

**Third Meeting of the CSCAP Export Controls Experts Group,  
Tokyo, Japan, Feb. 9-10, 2007  
Chairman's report (Final)**

The third meeting of the 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 (WMD Study Group), was held Feb. 9-10, 2007 in Tokyo, Japan. Some 37 people attended from 13 CSCAP member committees and other institutions. While some participants came from government agencies, all took part in their private capacities. USCSCAP would like to thank the Japan Institute of International Affairs (JIJA), the secretariat for CSCAP Japan, for excellent work organizing the meeting. The XCXG meeting followed the 14<sup>th</sup> Asian Export Controls Seminar, which was organized by Japan's Ministry of Foreign Affairs and the Ministry of Economy, Trade and Industry; they ensured that the two meetings complimented each other and that seminar participants could join the CSCAP meeting. The report that follows reflects the opinions of the chair; it is not a consensus document, although it has been reviewed by XCXG participants.

**Developments in the Global Nonproliferation Regime.** The meeting began with a review of developments in the global nonproliferation regime (GNR) by Akiyama Nobumasa of CSCAP Japan. Akiyama identified five key issues: the North Korean missile and nuclear weapons tests in 2006, the controversy surrounding Iran's nuclear program, international nuclear cooperation with India (following the agreement on U.S.-India civilian nuclear technology cooperation), the Global Initiative to Combat Nuclear Terrorism signed by the U.S. and Russia at the July 2006 St. Petersburg G8 summit and the October 2006 follow-up meeting in Morocco, and various proposals for multilateral control of the fuel cycle.

He highlighted six trends: engagement with India, the proliferation of nuclear capability, a greater readiness by the United Nations Security Council (UNSC) to take action to enforce the GNR, crisis in the multilateral nuclear regime, a growing tendency toward ad hoc responses (such as "coalitions of the willing") that raises questions about tradeoffs between the universality of norms and the effectiveness of enforcement measures, and the growing embrace of supply side controls.

Discussants added to that list. Rising energy prices and concerns about the reliability of supply have a profound influence on government policies. The prospect of climate change and global warming have focused attention on the environmental dimension of energy policies and altered the cost-benefit analysis of the nuclear option.

As in previous meetings, there was spirited discussion of the "dichotomy" inherent in the GNR. Several speakers criticized the discriminatory nature of an international order that affords some states nuclear weapons status while denying it to others. Others noted that the pursuit of "universality" has come at the expense of the effectiveness of global norms; the pursuit of the lowest common denominator to ensure membership has prevented action to enforce those norms.

Similarly, while there is growing emphasis on enforcement, insufficient attention has been given

to the costs that result from such action.

There was debate whether the GNR is experiencing a crisis. Plainly, there are “serious problems”; the rise of nonstate actors is a development for which the GNR was not prepared. One participant argued the crisis was that of the Nuclear Nonproliferation Treaty (NPT); the global nonproliferation regime itself was strong. The extraordinary attention the United Nations Security Council (UNSC) has given to nuclear proliferation in the last year – two presidential statements and four resolutions – is proof of the priority the international community affords to this issue. Plainly, only international action, cooperation, and coordination will be effective. But while virtually all nations share the goal of fighting WMD proliferation, problems arise over how that goal can be achieved. For example, there continues to be a dispute over whether civilian nuclear cooperation with India helps or undermines the GNR.

Another participant countered that the real proliferation problem is a proliferation of United Nations Security Council resolutions. The regime is not in crisis, but it is “languishing,” the result of too many ad hoc measures. Rather than craft a genuine nonproliferation strategy, the rush to respond to developments has resulted in an unwieldy system of non-interlocking parts. This reopened the debate about discriminatory regimes, but from a different angle: one participant complained that some countries would like to better comply with nonproliferation efforts but cannot because they aren’t members of the organizations or institutions. For example, the terms of reference for the Global Initiative to Combat Nuclear Terrorism exclude India and Pakistan even though they would like to join and contribute.

Serious examination of the proliferation problem requires a focus on the demand side of the equation. As one participant explained, over the long term, political will is key, not technology. It was suggested that the WMD Study Group look at security assurances and the role they have played in getting countries to abandon their nuclear ambitions. It was also proposed that the group explore ways to make it more difficult to withdraw from the NPT.

It was suggested that more attention be paid to fuel cycle issues. How can reliable supplies of energy be guaranteed? How can fissile materials and sensitive technologies be controlled? Advancing a theme that was repeated throughout the meeting, a speaker called for greater involvement by the private sector in all these discussions, as it has interests and can play a role in all the issues that are being discussed.

**Regional Efforts to Support Nonproliferation Norms: Export Control Cooperation.** The second session looked at regional efforts to support nonproliferation norms. John Fleming of the U.S. Foreign Commercial Service provided a quick briefing on an export control (XC) seminar the U.S. had hosted for Japanese companies the previous week. Over 300 companies attended for a briefing on U.S. export and re-export controls that was followed by individual consultations.

Sugie Kazuhiro of Japan’s Ministry of Economy, Trade and Industry (METI) briefed the group on the Asian Export Controls Seminar that MOFA, METI, and CISTEC hosted immediately before the XCXG meeting. The annual seminar began in 1993; the 14<sup>th</sup> meeting, from Feb. 6-8, included representatives from 18 countries and regions, and seven supporting countries and

regions. It looked in detail at the key elements of a successful XC regime – a legal framework; experience, expertise and know-how in the XC authority; industry compliance; and international collaboration – and ways to help countries with widely divergent capabilities build capacity.

Seema Gahlaut of the University of Georgia’s Center for International Trade and Security introduced her center’s Export Control Academy, a 2-3 week program that helps build capacity among countries seeking to develop more robust XC regimes. It is open to officials and researchers; the next session will be held in June and she invited all interested individuals and institutions to contact her for details.

Sybille Bauer then explained XC projects undertaken by the Stockholm International Peace Research Institute (SIPRI). A pilot project was inaugurated in 2004 to support the European Union Strategy to Prevent the Proliferation of Weapons of Mass Destruction, unveiled the previous year. The project looked at ways that the EU could support national and regional XC capacity building. It concluded that there is great scope for assistance and a need to expand the program globally, a task the EU has since taken up.

Lance Stubblefield briefly reviewed various U.S. programs to help nations build XC capacity and use their own resources more effectively. The Dept. of Energy is currently working with 13 countries in the Asia Pacific region, efforts he characterized – and emphasized should be thought of – as partnerships. He highlighted commodity identification training, customs officer training, and end use analysis.

While more training is needed, several speakers stressed the need for all countries to be more creative in accessing and utilizing their own resources. Export controls are complex and an effective regime will be complicated, but participants noted that there is considerable open source material available to help make XC more effective. Most critical is the political will to build an effective XC mechanism and to enforce it. Raising awareness of the need for effective export controls and the role they can play in fighting WMD proliferation is a critical challenge.

One key task, identified in previous XCXG reports and made plain by the surprise participants expressed as the various initiatives were reported, is coordinating the growing number of meetings, seminars, and workshops. There are many parallel and supportive processes and they need to be better linked. Information should be shared, both in regard to timing and, if possible, content. A question was raised as to whether or not the XCXG could serve as a clearing house for information on XC cooperative efforts or if such a tabulation was already being prepared elsewhere or could readily fit on existing web sites.

The XCXG benefitted from coordination with this year’s Asian XC seminar, and it was proposed that the two work more closely in the future. Ideally, the two efforts could be run back to back, with CSCAP experts being invited to the Asian XC seminar and selected participants – and especially experts giving presentations – in turn being invited to the CSCAP meeting in order to exchange ideas and dig more deeply into XC-related issues and problems. This could also include the exchange of papers and mutual web site links. The possibility of developing a closer association between MOFA, METI, and CISTEC and XCXG efforts will be explored.

XCXG participants (and readers of this report) are also encouraged to disseminate this report as widely as possible and bring the work of the XCXG to the attention of appropriate individuals and organizations – and those individuals and other programs and initiatives to the attention of the experts group.

Lawrence Scheinman was unable to attend the meeting, but provided a paper that focused on ways that export controls, United Nations Security Council Resolution (UNSCR) 1540, and nuclear safeguards agreements are mutually supporting. He noted that “there is a certain synergistic relationship between safeguards and export controls but much more can be done to develop this relationship.” For example, safeguards agreements provide a context for interpreting exports and can raise flags when requests are made for goods and materials that don’t match declared capabilities. Key to more effective synergy is sharing of information among the various components of the GNR. Scheinman noted that the Nuclear Suppliers Group (NSG) is now sharing more information among its members; the sharing of export denials essentially creates a “no undercut” policy among the NSG. He suggests (among other things) “endorse the Zangger and NSG guideline lists as the universal benchmarks for what must be controlled to effectively implement national obligations under UNSCR 1540 with respect both to monitoring and accounting for safeguards purposes and to export licensing.”

Other participants agreed on the need for information sharing. Several speakers noted that their ability to comply (voluntarily) with some international regimes is hampered by a lack of access to information about what is on certain control lists. While this is a problem for countries deemed to be outside the scope of the NPT, it is also a problem for governing authorities that lie outside the international mainstream, such as Chinese Taipei’s. There was virtual unanimity that sharing information about denials would be especially useful, although there were concerns that a “no undercut” policy is also needed. Regime members should also rethink their position: access to information rather than a desire for technology can be a motivation of states. One speaker noted that trust and transparency are needed to share such sensitive (in terms of commercial and technical utility) information. The use of intelligence in the export control regulation and enforcement process also raises flags and heightens national sensitivities. But while formal mechanisms to communicate information may not exist, informal ones often do. And the process of sharing can also be a confidence building measure.

There were other suggestions on ways to support nonproliferation norms. Closer collaboration with industry should be a priority; Japanese research on Southeast Asian export controls has shown that tighter links are needed and can be especially useful. Regional clearing houses were also suggested: they could provide information on a range of concerns, from denials of licenses to provision of experts who can help identify commodities. One Japanese participant endorsed a Japan-U.S. mechanism to share XC-related information and use that as the foundation of a broader regional initiative.

**United Nations Security Council Resolution 1540.** Our third session looked at UNSCR 1540, its terms, and its implications for the GNR. Ishiguri Tsutomu from the UN Regional Centre for Peace and Disarmament in Asia and the Pacific provided an overview of the resolution. It mandates that all states “in accordance with their national procedures, shall adopt and enforce

appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage” in them. All states must “establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery,” including, among other things, “appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls.” The resolution requires all countries to file national reports on steps to control WMD proliferation and a committee was established to evaluate the reports, develop next steps, and facilitate capacity building. Two years after 1540 was passed, UNSCR 1673 was promulgated to extend the life of the committee and devise a new work program.

Ishiguri explained that the UN Department of Disarmament Affairs assists the 1540 Committee and has been engaged in outreach, dialogue, and help to implement UNSCR 1540. Various institutions and organizations have undertaken efforts to raise awareness about UNSCR 1540; the Dept. of Disarmament Affairs has held seminars and regional and subregional workshops that are tied to the specific needs and groups of states. Emphasis is on the promotion of practical implementation, assisting information sharing and lessons learned, developing priorities of national action plans, and exploring possibilities for partnership for regional and subregional organizations and relevant international organizations.

The UN work focuses on three main aspects of implementation: national reporting, formulation and enforcement of national legislation, and export and border controls. At seminars and workshops, participants share national experiences in preparing national reports, in identifying priorities in national action plans, and in helping develop partnerships (without playing matchmaker).

Manpreet Sethi of CSCAP India gave an overview of India and UNSCR 1540. She noted that India has a long history of support for nonproliferation initiatives (despite its refusal to join the NPT and the fact that it has been the victim of technology denial) and understands too well the danger posed by terrorism and nonstate actors. She noted that the WMD focus of UNSCR 1540 “is long overdue” and is welcomed by India despite its discomfort with “legislative action” by the UNSC.

Sethi believes that India’s perspective on export controls has changed. Despite suffering from technology denial, New Delhi appreciates the need for strong export controls. Its economic resurgence means that the country is now a user, producer, importer, and exporter of strategic materials and now sees itself as a partner of export control regimes, rather than a target. Indian efforts to strengthen its XC regime predate UNSCR 1540; its strategic controls list was brought into accordance with the NSG and the Missile Technology Control Regime (MTCR) in 2000. In 2005, India passed the WMD and their Delivery Systems (Prohibition of Unlawful Activities) Act. It is integrated and overarching legislation that includes (among other things) catch-all provisions, transfer and transshipment controls, and brokering controls. There is a single unified control list and it is consonant with the NSG and the MTCR. Outreach efforts have been made to customs officials and brokers. Future challenges include outreach to small and medium-size

enterprises, the creation of internal compliance programs in those businesses, and getting trained manpower (a common complaint for many countries).

Charn Jullamon of Thailand's Ministry of Foreign Affairs outlined his country's experience in implementing UNSCR 1540. Especially valuable were the problems he said Thailand has encountered as it implements a more rigorous XC regime. For example, there were difficulties translating from English to Thai some items on the control lists. Thailand uses end user certificates, which puts a premium on public-private cooperation. However, few companies have internal compliance programs (ICPs) and there is a need for more outreach to raise private sector awareness of the importance of export controls. Budget constraints are a problem and Jullamon thanked Japan and other governments for help running XC seminars and workshops.

In a comment that elicited agreement from all participants, he complained about the difficulties of policy coordination among government agencies. Jullarn said that there is no focal point for policy coordination and the process is evolving.

Resource constraints are common. One speaker noted that it is unfair for the UN to demand that countries take action and then not help defray the costs of doing so. Participants shared ways they got around that problem. One speaker explained that his country had asked exporters to provide funds for radiation detectors when the government could not afford them. They did so, recognizing that more robust XC are confidence building measures among trade partners.

This commenced a discussion of the appropriate level of technology for governments trying to control trade. A speaker complained that the U.S. always wants countries to have the latest technology, a claim that was countered by the observation that the U.S. helps countries acquire state of the art equipment when Washington demands it. More important, U.S. participants argued that high-tech isn't always best. In addition to being expensive, equipment can fail; properly trained people are the real strength of XC programs. Low-cost, low-tech, labor intensive solutions are likely to be more suitable to countries developing XC regimes. Yet even these programs incur training costs.

UNSCR 1540 serves several purposes. First, it raises awareness of the WMD threat. Second, its very existence helps overcome domestic opposition to XC regimes. While XCXG members agree that export controls are trade facilitating, that view is not universal. The existence of international obligations provides a ready response to critics who argue that XC comes at the expense of growth and development. More convincing would be real proof – rather than anecdotal evidence – that export controls are trade enhancing. Members endorsed studies to explore that link. (Researchers have noted that the perception of licensing officers of a country's XC system is key in shaping their determinations.)

Establishing that connection would make it easier to sell export controls to policy makers and to industry. Some speakers suggested that the link could work in reverse: in automated targeting systems, the absence of export controls is a negative factor in determining risk. Similarly, companies with ICPs and good records can get bulk approvals for their exports.

**1540 Implementation.** Session 4 continued discussion of how countries have implemented

UNSCR 1540 and the role of export controls more specifically. Alelie Macadatar of the Philippines' Presidential Management Staff noted that her government has created committees and task forces to oversee 1540 implementation. Contingency plans to deal with WMD attacks have been developed and the government is trying to raise public awareness of the problem. The government is still trying to secure passage of an antiterrorism bill and the Chemical Weapons Convention implementing act, and is working to build institutional capacity. Customs is working to improve operations and programs. There are several efforts to build national and regional capacity.

Many problems Macadatar identified are shared by other participants: the timely sharing of data and information, graft and corruption, smuggling, long and porous borders, insufficient penalties, and poor monitoring and feedback mechanisms to regulate the XC program. Fortunately, the Philippines is upgrading customs facilities, is providing training on sensitive materials, and developing legislation to penalize violators.

Mohammad Kamran Akhtar of Pakistan's Foreign Ministry provided a summary of his country's actions under 1540. He began by noting that effective export controls are key to the implementation of the state obligations identified in operational paragraph 3 of 1540, even though the role of XC is not limited to that paragraph. The 1540 report helped identify areas of concern and Pakistan has been working to address the gaps that have become visible. Significantly, it has helped raise awareness within various parts of the Pakistan government of their 1540 obligations and respective responsibilities. A Permanent Working Group on Disarmament and Arms Controls has been established to monitor the legal steps being taken and what more needs to be done.

All elements of UNSCR 1540 are included in Pakistan's export controls law, promulgated in 2004. It covers all 1540 obligations and Islamabad is establishing an XC authority which will provide a forum for interagency coordination. More can be done, however, Akhtar called for the universalization of the NSG and MTCR; cooperation to acquire detection and border control equipment (he noted that Pakistan requested certain equipment but it was denied because it had potential dual use); and he promoted international cooperation on the peaceful uses of dual-use technology on a nondiscriminatory basis in accordance with a state's international obligations.

Bowoon Kim of the Strategic Trade Information Center reported on the Republic of Korea's export controls. UNSCR 1540 challenged Korea to streamline its XC system. Many of its efforts focus on the private sector. Through an aggressive outreach program, Korea is trying to encourage the thinking that XCs are an element of corporate social responsibility. Voluntarily compliant traders can receive bulk export licenses. Training and education are key parts of an attempt to build an XC human infrastructure. Among the common problems cited by Kim were complaints by companies that export controls were costly and burdensome, and the difficulties created by lack of expertise. The ROK government was attempting to streamline XC procedures and is engaged in public awareness programs and training.

Seema Gahlaut then analyzed UNSCR implementation in Southeast Asia, drawing on the national reports filed by ASEAN countries at the UN. These countries "have done pretty well."

They have passed legislation, provided licensing information, have one or more national XC authorities and even include deemed exports. Chemical weapons seems to be greater concern; only four of the ASEAN 10 have nuclear control lists and only one has a list for means of delivery. They worry about money laundering, but that is linked to antiterrorism, not WMD. Most countries focus on imports, however, rather than exports. This reflects the relatively low priority that ASEAN governments attach to WMD terrorism. Since they don't have WMD relevant materials and technology in their countries, they don't recognize the threat as high. There needs to be more awareness of the risk that their countries can be used as proliferation pathways.

Echoing remarks earlier in the day, Gahlaut identified the following challenges: unclear lines of authority among agencies; control lists are not well specified; enforcement capabilities vary; there isn't enough transparency; some countries are still slow to recognize that trade is a privilege not a right and that XC can be net positive for trade.

To remedy these problems, she recommends 1) establish control lists; 2) control transactions; 3) identify appropriate licensing authorities; 4) accept industry as a partner and asset; 5) make data collection a priority; and 6) harmonize standards and share information.

During discussion, there were complaints about UNSCR 1540. For some countries, there is just too much to be done and the starting point is too low. Governments have priorities other than export controls. Several speakers wondered what the 1540 Committee is doing with all the information (the reports are online) and whether it will make its analysis, recommendations, and requests public.

It was recommended that more attention be paid in the Asia Pacific to regional mechanisms that can focus on export controls. They better understand regional concerns and regional needs. They are more democratic, more visible and there is more "ownership" of them. CSCAP can help by raising awareness, helping identify national priorities for action, and providing data on ways that countries have dealt successfully with XC-related problems.

**The Role of Customs in Enforcing XCs and Overcoming Obstacles.** On the second day, the group focused on the role of Customs. Sybille Bauer began with an overview of SIPRI's export control programs and lessons they have learned. (The chair highly recommends the presentation to anyone interested in practical issues concerning XC implementation.) She noted that traditionally, Customs' primary concern has been collecting revenue, not controlling trade. Changing that mindset is not easy. The process must start with the Ministry of Finance and then spread. Governments must "mainstream nonproliferation as a priority." Only then will it get the time and resource allocations that are necessary.

She noted that the World Customs Organization has an initiative to emphasize the security role of customs and is developing a framework of standards to secure and facilitate trade. The "Columbus Program" includes a diagnostic mission and suggests a national action plan. This project should wrap up by the middle of 2007. Bauer suggested this program is especially important since it provides a World Trade Organization mandate for action.

According to her research, an effective XC system must include: comprehensive and clear primary legislation; control list; catch-all provisions; administrative/criminal sanctions; clear definitions of key terms; coverage of the entire supply chain; a range of laws and awareness of the frameworks to prosecute; a policy making mechanism; a licensing system; outreach to industry and the view that industry is a partner; international information exchange and cooperation; an enforcement system; and finally, a system or strategy to enforce XC and give customs a sense of mission and awareness of its role.

The inter-agency process can be the most difficult piece of the XC puzzle. As noted earlier, a competent staff is critical – so training is a priority; institutional memory and continuity are needed if training is not to be wasted. There must be accessible data and free information flow. Clear decision making procedures are needed and the legal framework has to be continually updated to reflect technological changes, trading patterns, loopholes identified, etc.

Customs has an especially difficult assignment. Officers must be motivated to do their job, have the right tools, and understand the complexities of the XC system and their role in it. Understanding those many facets and their role in the effective enforcement of XC is essential to the success of any XC system. Customs offices need sufficient legal powers, an incentive to act, speedy access to information/ intelligence, access to technical expertise, the right equipment, continual training, and the recognition that industry is a key partner in enforcement.

Thiam Siong Teh of Singapore Customs reviewed his country's work. While Singapore is viewed as a success story, Teh noted that export controls are relatively new to Singapore and the country has had its share of implementation issues. The country has prosecuted three cases of XC violations resulting in fines and jail times for the defendants. He argued that the publicity surrounding the cases has raised awareness and motivated companies to request more information or help in obeying the law.

The challenges Teh outlined were familiar: understanding controlled items (an especially difficult assignment since Singapore is not a producer of nuclear materials or a member of XC regimes) and training for licensing and enforcement staff. Singapore is increasingly relying on traders to help enforce its XC laws: it encourages businesses to come forward with information and assures them of confidentiality when they do. (Several speakers noted that companies can be enticed to report on competitors when it comes to XC violations; if national interests don't motivate them, profit might.) In Singapore's view, the licensing authority in the supply country has the real obligation to check on final destinations; still, bilateral consultations and cooperation are needed. Singapore does not have one of the key problems that other countries experience: trade is understood to be strategic and export controls are seen as trade enhancing.

As a result of UNSCR 1540, Singapore is now expanding its control list to harmonize with the four main XC regimes. The new list will take effect in January 2008. In addition, the government is reviewing its permit regime. It will adopt a three-tier strategic trade scheme: single shipments, multiple shipments to the same source, or multiple shipments to multiple sources. The latter will depend on a record of good behavior and trust.

Tuan Cheng from the Institute of International Relations then outlined Chinese Taipei XC and Customs procedures and practices. He explained that its XC system was founded 20 years ago. Taipei has worked closely with the U.S. to create a comprehensive and institutionalized system. Its control lists include the items from the Wassenaar Agreement, the NSG, MTCR, CWC, and Australia Group. In 2004, a catch all list was adopted to monitor end use and the end user.

Export controls are administered by the Ministry of Economic Affairs; the Bureau of Foreign Trade is charged with the day to day responsibility. Export processing zones are authorized to issue licenses; the Atomic Energy Agency also plays a minor part.

Customs is on the front lines. It checks export applications and does pre- and post- shipment investigations. It can seize cargos. When an exporter submits a customs clearance application, the customs officer reviews and checks it. There are two types of reviews: paper review only (when the company has a good record and ICP) or paper and commodity check when questions are raised. There is also a special review process for special cases.

Chung identified several basic problems, most of which sounded familiar: access to timely information, lack of equipment so it can't examine many containers, insufficient training, and a lack of consciousness. Most attention goes to drug and handgun smuggling; there is little attention to high-tech commodities.

Mike Pointer of the New Zealand embassy in Tokyo gave a brief overview of the role of New Zealand Customs. His presentation focused on enforcement of UNSCR 1718, which was promulgated in the wake of the North Korea nuclear test. New Zealand has long supported nonproliferation initiatives and strongly backs international efforts to promote global norms in this area. As for other countries, collecting timely and accurate intelligence and information is a challenge. A computer alert system is used to detect XC violations.

Following the DPRK nuclear test of Oct. 9, 2006, the Wellington government passed regulations to restrict trade with North Korea. The controlled items include military equipment, WMD and delivery related goods, and a range of luxury goods.. There is also a ban on the travel of certain individuals. New Zealand is also a member of four XC regimes – Wassenaar Arrangement, Australia Group, the NSG, and the MCTR – and has “well established systems in place to control

the export of goods on the New Zealand strategic goods list or which fall under United Nations sanctions.”

Pointer noted two problems. The first was some confusion about which Korea was which; goods intended for South Korea were mistakenly designated as heading to the DPRK. Apparently, the word “Democratic” threw off some freight forwarders and exporters. A second problem is that New Zealand law requires a complete list of prohibited goods rather than a designating mechanism; this can be more burdensome and slows down changes in XC lists.

Vu Thanh Hai from Vietnam's General Department of Customs was forced to cancel at the last minute but he also submitted a paper. It highlighted the various lines of authority regarding Customs in Vietnam – and the confusion that results. Customs in Vietnam is moving from pre-clearance to post clearance checks. Customs and licensors work with private companies to check on suppliers and suspect companies. It has a risk management database. In addition, Vietnam has also bought new equipment to detect WMD materials and is training officials to be more alert to these dangers.

Chiang Li of the China Arms Control and Disarmament Agency gave an overview of China's Customs challenges. China Customs has 48,000 staff, which have to watch 253 first class ports (airports, sea ports) and 200 2<sup>nd</sup> class ports. There are more than 300,000 arriving and departing aircraft each year, more than 485,000 arriving and departing vessels, and 18 million arriving and departing vehicles. There are in excess of 2.1 billion tons of imports and exports annually. Checking them all is impossible.

As in other countries, China Customs needs more resources (financial and material) to handle XC violations. It has to better cooperate and coordinate with other agencies responsible for XC. It is striving to strike a balance between the need for national security and development. It has embraced training and outreach to industry but more needs to be done. Beijing has also worked with other countries and institutions to build national capacity.

Discussion got into the details of effective Customs work. There was agreement that the first step was a mentality that moved beyond revenue collection and acknowledged the role Customs plays in national security. Moreover, that goes beyond small arms and must take in WMD. Considerable time was spent on the role of training. This is vital since the core concern for many Asia Pacific countries is dual use items; they don't make or produce nuclear materials. Customs people must understand what these items are and how to identify them.

But several specialists reminded the group that human skills are more important than equipment. Sometimes it is common sense and a sharp eye that matters, not specialized knowledge. There were reports of officials stopping shipments because of suspicions about the documents not the goods.

Corruption surfaces here too. Bribes can cripple the effectiveness of an export control system. The group was reminded that this problem affects ALL countries. One specialist called for distancing Customs officers from the bribe payers; electronic communications make it harder to make payoffs, although it also cuts down on the human input that seemed so important in another context. Alternatively, Customs officers could be paid more to eliminate the temptation, or they could be rewarded in some form or another for stopping illicit shipments.

Another problem is the compatibility of control lists with customs codes. More coordination is needed to ensure that the two are easily referenced and coordinated. Several countries have added digits to their tariff codes to make them more consistent and easier to compare.

Discussion turned to ways to create incentives for companies to report export controls violators.

It is easier to turn in a competitor; are there other incentives? Moreover, what is the most effective way to deal with XC violations by a company's foreign subsidiaries?

One participant wanted to know how various countries do risk analysis on transshipment cargo? The consensus seemed to be that the burden rests on the original shipping authority to do a good job. A data base would be helpful. Another proposal was a virtual experts group that would be accessible for queries. (There are legal and administrative issues involved in pursuing this proposal, but they are not insurmountable.)

Another topic was the proper focus of training. As in so many other areas, participants emphasized the need to ensure that local needs were addressed. There is no "one size fits all" solution. Curricula have to be tailored to a country's particular conditions. Several speakers noted the need to develop local trainers so that there is continuity and sensitivity to those needs. But training should encompass all dimensions of Customs work so that officials understand where they are in a broader system and its importance and function. (This is particular important as the Customs function changes, as noted above.)

There was also considerable debate about what it is reasonable to expect of a Customs officer. As one person noted, it is not realistic for a Customs person to be able to identify goods at the border. Another agreed, explaining that it is impossible to train customs officials to be experts on all items. This would seem to put a priority on cooperation among nations, agencies, and industry.

As in the past, the group debated the value of transparency. As one participant explained, no country wants to let the world know that it has suspicious objects at its border. Others countered that such a licensing failure could also be seen as an enforcement success. And the willingness to take action – even if it might seem to court embarrassment – is a confidence building measure. (In all fairness, however, some speakers noted that it could also be used for political purposes.) Ultimately, as one specialist pointed out, dual-use commodities are an integral part of a modern high-tech economy. Countries will not get access to them without confidence among supplier nations that they will be controlled. That should be the incentive that governments need to implement effective export controls.

**Export Controls/WMD Handbook.** The XCXG is part of the broader CSCAP WMD Study Group which is developing an *Asia Pacific Handbook and Action Plan to Prevent the Proliferation of Weapons of Mass Destruction*. The XCXG is tasked with developing the chapter on export controls in that handbook. At our meeting, the group agreed on language for the handbook chapter description, and a statement of export control objectives and guiding principles; that language is attached to this report. Subsequent meetings will flesh out the XC chapter.

**Future XCXG Tasks and Priorities.** At this point, discussion turned to future tasks for the XCXG. It was suggested that the group examine the legal basis for XC systems. One possible project would be a cross-national comparison of the contents/elements of national legal XC

frameworks. Another participant suggested building consensus on the key parts of a model XC law for the region. An actual model law might be too much at this point, but perhaps later. Another participant suggested a collection of best practices – or successful practices in overcoming key XC challenges. A catalogue of outreach efforts and national capacity building programs would be helpful. Members were asked to identify priority concerns for their export control authorities and topics and agenda items for future meetings: possible topics include “deemed exports,” “ICP,” the inter-agency process, licensing decisions, basic practices in investigations. The discussion could be organized in a series of “lessons learned” discussions on specific topics or disciplines, where the XCXG could focus in on examples of specific problems and specific steps taken to overcome them. This could also help in the development of best practices.

The XCXG has already begun development of a template to analyze national export controls. Members were tasked after the last meeting (May 2006 in Beijing) with reviewing the template and providing comments, criticisms, and improvements. None were received. That “homework” was again given to all participants.

As is evident, these discussions will quickly get technical. That is the purpose of an experts group. And given the various seminars that exist, real value is added when specialists tackle their common concerns. That imposes a special responsibility on meeting participants and CSCAP member committees to send the right individuals to meetings. The chair will try to facilitate that process by proposing dates and sending agendas as far in advance as possible to give committees time to identify the right person and to get them to the meeting. Follow up meetings with national authorities responsible for XC is also planned, both to achieve greater awareness of the work being done and to identify experts for future sessions.

We ask that all participants and member committees spread the word about the XCXG; to raise its profile, to help us tackle relevant concerns, and to help us find the right people. Suggestions on how to disseminate our work more widely and to better coordinate with other outreach efforts are always appreciated.

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### **Chapter 9. Promote Regional Export Controls**

This chapter outlines a regional export control template and identifies “best practices” necessary for effective export controls. It promotes regional information sharing and encourages countries to harmonize national standards with international norms.

Comprehensive export controls, covering all forms of transfer, are critical to the success of global nonproliferation efforts. Effective export controls prevent the illicit flow of WMD-related commodities, while serving as a confidence building measure for facilitating trade, economic growth, and development. They also help keep WMD agents out of criminal or terrorist hands. Building national capacities is a priority that requires, among others, the participation of specialists from governmental and non-governmental sectors to identify and implement best

practices.

Greater regional economic integration requires greater export control harmonization to enhance security and economic equality (i.e., competitiveness). As a result, export control standards should be embedded in all mechanisms that promote regional economic integration, such as APEC and ASEAN Plus Three and other East Asia and broader Asia-Pacific community building efforts. In addition, active efforts should be made to partner with industries and trade associations to facilitate compliance with national laws and regional and global nonproliferation instruments such as UNSC Resolution 1540.

The CSCAP Export Controls Experts Group (XCXG), a subgroup of the WMD Study Group, is taking the lead in developing the export controls section of the Handbook and Action Plan. The XCXG supports, and believes that regional export control (XC) efforts should be guided by, the following **export controls guiding principles**:

Regulating the transfer of nuclear, chemical, radiological, biological, and missile-related technology and commodities contributes to common security.

Comprehensive export controls are fundamental to ensuring the security of global trade. Because of increasing globalization, effective export controls are only possible on the basis of regional and broader international cooperation.

An effective XC regime should be based upon a common set of export control elements that can be applied to an integral list of controlled items. These elements include, inter alia, comprehensive legislation, effective licensing procedures and enforcement, and industry outreach, with appropriate incentives and penalties.

Regional XC cooperation requires the sharing of national information on XC policies, the current state of implementation, and future priorities, plus the development of mutually supportive confidence building measures and assistance programs.

XC best practices that can be applied to the development and implementation of national standards should be identified and utilized. National and regional cooperative XC efforts should be consistent and mutually supportive.

The private sector must be an integral part of any XC regime and should bear a social responsibility to meet common security needs.

While serving the objective of nonproliferation, export controls should not hamper legitimate commerce (including the peaceful use of dual-use technology).

The CSCAP XCXG can contribute to the accomplishment of these objectives through the identification and examination of best practices and the creation of an export controls template to guide national and regional efforts. Continuity of participation in the XCXG by a “full house” of domain experts is desired.