually with technical support from the 1540 Committee’s Group of Experts and/or support from national 1540 POCs. Both TTXs and PPRs can help national authorities improve systems by enhancing

capabilities and associated performance measures so they do not just look good on paper but are good in reality, regardless of their maturity status.

Toward a Shared Language of Maturity Model-Based STCs

During the current global pandemic, communications between STC stakeholders within and between countries are often less frequent and more formal than in the past. This places a premium on clarity of communications. The use of maturity models and related planning tools can be vital in this regard by highlighting those STC-related capabilities that all states must acquire if they are to have a foundation upon which to create interagency-based STC proliferation risk reduction systems. Through the explanation and use of maturity models, states can be informed up front that their failure to not plan for the integration of all four STC foundational capabilities into their STC system means that its STC authorities will be unnecessarily cut off from a range of implementation options that might otherwise enable them to mitigate evolving proliferation risks.

Regardless of a state's level of STC maturity, the common language created by internal and regional discussions centered upon the four foundational capabilities mentioned here is both clear and flexible: all states must have the means to track and regulate strategic goods. But at the same time, once foundational capabilities are acquired, there are many ways that states can choose to do so. By using maturity models to explain organizational- and system-level gaps, national and regional discussions can systematically focus on the scope and sequencing of capabilities and measures needed to strengthen STC implementation in a manner consistent with each country's national circumstances.

If assistance providers participate in these discussions, there is likewise a higher chance that their assistance offerings can be adjusted to align with national needs. The shared language made possible by the use of maturity models based upon the four STC system capabilities has already been put to use in this way in assistance and peer-to-peer discussions sponsored by some U.S. and European Union STC assistance programs.³ These programs' experiences reveal

³ In a Winter 2019 *Strategic Trade Review* article entitled "Reducing Proliferation Risk Through Export Control Outreach: Assistance Providers' Use of Maturity Model-Based Approaches," the author includes a case study of the U.S. and EU STC assistance programs' use of maturity model-based approaches. The

that assistance-recipient relationships not based upon a shared language of step-wise and maturity-based system development will not be optimally effective, even if all involved countries have the same understanding of proliferation risk. The use of maturity models and related planning and exercise tools in the development and strengthening of STCs can therefore be key to ensuring the successful development and implementation of STC capabilities and measures, and therefore offer the highest chances of mitigating WMD proliferation-related risks.

above observations about STC core national capabilities and system performance measures are based largely upon this 2019 article.

ASEAN STC IMPLEMENTATION: STRATEGIES IN THE IMPLEMENTATION OF THE PHILIPPINE STRATEGIC TRADE MANAGEMENT ACT

By Lorenz Anthony T. Fernando; Janice Sacedon-Dimayacyac; Domina Pia S. Salazar

The authors are part of the initial core group formed by the Philippine Department of Trade and Industry to function as the Strategic Trade Management Office after the enactment of the STMA last 2015.

Engr. Lorenz Anthony T. Fernando serves as the Head (Officer-in-Charge) of the STMO Registration and Authorization Division. Before joining the STMO, he handled research projects on green materials, biopolymers, and composites at the Department of Mining, Metallurgical, and Materials Engineering, University of the Philippines - Diliman. He is a registered chemical engineer with MS in Materials Science and Engineering. His email is LorenzAnthonyFernando@dti.gov.ph.

Atty. Janice Sacedon-Dimayacyac currently serves as Assistant Director of the Philippine STMO. She has previously worked for the Supreme Court of the Philippines and an international law firm for ten years. Her email address is JaniceDimayacyac@dti.gov.ph.

Ms. Domina Pia S. Salazar serves as the Deputy Head of the STMO Registration and Authorization Division. She previously worked as a Science Researcher and Forensic Chemist at the Department of Science and Technology-Philippine Textile Research Institute and the Philippine Drug Enforcement Agency. She is a registered chemist and is currently pursuing her master's degree in chemistry. Her email address is DominaPiaSalazar@dti.gov.ph.

ABSTRACT

Since the 2015 enactment of the Philippine Strategic Trade Management Act (STMA), the Philippines has taken significant steps to establish a strategic trade management regime. The Philippines, along with Singapore and Malaysia, leads in ASEAN in implementing comprehensive legislation that complies with international nonproliferation obligations, including the United Nations Security Council Resolution (UNSCR) 1540. This paper will outline those steps and the plans of the Philippine Strategic Trade Management Office (STMO)

on how it will implement the STMA by seeking a balance between promoting international peace and security while ensuring domestic economic growth. This paper will also offer a glimpse of how the Philippines continuously implements the STMA even during the COVID-19 pandemic.

Background

The Philippines enacted the Strategic Trade Management Act (STMA) on November 13, 2015. In a *Strategic Trade Review-Journal* article, Pabeliña (2016, 118)¹ outlined the history of the Philippines' adoption of strategic trade management after six years in the legislative mill. The published article also provides historical insights on certain provisions of the STMA. This paper intends to supplement the 2016 article by outlining the steps undertaken by the Philippine government after the publication of the STMA Implementing Rules and Regulations (IRR) on September 25, 2018.

Adherence to Nonproliferation Norms and Obligations

International Treaties and Conventions

In its *UNSCR 1540 National Implementation Report*² dated March 5, 2020, the Philippines highlighted specific provisions of the STMA and its IRR to show how it domesticates international nonproliferation norms and obligations.

The STMA regulates the export, import, transit, transshipment, re-export, and re-assignment of strategic goods through the Philippines, and the provision of related services (i.e., brokering, financing, transporting, technical assistance) covering all Filipino persons providing these services wherever located.³ Moreover, the export of strategic goods under the STMA does not only refer to the actual shipment of goods outside of the Philippines but also includes the transmission of software and technology via electronic media or non-electronic means.

¹ Pabeliña, Karla. "The Strategic Trade Management Regime in the Philippines." *Strategic Trade Review* 2, no. 2 (2016): 118–29. https://strategictraderesearch.org/wp-content/uploads/2017/11/STR_02.pdf.

² Philippine Mission to the United Nations. *Philippines 1540 National Implementation Report*. New York: 2020. Online, <https://www.un.org/en/sc/1540/documents/PhilippinesReport5Mar2020.pdf> (September 13, 2020)

³ Strategic Trade Management Act, PH.C. § 3 (2016)

While most jurisdictions related to strategic trade management regimes only regulate export-related activities, the STMA covers the import of strategic goods to fully comply with other international obligations such as the Nuclear Nonproliferation Treaty, the Chemical Weapons Convention, the Biological Weapons Convention, and the Arms Trade Treaty.

Strategic Goods Control List and the Multilateral Export Control Regimes

The Philippine National Strategic Goods List (NSGL) contains technical specifications that must be met for goods to be considered strategic. The NSGL conforms with international commitments and nonproliferation obligations pursuant to bilateral and multilateral treaties, international conventions, and international nonproliferation regimes.⁴ It is composed of three annexes: Military Goods (Annex 1), Dual-Use Goods (Annex 2), and Nationally Controlled Goods (Annex 3).

The Philippines follows its ASEAN neighbors, Singapore and Malaysia, in using the European Union's Common Military List and Dual-Use List as the basis for its NSGL Annexes 1 and 2. The NSGL Annex 3, on the other hand, is a list of goods that are unilaterally controlled for reasons of national security, foreign policy, anti-terrorism, crime control, and public safety. Currently, there are no goods listed under NSGL Annex 3, though the Philippines plans to place in this Annex the list of items going to and coming from countries sanctioned by the United Nations Security Council.

By adopting the EU Control Lists, the Philippines aligns itself with most countries which utilize a harmonized list of sensitive goods that are regulated whenever they are traded internationally. The Philippines, without being a member of the four multilateral export control regimes⁵ (MECRs), also adopts the annual updates of the MECRs control lists and their corresponding guidelines. The annual updates of the Philippine NSGL are published in the Official Gazette and two newspapers of general circulation after the approval of the National Security Council – Strategic Trade Management Committee (NSC-STMCom).

⁴ Strategic Trade Management Act, PH.C. § 4 (2016)

⁵ The four MECRs are the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile and Technology Control Regime, and the Australia Group

Catch-All Controls and Sanctions Implementation

Section 11 of the STMA provides for end-use or catch-all controls. Catch-all controls require authorization for items not listed in the NSGL from persons engaged in the cross-border trade of goods or the provision of related services if the STMO has informed the exporter or principal party that the goods or services are or may be used for weapons of mass destruction (WMD) development or military purposes, or if the entity or country of destination is subject to the United Nations sanctions or an arms embargo.

The publication of the List of Restricted and Prohibited End-Users, and the Know-Your-Customer Red Flags brochure for the industry are among the steps taken by the STMO to inform the public of possible catch-all related transactions. The STMO automatically adopts the UN Consolidated Sanctions List as its List of Prohibited End-Users. Thus, any cross-border transactions with the listed entities would require authorization from the STMO. Companies and even other government agencies can also request the STMO for end-user assessment advice to determine any sanctions imposed on the parties they are dealing with.

Pillars of effective Strategic Trade Management

STMO Organizational Structure

An effective strategic trade management system addresses the threat of proliferation of WMD, given the possibility of potential diversion of legitimate goods within the complex global supply chain network. Such a system requires a national licensing framework that regulates the international transfers of strategic goods, an extensive industry outreach that educates and empowers the industry to conduct enhanced due diligence in dealing with their customers, and an interagency enforcement mechanism that could interdict and prevent illicit shipments, and investigate and prosecute potential violations.

These pillars of effective strategic trade management are mirrored by the three divisions of the Philippine STMO: Registration and Authorization, Policy and Enterprise Relations, and Investigation and Compliance. The Registration and Authorization Division is the licensing arm of the STMO and has the primary responsibility to register companies engaged in strategic trade, assists the industry in classifying strategic goods, and evaluates authorization applications by conducting end-use/end-user checks. The Policy and Enterprise Relations Division is in

charge of awareness campaigns and partnerships with the industry to encourage full compliance with the STMA. Lastly, the Investigation and Compliance Division is the enforcement arm of the STMO and evaluates the suitability of the industry's Internal Compliance Program (ICP), monitors the fulfillment of license conditions by authorization holders, coordinates with law enforcement agencies for enforcement functions, and conducts investigations on possible violations.

Whole-of-Government Approach in STMA Implementation

The central authority on all policy matters relating to strategic trade management is the NSC-STMCom. The NSC-STMCom is chaired by the Executive Secretary and vice-chaired by the Secretary of Trade and Industry. The 12 other Department Secretaries⁶ serve as members. Among its various roles are to formulate strategies, policies, and guidelines for implementing the STMA, and publish updates on the NSGL.

The NSC-STMCom issued Resolution No. 1, directing various government agencies to form permanent subcommittees and assist the STMO in fulfilling its functions. The four subcommittees created by the NSC-STMCom are: (1) the Subcommittee on Technical Reachback (SCTR), (2) the Subcommittee on Risk Assessment (SCRA), (3) the Subcommittee on Enforcement (SCE), and (4) the Technical Working Group on Trade Facilitation (TWGTF).

The SCTR is composed of national research institutes that assist the STMO in properly classifying commodities as strategic goods. The SCRA comprises intelligence and national security-related agencies that assist the STMO in conducting end-use/end-user checks during license application assessment. The SCE members, on the other hand, are law enforcement agencies that have critical roles in the interdiction, investigation, and prosecution of STMA-violations. The TWGTF, composed of border control agencies and Investment Promotion Agencies, provides a coordination mechanism to ensure that legitimate trade is not hampered and that proper licenses are in place for strategic goods shipments.

⁶ These are the Secretaries of (1) Foreign Affairs; (2) Justice; (3) National Defense; (4) Interior and Local Government; (5) Finance; (6) Transportation; (7) Environment and Natural Resources; (8) Science and Technology; (9) Agriculture; (10) Health; (11) Information and Communications Technology; and the (12) the National Security Advisor;

Following the best practices from established STM regimes, the Philippine government employs a whole-of-government approach in implementing the STMA. Each subcommittee develops its scenario-based protocols which outlines interagency coordination mechanisms and identifies focal persons from each government agency. This interagency coordination is crucial to ensure that license applications are properly evaluated vis-à-vis established strategic trade risk-assessment criteria. Moreover, interagency coordination for fast verification of strategic trade licenses and identifying strategic goods is also crucial so that shipments are not delayed. Lastly, interagency coordination is necessary so that the majority of enforcement actions will result in interdictions of illicit shipments and eventual convictions of those who are criminally liable.

STMA Regulatory Framework

The STM regulatory framework requires all persons engaged in strategic trade to be registered first with the STMO before applying for a specific authorization on the cross-border transfer of strategic goods.

Registration of Companies

Registration is the act of entering into the STMO register persons who engage or intend to engage in the export, import, and re-export of strategic goods or provide related services. The purpose of registration is to identify all persons in the Philippines engaged in strategic trade, to ensure that traders are familiar with their obligations and the requirements under the STMA, and to enable the STMO to verify the bona fide nature of traders.

After registration, the STMO advises the registered person on the type of authorization the person could apply for and how to fulfill the corresponding set of requirements.

Types of Authorizations

To facilitate trade and limit the number of times the registered person has to apply for an authorization for strategic trade transactions, the STMO issues three types of authorizations depending on the sensitivity of the trade transactions, number of end-users involved, the security of the countries of destination, and the company's readiness to implement strategic trade controls independently.

Individual authorization is a license granted to one specific person or entity to engage in the export of strategic goods to one end-user, consignee, and covering one or more strategic goods. It is valid for up to two years.

Global authorization is a type of license granted to one specific person or entity to engage in the export of strategic goods to two or more specific end-users and/ or in one or more countries. This type of authorization requires an Internal Compliance Program (ICP) before application.

General authorization is a license to export specific strategic goods to destination countries under the conditions specified in the general authorization. STMO-registered persons may use this type of authorization if they comply with two requirements: (1) notify the STMO before using such authorization, and (2) comply with the conditions set forth therein. The STMO will publish this type of authorization on its website.

The STMO also issues a Governmental End-Use Assurance, a formal security guarantee, upon request of the country of origin of the strategic items, certifying the end-use of those goods in the Philippines.

Pre-Authorization Requirements

For individual authorization applicants, proper commodity classification is a prerequisite for applying. For global authorization, the STMO Investigation and Compliance Division conducts pre-authorization audits to check if the company's ICP contains the required elements. An STMO evaluation of the Technology Control Plan (TCP) is also required for those authorization applicants dealing with intangible transfers of technology (ITT).

Authorization Risk-Assessment Criteria

Once the applicant submits its application for authorization, the STMO conducts a review based on the risk assessment criteria provided in Rule IV Section 6⁷ of the STMA IRR in parallel

⁷ The national security or foreign policy interests of the Philippines, in particular respect for international obligations

with the technical review to verify the classification of the commodity and the determination of the appropriateness of the declared end-use. The risk assessment criteria provided in the STMA IRR are aligned with the export assessment criteria guidelines provided by the MECRs. They are also similar to the European Union's Common Position⁸ defining standard rules governing control of exports of military technology and equipment.

The STMO has developed a risk-assessment criteria matrix that provides an objective basis for licensing officers to determine the next course of action that the office has to take on a particular application, including the possibility of reach back with the SCTR and SCRA member agencies. Ultimately, while taking into consideration the inputs from these agencies, the STMO decides whether to allow, to impose certain conditions on, or to deny the authorization application.

Appeal Process

The applicant may appeal the denial of its registration or authorization by filing for a motion for reconsideration with the STMO, and if still denied, by filing an administrative appeal with the NSC-STMCom. Should the applicant's appeal be further denied by the NSC-STMCom, the applicant may file an appeal before the Court of Appeals or the Supreme Court of the Philippines.

Processing Online Registration and Authorization Applications

All STMO applications are submitted and processed online for 30 days for registration, individual authorization, and governmental end-use assurance applicants, and 90 days for global authorization applicants. Registration and authorization decisions are likewise forwarded to the applicants online. As an added security feature and to authenticate issued licenses, STMO-

and commitments under the UN Security Council sanctions, or relevant international treaties and non-proliferation agreements; Preservation of regional peace, security, and stability; Internal tensions or armed conflict in the destination country; The human rights and international humanitarian law; Terrorism or organized criminal activities; Security interests of a country which is an ally to the Philippines; Risk of illegal end-use or by a restricted party; Risk of diversion to an unauthorized end-user or end-use; Technical capacity of the recipient country, et al.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008E0944&from=EN>

issued authorizations contain QR codes that can be verified online by border control agencies using their smartphones.

Since October 2019, the STMO has registered 31 companies and issued six governmental end-use assurances. Since July 2020, the start of export authorization application, the STMO has received nine export authorization applications and four applications for license exemptions. Based on the STMO's industry mapping study, there are almost 200 companies that are potentially engaged in strategic trade in the past three years. The STMO continues to reach out to these companies for them to classify their products properly and subsequently apply for registration and authorization.

STMO Partnerships with Industry

STMA Awareness Campaigns and Strategies

To raise awareness of the STMA and increase industry compliance, the STMO has conducted awareness campaigns targeting almost 500 industry stakeholders in the Philippines. Except for industry outreach events conducted in Cebu, Clark, and Baguio, most were held within the Metro Manila and Calabarzon regions, which account for 52 percent of the Philippine Gross Domestic Product.⁹ Moreover, most targets of the industry campaigns are based on economic freeport zones or those under the jurisdictions of the Philippine Economic Zone Authority, the Subic and Clark Freeport Zones, and the Authority Freeport Area of Bataan or members of the aerospace, semiconductors, and chemicals industry associations.

Additionally, in 2019, the STMO started accepting one-on-one consultations with companies to address specific concerns of the industry on how to comply with the STMA registration and authorization requirements, setup an ICP (especially for small and medium enterprises with no existing ICP in place), and/or classify strategic commodities based on the NSGL. Even during the COVID-19 pandemic, the STMO continues to conduct one-on-one consultations online. Considering the broad reach of these consultations, especially to industries based outside the Metro Manila area, the STMO will continue to offer this service.

⁹ [GRDP Tables | Philippine Statistics Authority](#)". *psa.gov.ph*. Retrieved 2018-11-27.

To further increase client engagement, the STMO has also developed a Realtime Online Inquiry Tool via Chatbot on its Facebook page, which provides answers to frequently asked questions.

¹⁰ The STMO will continuously update this tool to address specific concerns from industry stakeholders.

Technical Advisory Committee

This year, the STMO also plans to launch the Technical Advisory Committee composed of industry stakeholders, industry association representatives, and academia as a venue for the STMO to receive feedback on the effectiveness of its issued policies and guidelines, and also for the STMO to be updated on the latest strategic technology being developed by the industry. The STMO will publish specific guidelines on the membership and the roles and responsibilities of this committee.

STMA Implementation Guidelines

The STMO's website¹¹ serves as the repository of all STMA-related issuances to further guide the industry on how to comply with the specific provisions of the STMA and its IRR. Aside from the published newsletters, brochures, and guidebooks, the website contains the following STMO Memorandum Circulars:

- Guidelines on Strategic Trade Management Registration;
- Guidelines on Export Authorization;
- Guidelines in Obtaining Non-Strategic Good Certificate;
- Guidelines on ICP Pre-authorization Audit;
- Guidelines for Export Clearance;
- List of Prohibited End-Users; and
- Guidelines on Temporary Suspension of Administrative Penalties in light of COVID19 Pandemic.

Notwithstanding, the STMO recognizes the need for industry to adjust to the regulatory environment brought about by implementing the STMA, and the disruptions to business in

¹⁰ <https://www.facebook.com/DTI.STMO>

¹¹ <https://www.dti.gov.ph/negosyo/strategic-trade-management/>

light of the COVID-19 pandemic and associated control efforts. Relative to this, the STMO has issued the Guideline on the Temporary Suspension of Administrative Penalties. Industry stakeholders were provided a grace period to make the necessary internal adjustments to enable them to comply with the provisions of the said law and its IRR.

In the future, the STMO will continue to issue guidelines to the industry as it progresses in STMA implementation. Among the issuances being discussed are the guidelines on Governmental End-Use Assurance, Catch-all Controls, ICP Audit Checklist, Implementation of Brokering, and Financing.

Toward a fully functional office by 2028

Phased-Implementation Approach and Future Challenges

Considering the wide scope of regulated activities under the STMA, the STMO intends to adopt a phased implementation approach covering the following milestones to provide ample time for the industry to comply with the regulation:

- 2022 – covers all exporters of dual-use goods, as well as catch-all controls;
- 2025 – covers export, transit, transshipment, re-export and re-assignment of all strategic goods including military and nationally controlled goods; and by
- 2028 – covers brokering, related services, technical assistance, and imports, in full compliance with UNSCR 1540 and other international obligations.

These milestones could be implemented earlier than the target years depending on the readiness of both the STMO and the industry.

The STMO is aware of the threats and export control challenges of emerging technology, including Intangible Transfer of Technology (ITT), proliferation financing, and digital infrastructure development control/s. Moreover, existing gaps in current legislation or possible overlapping functions with other agencies undoubtedly affect the implementation of strategic trade controls.

To address this, the STMO is continuously working toward aligning its policies and guidelines to international export control regulations, sanctions and entity lists, and compliance best practices. This is further evidenced by the Office's active participation in international dialogues

and extensive cooperation with partner states. The STMO is also in constant communication with other government agencies and industry stakeholders to provide technical assistance or clarifications on STMA-related concerns.

Leveraging STM Regime in Attracting Foreign Investments

When the STMA was enacted in 2015, DTI Undersecretary Ceferino S. Rodolfo, in a press conference, stated that enacting an effective strategic trade law will provide greater opportunities for the Philippines to increase investments in the manufacture, assembly, and export of strategic goods and services.¹²

This has yet to be statistically proven in the Philippines, considering that it has just started implementing the STMA. However, an anecdotal experience illustrates how the STMA could expand existing products/services and generate highly technical jobs. In 2018, the STMO issued a provisional authorization on services related to the transfer of nuclear technology from a Philippine-based company to a client abroad. After two years, the same company attracted three additional clients for transactions of the same nature, thereby increasing revenue and hiring more staff.

The STMO, therefore, in its roadmap, seeks to position itself as a fully functional office compliant with international commitments and obligations in regulating strategic trade by 2028. In facing future challenges, the STMO reaffirms its commitment to adopt international best practices, strengthen industry partnership, and apply a whole-of-government approach. By performing its core and support functions, the STMO aims toward establishing a strong and effective strategic trade management regime in the country. The Philippines seeks to leverage its strategic trade management regime as a necessary infrastructure in attracting foreign investments on high-value technology and generate jobs for highly-skilled workers, sending a message to investors that the Philippines is a safe manufacturing hub of strategic goods and provider of strategic trade-related services.

¹² <https://boi.gov.ph/dti-sees-increased-investments-enhanced-exports-under-new-stm-law/>

ACKNOWLEDGMENT

The authors would like to acknowledge the Director of the Department of Trade and Industry - Strategic Trade Management Office (STMO), Atty. Luis M. Catibayan, for his leadership in the establishment of the STM regime in the country. Our gratitude also goes to Mr. Armando Q. Mercado, Jr., who assisted Director Catibayan in forming the initial core group of what is now the Philippine STMO.

Specific actions outlined in this paper were instituted by our STMO colleagues – Atty. Alexander Santos, and the rest of the Investigation and Compliance Division; Mr. Justin Herrera, and the rest of the Policy and Enterprise Relations Division; our colleagues from the Registration and Authorization Division; Ms. Marie Claire Tiglao, Mr. Romeo Steve Conge, Mr. Denmark Maglalang, and Mr. Patrick Sagun. To all of them, we also offer our sincerest gratitude.

Lastly, the authors would like to thank the various Philippine government agencies and the governments of the United States, the European Union Member States, Japan, South Korea, Australia, Malaysia, Singapore, and the various international organizations that continuously support the STMO and the entire Philippine government in implementing the STMA.

UPDATES ON MYANMAR'S STC SYSTEM

By Phone Myint Naing

Introduction

A Strategic Trade Controls (STC) system is important for all nations to control the proliferation of sensitive goods and their potential use in weapons of mass destruction (WMD). The Myanmar government has been implementing an STC system since 2016 with the help of international organizations. However, due to limited resources, government officials have been unable to prioritize its implementation. Thus, the Myanmar Government's contribution to STC is minor and the system's implementation has improved slowly.

Currently, Myanmar's implementation of STC within the planned timeframe is slower than expected due to the COVID-19 crisis. As with the previous year's target that Myanmar implemented the law and released the dual-use control list, the country has postponed promulgation of the legislation, licensing process, industry engagement and interagency cooperation.

Legislation

The Ministry of Commerce (MoC) has prepared the legal drafting of the Trade Law and its promulgation is due in mid-2022. However, other relevant government organizations still need to provide information on STC legislation-related regulations and mechanisms, including an STC licensing system and control list. MoC has established a working group with 15 relevant departments in other ministries cooperate on enforcement. They are the:

- Department of Trade (DoT);
- Directorate of Investment and Company Registration;
- Department of Medical Services;
- Myanmar Police Force;
- Directorate of Industrial Collaboration;
- Myanmar Trade Promotion Organization;
- Department of Internal Revenue;

- Legal Advice Department;
- Department of International Organization and Economic;
- Department of Consumer Affairs;
- Department of Agriculture;
- Department of Customs;
- Department of Environmental Conservation;
- Department of Mining; and
- Department of Posts and Telecommunications.

Further negotiation with additional relevant departments is ongoing and these will not be included in the current working group. DoT has established a core team with the 12 members in its primary divisions such as the World Trade Organization (WTO) and International Trade and Related Organizations Division, the Trade Policy Division, the Regional Economic Cooperation Division and the Bilateral Trade Relations Division to conduct meetings with working group members and to engage industry. The role of the working group is to enhance interagency cooperation for enforcement, legislation, licensing, and industry outreach program as a national system. The role of the core team is to coordinate with the relevant division under DoT for the legislation of control lists including sensitive goods, technology and services; to raise awareness and enhance industry outreach program with interagency cooperation; and to share information through international seminars and workshops.

Licensing

Updates to the licensing process for dual-use items and the release of the dual-use control list is ongoing and the raising industry outreach program has been postponed. Despite increasing international cooperation with the Ministry of Economics, Trade and Industry (METI) from Japan, Pacific Forum (US), and the European Union Partner to Partner (EU P2P) program, reaching out to international academia and experts has been postponed due to the COVID-19 crisis. Myanmar faces multiple challenges regarding the implementation mechanisms of STC as it is difficult to cooperate with relevant agencies during this pandemic. It is especially difficult to implement these mechanisms within a planned timeframe. Limited resources for implementation, financial requirements, and the need for technical assistance have delayed STC

implementation. Therefore, Myanmar has not made much progress this year. Engagement with the relevant government agencies and international organizations, and awareness by EU P2P has not been updated yet.

Training Programs

The EU P2P training program will be restarted when domestic and international travel are once again allowed. The topics offered by EU P2P will include a basic awareness workshop to multi-agencies and customs, brokering controls, trends and methods of illicit trade, an introduction on the role of customs in STC, transit and transshipment controls, and enforcement for customs. This program is essential for the STC implementation process between the MoC and customs. Raising awareness of STC to the Customs Department in Myanmar is essential because it supports the most comprehensive effort for implementing the STC system.

Difficulties in restarting STC programs stem from limited online access for Myanmar and unfamiliarity of focal-selected persons with the current topics offered by the EU.

So, the interest of trainees could not be increased on the selected topics. The language barriers on unique topics, as well as online learning, can be a problem for officials. Most prefer face-to-face, rather than online, training and lack knowledge on using IT devices. Prior to COVID-19, they rarely had online learning opportunities and virtual meetings. As such, the implementation process, enhancing working group cooperation, and reviewing the control list will restart after EU training.

In summary, Myanmar still needs to make specific decisions on STC implementation during COVID-19 crisis. This includes increasing the capacity-building program with the Customs Department and then with the relevant agencies of STC. Additionally, during the current pandemic, all government agencies involved in STC implementation should familiarize themselves with technological devices such as smart phones, computers etc., to be able to join any online trainings. The focal department should provide outreach focused on addressing specialized STC issues: IIT, technical assistance, and catch-all controls. Offering specific guidance documents, workshops, and training seminars helps the Myanmar STC system to move forward by the focal ministry. By providing information in such documents and training

events with local and foreign languages, governments can help to increase the understanding of the technical language and improve the implementation of STC.

GENERAL OVERVIEW ON IMPLEMENTATION OF STRATEGIC TRADE CONTROLS IN VIET NAM

By Thu Pham

Strategic Trade Controls (STC) are essential tools for meeting the requirements of the United Nations Security Council Resolution (UNSCR) 1540. UNSCR 1540 and related resolutions call on Member States to enact and implement effective measures to prevent the proliferation of WMD. However, real success depends on the leadership of each country to ensure that effective measures are taken. The enforcement of STC will help members to more effectively perform and facilitate global trade consistent with principles set out in the World Customs Organisation (WCO) Standards to Secure and Facilitate Trade (SAFE) framework, better protecting polities from criminal organization and strengthening national security. Effective Strategic Trade Control Enforcement (STCE) measures detect potentially high-risk shipments while also allowing low-risk shipments to flow, encouraging legitimate trade. As a member of the UN, Viet Nam complies with UN resolutions, including on efforts to combat and prevent the proliferation of WMD.

Domestic Legal Framework for STC

Currently in Viet Nam the legal framework governing strategic trade controls includes four documents:

1. the Commercial Law (2005)¹;
2. the Foreign Trade Management Law (2017)²;
3. Decree No. 69/2018/ND-CP³ dated May 15, 2018 detailing a number of articles of the Law on Foreign Trade Management; and
4. Decree 81/2019/ND-CP on the nonproliferation of WMD.

These documents outline the legal system on import and export; temporary import for re-export; export and import bans; transit and transshipment of goods; list of controlled goods, and other aspects of import and export activities such as brokerage and intangible technology

¹ https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_11.pdf

² <https://vanbanphapluat.co/law-05-2017-qh14-foreign-trade-management>

³ <https://thutucxuatnhapkhau.vn/degree-69-2018-nd-cp/>

transfer (ITT). These documents are the legal basis for state management and enforcement agencies to guide and monitor enterprise activities in accordance with state STC requirements.

In 2019, Decree No 81/2019/ND-CP on the nonproliferation of WMD was issued. This set of new legal documents were issued based on UNSCR 1540 requirements and for the first time, defined dual-use items. A committee was established to implement the decree with the leading located at the Ministry of National Defense. Relevant ministries have set up their focal points to cooperate with the committee on implementation of the decree. At present, relevant ministries/agencies are building their own plans for implementation.⁴ Based on the above legislation, ministries within their respective functions issue circulars and legal documents on specific commodities.

There are also legal documents related to STC such as the Criminal Code, the Ordinance on Handling of Administrative Violations, and the Customs Law.

List of Exported and Imported Goods

Clause 1, Article 25 of the Commercial Law stipulates that the Government “specifies the list of goods prohibited from trading, goods restricted from trading, goods subjected to conditional business, and conditions for trading such goods.”

Along with the Commercial Law, the Law on Foreign Trade Management has specified cases of application of measures of prohibiting export and import; management under license, and the conditions which apply.

Bans from Export and Import

Article 9 of the Law on Foreign Trade Management lists three cases of application of the measures regarding export bans and five cases of application of the measure regarding import bans, specifically:

- a. Export prohibition shall be applied when goods fall into one of the following categories:

⁴ Visit <http://www.mod.gov.vn/wps/portal> for details.

- i. Exports related to defense and security that have not been permitted by a competent state authority;
 - ii. To protect relics, antiques and national treasures in accordance with the law on cultural heritage; or
 - iii. According to international treaties to which the Socialist Republic of Viet Nam is a member.
- b. Import prohibition shall be applied when the goods fall into one of the following categories:
 - i. The import is not permitted by a competent state authority related to national defense or security;
 - ii. Causing harm to the health and safety of consumers;
 - iii. The offense has a negative impact on social order and safety, social ethics, fine customs and traditions;
 - iv. Harming the environment, biodiversity, posing a high risk of carrying harmful organisms, threatening food security, Viet Nam's production and exports, infringing intellectual property rights; or
 - v. Under an international treaty to which the Viet Nam is a signatory.

According to Article 10 of the Law on Foreign Trade Management, the government stipulates the list of goods banned from export and import. The Law on Foreign Trade Management delineates a number of exceptions allowing the export and import of goods on the list of goods banned from export or import for special purposes such as warranty, analysis, testing, scientific research, medical, pharmaceutical production, defense and security protection. The authority to decide this belongs to the Prime Minister.

Based on the above provisions, Decree No. 69/2018/ND-CP issued the list of goods banned from export and import in its Appendix I.

Licensing, Licensing Authorities and Management according to Licenses and Conditions

The management under permits, import and export conditions is prescribed in Section 3, Chapter II of the Law on Foreign Trade Management. Whereby,

- a) The Government shall prescribe the list of goods imported and exported under permits and conditions; to prescribe modes and scope of management of ministries and ministerial-level agencies with regard to goods on the List; prescribing the order and procedures for the grant of export and import permits.
- b) Ministries and ministerial-level agencies shall have to publicize the list of goods imported and exported under permits or under the conditions specified in Clause 1 of this Article and publicize export and import conditions for Goods on the List.

Article 7 of Decree No. 69/2018/ND-CP stipulates, on the basis of exchange and agreement with the Ministry of Industry and Trade, ministries, ministerial-level agencies, the detailed list of goods subject to licenses and conditions.

In short, the Vietnamese legal system has regulations regarding the control and export licensing for sensitive goods (military goods, weapons, ammunition, chemicals, nuclear materials, etc.). However, these regulations are managed by specialized ministries/agencies instead of being codified into a separate legal framework. As a result of decree 81/2019/ND-CP, it is likely that in the future, Viet Nam will study and issue a list of dual-use goods.

The Ministry of Industry and Trade (MOIT) and relevant ministries and agencies are the primary licensing authorities. Before exporting goods, which fall under the Prohibition List and Export Suspension List, exporters must have the license granted by MOIT and other licensing authorities. Details on licensing authorities, licensing procedures and good categories are stipulated in Decree 69/2018/ND-CP.

Enforcement, Investigation, and Prosecution of Violations

The border-gate customs officers shall assume the primary responsibility for, and coordinate with specialized state management agencies at the border gates in the following:

- a) Carrying out import and export procedures for goods at the border checkpoints
- b) Preventing and combating the transportation and trading of goods on the list of banned goods, smuggling and commercial fraud
- c) Carry out customs inspection and supervision of vehicles on exit, entry or in transit in accordance with the law.

Customs officers are those responsible for checking the export license issued by the MOIT, checking the Harmonized System (HS) code of exported goods, carrying out customs procedures, supervising goods temporarily imported for re-export until they exit the country, supervising the goods transshipped through Viet Nam's gate until they are exported, supervising the goods transited in Viet Nam during the time they stay in Viet Nam, the gate of entry and exit and route as regulated, extending the staying time of the goods which are temporarily imported (for re-export) but stay in Viet Nam more than 120 days, and in detecting fraud.

In the context of globalization, the pressure of increased workloads and responding to sudden changes in the world economy and politics are burdensome on the Customs sector. Viet Nam Customs has been applying risk management techniques to customs operations to ensure the requirements of control duty and to facilitate trade activities. Exported, imported, and transited goods, means of transport, and luggage of passengers on exit, entry or in transit, must be risk-assessed in order to apply customs inspection and supervision measures and other necessary professional measures to ensure legal compliance. Customs offices are also equipped with devices such as camera surveillance systems and container scanners to detect trading and trafficking activities of weapons, ammunition, and prohibited goods at seaports, airports, and border gates.

When a violation occurs, the investigation is delegated to the Ministry of National Defense, Ministry of Internal Affairs, General Department of Customs, and others as required by law. The General Department of Customs has the jurisdiction to prosecute and investigate against the production and trading of prohibited goods, crimes of smuggling, and illegal cross-border transportation of goods and currencies.

International Cooperation on STC

As a member of the United Nations, Viet Nam always strictly abides by the resolutions of the United Nations Security Council. Recognizing the importance of combating the proliferation of WMD, as well as understanding that the prevention of proliferation is not simply covered by one country, Viet Nam has actively cooperated with international partners to prevent the

proliferation of weapons of mass destruction. This helps to ensure the security and safety in the region as well as around the world. Viet Nam is a member of international treaties on nonproliferation such as the Nuclear Non-proliferation Treaty (NPT), Chemical Weapon Convention (CWC) and Biological Weapons Convention (BWC). Viet Nam also partners in STC with the US (EXBS) and EU (CBRN).

Viet Nam's exports are changing drastically from commercial to high-tech products. As export commodities become increasingly complicated and have more dual-use and sensitive items, the Viet Nam strategic trade control system will need to improve to adapt to a new era of international integration with opportunities that come along with free trade agreements.

HOW INDONESIA CUSTOMS CONTROL STRATEGIC ITEMS

By Alfian Chaniago

The Directorate General of Customs and Excise (DGCE), or Indonesia Customs, implements various government policies including, but not limited to: revenue collection, trade facilitation, community protection, cultural heritage, intellectual wealth, statistical data collection, and environmental protection. DGCE is also responsible for the implementation of policies regarding the prohibition and restriction of strategic items. DGCE plays an important role in strategic trade control (STC) enforcement due to its unique authority and responsibility to monitor and control the flow of goods, people, and means of transport across borders.

Under the United Nations Security Council Resolution (UNSCR) 1540, the Security Council calls for all countries to refrain from providing support to non-state parties seeking to develop, acquire, produce, own, transport, or use nuclear, chemical or, biological weapons and the means thereof, particularly for terrorist purposes. This resolution requires all states to adopt and enforce appropriate laws for the implementation of the resolution, as well as other effective measures to prevent the proliferation of these weapons and their modes of delivery, including export, re-transport, border control, and enforcement of laws to block illicit trade.

STCs include all elements of strategic export controls. This includes border transit and transshipment controls and possibly import controls and extraterritorial action. STCs are not limited to control and licensing lists, but also involve government customs and intelligence services, as well as broader industrial outreach efforts by the government. STC systems help to manage the transfer of sensitive raw materials, technology, and equipment that may be used in weapons systems. Therefore, the STC system includes a complete range of elements intended to regulate the flow of strategic goods. System components include control lists, licensing requirements, customs measures, information sharing agreements (domestic and foreign), law enforcement activities, and efforts to prevent the flow of illegal goods.

Indonesia is not a member of the world's long-established nonproliferation regimes such as the Australia Group, the Nuclear Supplier Group, the Zangger Committee, the Missile Technology Control Regime, or the Wassenaar Arrangement, and does not yet have specific regulations governing STCs. However, Indonesia does have regulations and mechanisms in place to control strategic items. Currently strategic goods and materials are covered under the "prohibition and restriction" category. These goods and materials require permits from the relevant ministries/agencies, as well as special supervision by the DGCE conducted either automatically through the Indonesia National Single Window (INSW) system or manually through the Analyzing Point Mechanism.

Indonesia's Laws and Regulations Related to STCs

Nationally, the laws and regulations governing the export and import of strategic goods are:

- a) Law No.35 of 2009 – Narcotics
- b) Law No.9 of 2008 - Prohibition of the Use of Chemicals as Chemical Weapons
- c) Law No.16 of 2012 - Defense Industry
- d) Law no. 15 of 2003 concerning countering terrorism as amended by Law no. 5 of 2018
- e) Law no. 5 of 1997 – Psychotropics
- f) Law no. 10 of 1997 - Nuclear Energy
- g) Law no. 10 of 1995 concerning Customs as amended by Law no. 17 of 2006
- h) Presidential Decree No. 125 of 1999 – Explosives
- i) Minister of Industry and Trade Regulation No. 0230 / MPP / Kep / 7/1997 concerning goods whose import trade system is regulated as amended by 50 / MPP / Kep / 2/2000
- j) Minister of Industry and Trade Regulation No. 0662 / MPP / Kep / 10/2003 concerning Import Provisions for Nitro Cellulose (NC)
- k) Minister of Health Regulations No. 10 of 2013 concerning Import and Export of Narcotics, Psychotropics, and Precursors
- l) Minister of Health Regulations No. 10 of 2013 concerning Import and Export of Narcotics, Psychotropics, and Precursors
- m) National Agency of Drug and Food Control (BPOM) Regulation No. 12 and 13 of 2015 concerning Supervision of the Importation of Medicinal and Food Ingredients into Indonesian Territory

- n) Government Regulation No. 74 of 2001 concerning Management of Hazardous and Toxic Materials Minister of Trade Regulation No. 48 / M-DAG / PER / 7/2012 concerning the Export Provisions for Non-Subsidized Urea Fertilizer as amended by 73 / M-DAG / PER / 12/2013.

These laws and regulations cover materials and strategic goods, including nuclear materials, chemicals, and explosives. They are used as the main reference in Indonesia's STC supervision which includes control, licensing, and law enforcement.

STC Supervision: Control, Licensing and Law Enforcement

Control

The laws and regulations that STC in Indonesia have been developed according to three main principles.

- Exported goods that have the potential to endanger the Health, Safety, Security, Environment and Morals of the Nation (K3LM) as well as the existence of international agreements regulated by the export trade system;
- Export and import of these goods can only be carried out by companies that have received government approval, namely Registered Exporters (RE) and Registered Importers (RI).
- The export and import of dangerous goods shall be subject to technical verification / surveillance by a surveyor appointed by the Minister of Trade to ensure the correctness of the types of goods and documents.

Licensing

Importers must fulfill licensing requirements before carrying out importation. For example, the requirements for the importation of flammable dual-use chemical goods at the time of import are:

- Being a registered importer (RI) or registered exporter (RE);
- Having an import license for import of flammable / explosive goods; and
- Obtaining a permit which requires the importer to have a recommendation from the Ministry of Defense / National Police Intelligence and Security Agency of the Republic

of Indonesia (Baintelkam POLRI) / Strategic Intelligence Agency (BAIS) – Indonesian National Army (TNI).

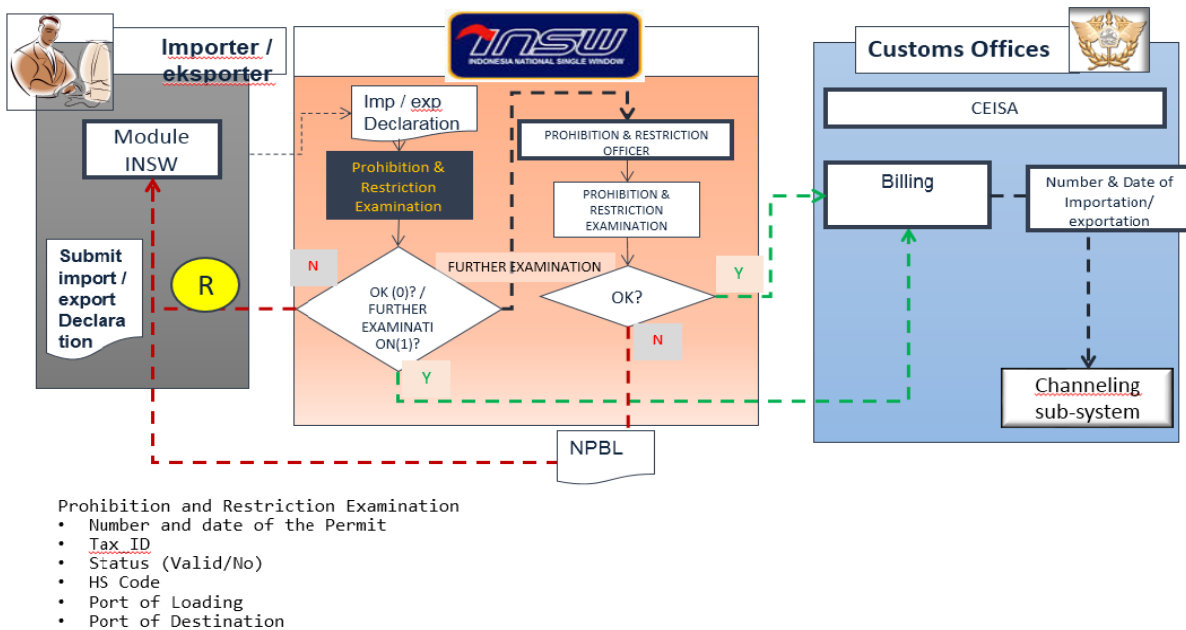
This is also true for the importation of precursors or other dual-use items.

Law Enforcement

Indonesia Customs and the Ministry of Finance of the Republic of Indonesia carry out the guidance of the above ministries/agencies based on the Customs Law Article 53 paragraph (1). Meanwhile, the regulation of the Minister of Finance is PMK-224 / PMK.04 /2015 which concerns the Supervision of Import or Export of prohibited and/or restricted goods.

There are three mechanisms for controlling prohibited and restricted items implemented by DGCE, including strategic items (STC), namely through INSW, Administrative/Analyzing Points, and cooperation between ministries/agencies and international organizations. The first mechanism is through the INSW:

Indonesia National Single Window Mechanism



The INSW is an Indonesian national system that allows single and synchronous processing of data and information to be carried out (single submission of data and information), single and

synchronous processing of data and information, and single decision making for customs clearance and release of cargoes. Currently, 18 ministries/agencies have joined INSW.

All export and import licensing processes will go through the INSW. This is a system that will integrate information related to the customs release and clearance of cargoes, which ensures data and information security, and automatically integrates the flow and process of information between internal systems. These systems include customs, licensing, port/airport systems, and other systems, related to the customs clearance process and release of cargoes. Because Indonesia does not have specific legislation regulating STCs, the licensing process for the export and import of goods and materials that are in the strategic categories are included in the “Prohibition and Restriction.” To carry out export and import activities, special permits are required. In this process all goods that fall into the category of prohibitions and restrictions that are regulated by each ministry/institution, according to their authority, are registered in the INSW and DGCE systems based on the HS Code, so that if any items are submitted without permission, they will be rejected by the system.

Analyzing Point Mechanism

The second mechanism is conducted through administrative checks and analyzing points to ensure that import and export data submitted are in accordance with the license, especially strategic goods that are not detected using the HS Code. This mechanism is also important for remote areas that have not used INSW. Analyzing Point Officers are well-educated and trained customs officers and have received training from UNODC and other international organizations to examine prohibited items. They generally come from an enforcement unit and are equipped with powerful tools to assist with their tasks. One such tool is a system called Passenger Risk Management (PRM), which provides initial information to field officers. This system is integrated with Immigration, land and sea borders, the tax agency, the police, the narcotics bureau and other enforcement agencies and includes information on land and sea borders, ferry manifests, civil registration, and information on cruise ships and yachts. PRM was built by Indonesia Customs and includes the Passenger Analysis Unit and Passenger Name Record. The main priority of PRM is to tackle crimes in narcotics, terrorism, and money laundering, among others. Additionally, Indonesia Customs is also assisted by the placement and use of Radiation Portal Monitor (RPM) in five strategic ports and is part of a cooperation

between Nuclear Energy Supervision Board and the International Atomic Energy Agency. It plans to increase the number of RPM placements at other ports. Other Customs and Excise services offices will be equipped with a Raman Spectrometer, X-Ray backscatter, and XRF analyzer which is a follow-up to the World Customs Organization (WCO) Program Global Shield (PGS).

Cooperation Supervision

Indonesia Customs' third mechanism is conducting supervision through cooperation between ministries/agencies and international organizations in the form of information exchange, joint operations, and training, including:

- Joint operation with INTERPOL (Operation Sunbird, Operation CHASE, Operation IRENE);
- Training from INTERPOL and WCO (RILO A/P, COSMO Operation, Security Program)
- Collaboration with the Police/Counterterrorism Special Detachment 88 (Densus 88), National Narcotic Bureau (BNN), National Nuclear Energy Agency

As part of the global trade chain, DGCE takes part in joint operations held by WCO. Regarding the supervision of strategic items, WCO and its member countries conduct Cosmo and PGS-SALW operations. Cosmo's operations are under the Strategic Trade Control Enforcement Program. Indonesia has participated in the Cosmo 2 operation which was held April 9-30, 2019.

The next operation under the banner of the Asia Pacific Security Project (APSP) is Operation Global Shield II and Small Arms Light Weapons Asia Pacific Security Project (GS II-SALW APSP). Small Arms and Light Weapons (SALW) can be operated by an individual or several people and is the category of tool most often used by terrorist and extremist groups to launch attacks due to their ease of use and affordability.

The PGS-SALW operation is part of the implementation of the WCO Security Program initiative in the Asia-Pacific region. Its main objective is the detection, disconnection, and dismantling of illegal crossings of SALW and dangerous chemicals that can be used for terrorist and extremist purposes. Items that have begun to attract the attention of SALW operations are

those related to goods under Harmonized System (HS) Code 93. This includes shippers who trade weapons and main weapon parts such as sears, hammers, firing pins, springs, magazines, barrels and triggers. Meanwhile, the main concerns of PGS operations are in improving analysis and inspections related to the types of items that can be used to make improvised explosive devices (IEDs) including detonators and 14 types of precursor chemicals.

In addition to joint operations, collaboration occurs through seminars and workshops on STC and other strategic items organized by WCO, CBP-EXBS, UNODC, IAEA, Federal Office of Economics and Export Control BAFA, and others. As a result, Indonesia Customs has been educated, trained, and well-prepared to implement UNSCR Resolution 1540.

Until now, Indonesia has submitted its national report twice to the UN, namely on November 5, 2004 (S / AC.44 / 2004 / (02) / 45) and on November 12, 2018 (S / AC.44 / 2018/9). The Indonesia National Report is a report on the implementation of UN Security Council Resolution 1540. This report states that Indonesia reiterates its support for all multilateral efforts to curb the proliferation of weapons of mass destruction and believes that the total elimination of such weapons is the only absolute guarantee against the threat of use of those weapons, in all their forms, and Indonesia is fully committed to the maintenance of regional peace and security. In 1971, together with other members of the Association of Southeast Asian Nations (ASEAN), it declared Southeast Asia as the Zone of Peace, Freedom and Neutrality.

This is the current implementation of STC supervision by Indonesia Customs at this time, however it should be noted that it implements regulations or restrictions including strategic items originating from ministries/agencies in accordance with their authority. In the future, there may be other ministries, institutions or agencies that will compile STCs as well.

About the Authors

Bryan R. Early is an Associate Professor of Political Science and Associate Dean for Research at the University at Albany, SUNY's Rockefeller College of Public Affairs Policy. Early is also the founding director of the Project on International Security, Commerce, and Economic Statecraft and served as the Director of the Center for Policy Research from 2015-2019. He has published 30 peer-reviewed academic articles on the topics such as economic sanctions, weapons of mass destruction (WMD) security issues, shadow economies, and political violence. Early earned his PhD from The University of Georgia in 2009 and is a former research fellow at Harvard University's Belfer Center for Science and International Affairs.

Scott A. Jones is a Nonresident Fellow at Stimson with the Trade, Technology, and Security program at the Stimson Center. His areas of expertise are WMD nonproliferation, export controls, sanctions, and economics. Jones is also a principal at TradeSecure, LLC, a global advisory firm focused on export control, FDI, sanctions, and trade compliance solutions. Previously, Jones served as Director at the University of Georgia's Center for International Trade and Security and foreign affairs analyst at Oak Ridge National Laboratory. He received his Ph.D. in international political economy at the University of Georgia and an MA at Lancaster University in the UK.

Seema Gahlaut is the Director of Strategic Trade Management Initiative (STMI), and Senior Fellow with the Trade, Technology and Security Program at the Stimson Center. Her areas of expertise are legal and institutional design of Strategic Trade Control/Management (STC/M) systems, UNSCR 1540 and sanctions implementation/enforcement, and CBRN security. Gahlaut has over 15 years of experience in conducting and managing training programs on STC for governments and industry. Prior to Stimson, Gahlaut served as the Assistant Director, Center for International Trade & Security (CITS) at the University of Georgia. She received her Ph.D. from the University of Georgia, USA and her Masters' and M. Phil., degrees from Jawaharlal Nehru University, New Delhi, India.

Todd E. Perry works in the US Department of State's Bureau of International Security and Nonproliferation (ISN) as US Special Coordinator for United Nations Security

Council Resolution (UNSCR) 1540. In this capacity, he guides US diplomacy in the 1540 Committee, promotes US and other 1540-related international outreach programs, and leverages ISN and US interagency expertise in support of the national reporting and assistance mandates of the 2004 resolution. Before joining State in 2019, Perry created and directed the US Department of Energy National Nuclear Security Administration's (DOE/NNSA's) International Nonproliferation Export Control Program (INECP). Perry received his Ph.D. in Government and Politics from the University of Maryland, College Park in 2001, and his B.A. from Grinnell College in 1985 with majors in French and Political Science.

Lorenz Anthony T. Fernando is the Chief of the Department of Trade and Industry Strategic Trade Management Office - Registration and Authorization Division (Philippines). Before joining the STMO, he handled research projects on green materials, biopolymers, and composites at the Department of Mining, Metallurgical, and Materials Engineering, University of the Philippines - Diliman. He is a registered chemical engineer with an MS in Materials Science and Engineering.

Janice Sacedon-Dimayacyac is the Assistant Director of the Philippine Strategic Trade Management Office. She has previously worked for the Supreme Court of the Philippines and an international law firm for 10 years.

Domina Pia S. Salazar is the Deputy Chief of the Strategic Trade Management Office Registration and Authorization Division. She previously worked as a Science Researcher and Forensic Chemist at the Department of Science and Technology - Philippine Textile Research Institute and the Philippine Drug Enforcement Agency. She is a registered chemist and is currently pursuing her master's degree in chemistry.

Phone Myint Naing has served as a staff officer at the Department of Trade under the Ministry of Commerce, Myanmar since August 2016. Phone was a resident Nonproliferation Fellow of the Pacific Forum, a foreign policy research institute based in Honolulu, Hawaii from December 2017 to December 2018.

Pham Minh Thu is a Customs official with the International Cooperation Department at the General Department of Viet Nam Customs, where her duties focus on the implementation of international cooperation activities related to trade security including the US Department of State Export Control and Border Protection Program, the EU Dual-Use Items Control Program, and implementation of UNSC resolutions. Pham has participated in multiple bilateral and multilateral cooperation activities for the Viet Nam Customs office and has worked on Customs-related projects with Cambodia, Mexico, and the Netherlands. Additionally, Pham has headed projects including risk management and capacity training for Vietnamese Customs officials, funded by the Japanese government, and the Trade Facilitation Project funded by USAID.

Alfian Chaniago has served as Deputy Director of Multilateral at the Directorate of International and Public Affairs, Directorate General of Customs and Excise Indonesia, since April 2017.