

**First CSCAP Export Controls Experts Group Meeting**  
**Nov. 7-8, 2005, Tokyo, Japan**

The inaugural meeting of the Council for Security Cooperation in the Asia Pacific (CSCAP) Export Controls Experts Group (XCXG), a subgroup of the Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific, was held in Tokyo, Japan Nov. 7-8, 2005. Thirty participants and observers attended.

Since this was the first meeting of the XCXG, it began with a review of the history of CSCAP, its purpose and procedures, as well as that of the WMD Study Group. Brad Glosserman of USCSCAP (and meeting chair) explained that the study group hoped to create an East Asian Action Plan to Counter the Proliferation of Weapons of Mass Destruction (WMD), modeled after the European Union's WMD action plan. Since export controls would be a core component of that effort, the XCXG was formed to focus on that issue.

Anupam Srivastava, of the University of Georgia's Center for International Trade and Security (CITS), got the discussion started with an overview of the importance of nonproliferation policy and export controls. The rise of new threats in the post-Cold War world, in particular terrorism and the role of nonstate actors, the spread of new technologies, and new economic relationships created by "globalization" have transformed the proliferation dynamic. Countering the spread of weapons of mass destruction is thus a top priority of the U.S. government, and it seeks to improve cooperation and policy coordination with the governments in the Asia-Pacific to effectively respond to these pressing challenges.

The development of Asia-Pacific economies, their increasing importance in the global economy, and their growing integration require regional governments to pay more attention to this threat and fashion new responses to it. But while many regional governments acknowledge the new dangers of the post-Cold War world, and especially the threat posed by terrorists, they have been slow to recognize the threat posed by the proliferation of WMD. As one Southeast Asian presenter pointed out, regional governments are more inclined to worry about inequalities in the global proliferation order – the permanent division between nuclear haves and have-nots – than the spread of WMD. For them, disarmament, rather than counter- or nonproliferation, should be a priority. Nevertheless, he conceded that there are worries about radiological dispersion devices (RDDs) or "dirty bombs."

Discussion focused on this division within the nonproliferation order. While there is concern about "nuclear apartheid," there are also worries that the focus on disarmament can become a pretext that allows nonnuclear states to ignore more immediate proliferation problems. Fortunately, several speakers noted that their governments are strengthening national nonproliferation programs, and export controls are a key component of those efforts.

The relationship between trade and security was another focus. There are fears that controls on technologies that can be used for proliferation will dampen trade and hence slow growth and development. In fact, the relationship is just the opposite: failure to

implement effective controls will slow trade as trade partners worry about the end use of technologies they supply. A European participant noted that this logic drove European Union (EU) policy on export controls: it was motivated by trade concerns, not worries about proliferation.

Abe Nobuhiro, deputy director of the security exports division of Japan's Ministry of Economy, Trade and Industry (METI), outlined Tokyo's export controls regime. Japan has adopted "catch-all" lists to control sensitive technologies. METI works closely with exporters to ensure they are honored. It conducts outreach programs (pamphlets, a website, and seminars for companies) to raise awareness of export controls, telephone consultations, and supports internal compliance programs. As a result, even though the ministry reviews some 9,000 individual export control licenses each year, surveys show the overwhelming majority of violations of export controls are unintentional. The government also uses a nonprofit organization, the Center for Information on Security Trade Control (CISTEC), for research and analysis and industry support; its members include companies responsible for two-thirds of Japanese exports of sensitive technologies. Current priorities include outreach to academia and research institutes and the overseas subsidiaries of Japanese companies.

Abe explained that a core component of Japan's export controls work is outreach to regional governments. Japan's efforts are based on the recognition of the growing production capability throughout the region and the numerous transshipment points in East Asia. Tokyo has conducted an Asian Export Controls seminar annually since 1993 (the next will be held in February 2006), an annual training course for implementing export control procedures which is hosted by the Japan International Cooperation Agency (JICA), export controls seminars (eight were held throughout the region in 2004-05), and industrial outreach seminars.

Abe highlighted two key lessons from that outreach. First, there is great diversity in the region regarding export controls systems. Therefore, second, outreach efforts must be nuanced, and tailored to fit local capabilities. He noted that Japan will continue its regional efforts and work to improve the implementation of the export controls legal framework: Japan will keep up its work on capacity building, both among its own companies and throughout the region.

While the discussion raised more questions than answers, the questions are good benchmarks for any assessment of export controls. They included:

- How do regional countries evaluate Japanese efforts? One Southeast Asian participant gave Tokyo high marks.
- How does Japan work with subsidiaries of Japanese companies regarding host country export controls? Specifically, does Tokyo work with Japanese companies in China? The questioner suggested need for joint Japan-China efforts in that field.
- How does Japan encourage countries to adopt control lists compatible with multilateral regimes that those countries have not joined?

- What is Japan's experience in working with nongovernmental organizations and whether this is a fruitful avenue to pursue?
- What is the appropriate mix of punishment and incentives to encourage companies to learn about and comply with their export control obligations?

We then turned to other governments' export control policies. Dr. Swaran Singh, of Jawaharlal Nehru University, looked at and commended India's nonproliferation policies. He argued that India has an "exemplary" record on nonproliferation that is better than some members of the Nuclear Non-Proliferation Treaty (NPT) and warrants it being considered a "responsible" nuclear power with advanced WMD technologies. He traced the long history of domestic legislation for export controls, noting that the country "has an extensive network of legal and administrative controls over activities relevant to WMD."

Most recently, the Delhi government passed the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act of 2005, which forbids dealing in WMD in any form, and has recently upgraded its SCOMET – Special Chemicals, Organisms, Materials, Equipment and Technologies – list of controlled exports. While this is not a "catch-all" list, it does put the onus on companies to stop the export of WMD technology. Singh noted that India has initiated new efforts to harmonize its export controls with other international regimes and concluded "India's export controls today compare favorably with the best in the world." Another participant pointed out that India has incorporated the entire NSG and MTCR control lists into SCOMET as of July 2005.

This effort raises questions about India's continuing absence from those regimes and its status in relation to them. Singh challenged United Nations Security Council Resolution (UNSCR) 1540, arguing that there are fundamental issues of justice surrounding a decision by 15 countries that binds all nations.

Our discussion examined the obligations created by 1540, which calls on all UN member states to prepare legislation to prevent the proliferation of WMD and enforce it. Recognizing that this will be difficult for some countries, the 1540 Committee has prepared a list of governments prepared to offer assistance in that effort.

There was debate over India's status. Several individuals asked why India refused to join international regimes, especially when it appeared to honor them: this position denies India the opportunity to influence discussions in those forums or to share information, a self-defeating policy given Delhi's attempts to work with them. Another participant argued that India's record was not so exemplary, given that Delhi's behavior had encouraged other countries to also remain outside the global nonproliferation order.

Li Genxin of the China Arms Control and Disarmament Association (CACDA) gave an overview of Chinese efforts in this field. He explained that Beijing is committed to fighting the proliferation of WMD and believes that export controls are a critical part of this effort. Since the mid-1990s, China has established a comprehensive system of export controls for all WMD and other sensitive items, with a scope of control basically identical to international standards. It uses licensing systems, end use/user controls, and control lists for dual-use items. This export control regime is transitioning from an

administrative system to one based on the rule of law and is consistent with common international practice; Li noted that more work needs to be done here. Since export controls cut across bureaucratic lines -- relevant agencies include the ministries of Commerce and Foreign Affairs, the Commission on Science, Technology and Industry for National Defense, and the departments of Customs, chemicals and atomic energy (to name a few) – there is extensive coordination and consultation among important actors. The Ministry of Commerce is the coordinating (and licensing) agency, although the Ministry of Foreign Affairs also evaluates license applications from the standpoint of security and China's non-proliferation commitments. There has been progress toward implementing a computerized export controls system and more than 200 outside experts are available for technical consultations relating to export licensing and approval decisions.

China has also begun government and NGO outreach efforts. Eight programs were held last year and more are scheduled for 2006. Beijing is looking for ways to cooperate to improve export control compliance by subsidiaries of foreign companies operating in China.

Song Danhui, from the Foreign Ministry's Department of Arms Control, echoed those points, stressing China's determination to build an export controls regime suited to its national characteristics. Nevertheless, it is trying to catch up to international standards and contribute to global nonproliferation efforts. She emphasized the difficulty in preventing the transfer of intangible technologies and asked for suggestions on how to deal with this problem. She, like the other Chinese participants, emphasized that Beijing understands that tightening export controls can contribute to China's long-term development.

Other participants welcomed Chinese efforts, in particular the attempt to harmonize national legislation with international regimes. Questions were raised about China's treatment of brokers – the government doesn't recognize their role in the supply chain, but is changing its practice given the role they play in trade – and relations with Taiwanese companies in China, as well as its reaction to end use inspections by regulators monitoring exports to China.

Chinese participants responded that their government understands the need for end use monitoring and on-sight inspections (although it is not happy with the imposition of sanctions by foreign governments) and is ready to work with outsiders to improve its regime and compliance. China encourages the use of internal compliance programs for all companies; they are already in place for many large companies but getting small and medium-size companies to set up similar programs remains a challenge. Intangible transfers continue to be a problem, especially as researchers become more mobile in the new Chinese economy.

Peh Kay Koon of Singapore Customs provided an assessment of that country's strategic goods control system. Being a major transshipment hub, Singapore is well aware of the importance of halting the proliferation of WMD, and the challenges of doing that. Singapore handled some 20.6 million TEUs (twenty-foot equivalent containers) in 2004, yet has only limited expertise in dealing with controlled items; moreover the government

knows a stringent export control regime risks diverting trade to other, less attentive ports. Nonetheless, it recognizes that a strong nonproliferation policy is a complement to its counterterrorism strategy and is vital to the country's long-term economic prospects; it has joined counterproliferation efforts such as the Container Security Initiative (CSI), the Proliferation Security Initiative (PSI), and the Radiation Detection Initiative (RDI).

Peh explained that in addition to international regimes, tough national policies are also needed to implement an effective export control system. Singapore Customs is the focal point of this effort, even though policy is made across a clutch of ministries and agencies. The country has developed a strategic goods control system that includes a continually reviewed control list, a catch-all list, and comprehensive regulatory requirements. To expedite processing, Singapore has enhanced TradeNet, to enable an electronic one-stop system for approval of strategic exports, transshipment, and transit permits; it now takes three working days on average for approvals to be processed. Exports, re-exports, transshipment, transit, brokering, and intangible transfer of technology all come under the program's purview. The government regularly audits internal compliance programs. It conducts outreach activities, which include industry briefings and consultations, field visits, publications, a website, courses and seminars. Singapore has joined export controls seminars sponsored by Japan and the U.S.

There has been feedback indicating that while a few companies have relocated because of the country's export controls, several companies have expressed their intention to move their research centers to Singapore because of the certainty and protections afforded by a stringent regulatory framework.

In the fourth session, Anupam Srivastava outlined the template that CITS has developed to analyze export controls in national systems and to align them with multilateral regimes. This is a key element of the experts group: we hope to create a framework for analyzing export controls efforts, to identify national capabilities, and to improve them. The template has two axes: along the left side, it lists legal bases of national regimes, enforcement, government-industry relations, and regime membership. Across the top, columns include: laws and regulations, institutions, processes, and implementation.

The template is intended to:

- create a standardized means of ordering information about export controls;
- create a comprehensive and methodical means to report to international agencies; and
- facilitate understanding of the export control system of a neighbor or trading partner.

It will identify potential problems, identify streamlined procedures, and facilitate regional harmonization of export controls. This particular template is offered as a starting point for discussion on how to evaluate various efforts throughout the region. Once we agree on a model, participants will use it to explain their own programs and create a database of export control regimes. This is to be a peer-reviewed process, with participation from all members.

Our discussion was positive; most participants expressed interest in the template and the project. One, however, noted that for his country, the first priority was getting the government's attention and making nonproliferation policy a priority. As such, he suggested that we hold a future meeting in Southeast Asia and invite "front line" officials in order to get their full attention.

On our second day, we resumed investigation of export control regimes. Dr. Azhar Djaloelis, former chairman of BAPETEN, the Nuclear Energy Regulatory Agency of Indonesia, gave his country's perspective on nuclear proliferation. Jakarta is well aware of the risks and benefits of nuclear energy and has developed a network of national control instruments to prevent the proliferation of nuclear materials. Given the country's location in the region, the threat of terrorism, and the many sources of such materials in the country – three research reactors, some 3,000 hospitals with radioactive materials, over 1,000 industrial plants, and plans to develop nuclear reactors – Indonesia should take the threat of proliferation seriously. And in fact, Indonesia was one of the first three countries to sign an IAEA integrated safeguards agreement.

But Djaloelis noted that his government's main concern was the elimination of nuclear weapons, and that the emphasis of its nuclear policy was disarmament. That provoked considerable discussion. Even though the country's proliferation record is enviable and it does not produce dual-use items, those factors should not encourage complacency. Several participants noted that Indonesia sprawls across the crossroads of regional trade; that it participates in free trade zones that expedite trade; that its companies have expertise that can be used to develop WMD; that there are thousands of end users of nuclear materials in Indonesia; and there is a sad history of arms smuggling. All these factors underline the need for an effective export controls regime.

At this point, we focused on national capabilities. We discussed corruption and noted that the problems posed by corruption were magnified by the lack of resources available for nonproliferation efforts, underlining the need for capacity building by regional governments. The need for bilateral and multilateral programs to help develop national capabilities is plain; such efforts can also help build confidence among trading partners and ultimately facilitate trade.

Our South Korean representative was forced to cancel participation at the last minute. He provided a summary of ROK national export control efforts by fax, however. Seoul has established a new division in its foreign trade ministry and developed catch-all controls. The Strategic Trade Information Center has been developed to support and promote industry compliance with the export control regime. One U.S. participant called Seoul a "champion" of export controls.

Sahachai Ngampairojpijul then provided a look at Thailand's efforts to halt the spread of WMD. Thailand aims to balance two priorities: protecting society while developing a competitive economy. Thai Customs is moving toward a paperless electronic data interchange (EDI) that uses a "single window" to expedite export approvals. The government is developing a database that can be used to check license requests. When used in conjunction with physical checks that include x-ray screening of containers at the port, it can facilitate Thailand's goal of stemming the export of dangerous materials.

One participant called Thailand an example of a country working under severe constraints. In this case, the Customs service is acting as a stopgap for the lack of an export controls regime. Plainly, there is the need for more outreach and greater efforts to help other countries. One participant suggested that a readily available group of experts be established; another proposed a “virtual technical experts group.” Another suggested the creation of a handbook with information, standards, and procedures – a guide to best practices. An American cautioned that such tools are just that: devices whose effectiveness depends on the skills of those who wield them. Training is essential to make them most useful.

Chinese Taipei’s export controls efforts were next: Dr. Yi-lan Chu provided the overview. Despite some initial reluctance, Taipei has since 1998 developed a system that corresponds to most multilateral regimes. It has developed control lists and relies on post-shipment verification (PSV). Dr. Chu explained that the government is trying to create a culture of compliance among companies, which is based not on fear, but on access to technology and the opportunity to make money. He confessed that export controls were not a priority until recently but the government now takes them seriously and is trying to implement the “catch-all” system effectively.

Discussion focused on the role of PSV. Some maintained that export controls are supposed to be preemptive, and that PSV was “too little, too late.” Similarly, it risks diverting valuable resources. Another participant suggested this offered a rationale for multilateral cooperation: it could save money and make up for deficits in national government’s abilities to assess goods. Dr. Chu noted that the emphasis on PSV echoes U.S. thinking, and will encourage companies to be more cautious when evaluating end users.

We then turned to the European Union’s export controls regime. Ian Anthony and Sybille Bauer of the Stockholm International Peace Research Institute (SIPRI) provided a look at EU controls on exports of munitions and dual use technology. The history of EU efforts underscored the need for genuine cooperation among the countries of a region. There must be continuing dialogue on the contents of control lists and close consultation to ensure that no country uses export controls to gain a competitive advantage over another. Bauer noted that munitions-related transparency agreements and a code of conduct on exports have become a vehicle for inter-governmental cooperation in Europe and a vital component of the larger effort to forge a coherent EU foreign policy. The wide range of ministries and agencies involved in export control efforts has ensured that capacity building has been an integral part of this effort.

Anthony pointed out that EU export controls on dual-use technology were spurred by trade – not security -- concerns. The original EU Council regulation was introduced to facilitate the free movement of dual-use items within the single market. Now, member countries have a legal obligation to apply guidelines from international export control regimes and they have created a common control list based on those lists. There is free movement for most of the listed items within the European single market and a community-wide general export authorization for trusted partners.

Despite this attempt to create uniform rules, implementation still depends on national assessments of threats, risks, and regime guidelines, and different systems for interacting with exporters. Peer review of national export control systems of fellow states in the EU was introduced to ensure that there is both transparency and objective assessment. This peer review process indicated that implementation standards and methods varied widely among EU states – and efforts are underway to narrow these gaps.

Discussion focused on how the European Union ensures uniformity and coherence among the various members in implementation and enforcement. Outreach to members of the EU that have not yet joined the various international regimes is beginning. Similarly, there is a rudimentary program to develop capacity in new member states; this is a key issue since all members are required to harmonize their national legal and administrative regimes with EU ones as a condition of joining the union.

Asia's growing defense trade with Europe, and the increasing popularity of co-production programs, means that Asian governments are going to come under mounting pressure to raise their export control capacity. The development of an EU Strategy for Countering the Proliferation of WMD ensures that this topic takes on more importance.

Seema Gahlaut of CITS then reported on an assessment of the filings of CSCAP members pursuant to UNSCR 1540, which requires member states to take active measures to halt the proliferation of WMD. She noted that all but two CSCAP states submitted reports. Moreover, most reports focused on membership in treaties and lacked information on implementation process and enforcement standards. And, despite the clear assertion of commitment to multinational efforts to counter terrorism and protect nuclear materials, few states provided information on their membership status in the 11 UN conventions on terrorism and IAEA conventions on nuclear safety. Independent research on membership status in these conventions revealed that many CSCAP states are not signatories – they appear to rely instead on bilateral and trilateral agreements to control terrorism (mutual legal assistance treaties and/or extradition treaties). Future meetings will look more closely at those filings and the summations from the 1540 Committee (due in December 2005) to propose some benchmarks for analyzing export control-related efforts in CSCAP states.

The ensuing discussion tried to determine the role and impact of UNSCR 1540. Several speakers noted that it provided positive political cover for governments to take action on nonproliferation; one said it broke a national logjam. Other participants complained that the resolution “left a sour taste” as it reflected only one side of the nuclear policy debate – proliferation rather than disarmament – and obliged governments to devote resources to problems that might not be high on their agendas. One Southeast Asian participant highlighted a general hostility to new initiatives based “on the pretext of curbing terrorism,” suggesting that some saw this as another example of the U.S. forcing its agenda on the world.

Our wrap-up session focused on next steps. All participants endorsed the experts group and considered it a valuable resource to muster political will and create the means to build capacity. One participant suggested more thought about the focus of the group and



tailoring future activities to ensure that we get the attention of our target audience – is it policy makers, politicians, or practitioners?

A recurring theme was the need for databases to identify the many efforts underway that relate to export controls. One speaker suggested we bring together people who have created data sets on export controls – the 1540 Committee, the Organization for the Prohibition of Chemical Weapons (OPCW), the Nuclear Suppliers Group – to compile consolidated databases. A survey of outreach efforts is definitely needed. There was a call to establish a readily available group of experts; another proposed a “virtual technical experts group.” It was suggested that we develop a handbook with information, standards, and procedures – a guide to best practices. Another proposed that we look closely at the Asia-Pacific region to see which dual-use sectors are most relevant and deserve the most attention; another called for a survey of free trade areas in the region and compare their administrative aspects in regard to export controls. Yet another suggested surveys of outreach and capacity building programs, and internal compliance programs.

No date has been set for the next XCXG meeting. We anticipate that it will be held in the spring of 2006 in Southeast Asia and it will further explore many of the above recommendations, while continuing our focus on developing an export control template as an integral part of our broader East Asia Action Plan. While we want consistency in attendance, we would like to expand membership to include CSCAP members that were unable to attend this first meeting. We encourage other committees to identify domain experts to join us.