



**Fourth Meeting of the CSCAP Export Controls Experts Group,  
Manila, Philippines, Aug. 25-26, 2008  
Chairman's report**

The fourth 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 Aug. 25-26, 2008 in Manila, Philippines. Some 36 people attended from 10 Council on Security Cooperation in the Asia-Pacific (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 Office of the Special Envoy for Transnational Crime (OSETC, Office of the President of the Philippines) for its superb work organizing the meeting. The theme of the meeting was “Regional and National Solutions for Strategic Trade Management” and focused on developing best practices to improve capacity in CSCAP member countries in strategic trade management. A specific objective of the meeting was to draft a Memorandum on Strategic Trade Controls that has been presented to the CSCAP Steering Committee for adoption as a CSCAP Memorandum. The report that follows reflects the opinions of the chair; it is not a consensus document, although it has been reviewed by XCXG participants.

**Rationale for Export Controls and Strategic Trade Management.** Following opening remarks by the co-chairs Ambassador Florencio Fianza (OSETC) and Brad Glosserman (USCSCAP), the meeting began with a presentation by Anupam Srivastava of the University of Georgia's Center for International Trade and Security on trade facilitation through strategic trade controls. Srivastava described dual use/strategic trade controls as a “semi-permeable membrane” to verify and permit transfer of strategically sensitive products, components, technologies, and services across national boundaries. While designed to detect and prevent proscribed transfers to unauthorized individuals and entities, he argued that a properly designed system should enable trade and build confidence; it is trade enhancing not trade-restricting. Therefore, the real challenge is seeking ways to encourage cooperation and establish the parameters of the system.

Srivastava identified access to dual-use technology by nonstate actors as a serious weapon of mass destruction (WMD) proliferation threat. New component suppliers, created by the globalization of supply chains, that are unaware of the proliferation threat or complicit with rogue actors, coupled with inadequate strategic trade controls create vulnerabilities in three dimensions. Economically, it emerges through the growing emphasis on foreign trade in value-added products and services, changing capacity in the private sector, shifting global business partners, and through the changing roles of government-owned industry. Technological changes create vulnerabilities through innovation and changes in production processes as well through changes in the nature of technology itself. In the security dimension, changing conceptions of security and the development of information technology-centric warfare introduce new vulnerabilities.

The rapid expansion of high-technology production capacity in Asia and the growth of intra-Asia trade have created strategic trade controls imperatives for both governments and industry. Government imperatives are in the areas of regulation to monitor and track dual-use

technology, customs-related revenue, enhancing free trade, and mutual security with trade partners. Industry imperatives are in the areas of creating economic opportunities, improving reputation, and enhancing security.

Emphasizing that prosecution of transnational crimes cannot succeed without transnational cooperation and information sharing, Srivastava argued that there are three important challenges in efforts to improve strategic trade management: developing a national control list, identifying what to include in the licensing approval process, and sharing human and technical information. Overcoming these challenges requires better regulatory harmonization and enforcement coordination among trade partners.

Next, a paper on the role of sub-regional organizations in implementing United Nations Security Council Resolution (UNSCR) 1540 prepared by Larry Scheinman from the James Martin Center for Nonproliferation Studies at the Monterey Institute of International Studies (who was unable to attend the meeting) was presented. Scheinman pointed out that one of the unique features of UNSCR 1540 is that it is distinct from other international regimes on WMD: it covers all types of WMD and focuses on the threat from nonstate actors. Despite the fact that the resolution is binding on all UN member states, difficulties have arisen because some countries lack either the capacity or political will to implement some or all its provisions. Regional organizations such as ASEAN and the ASEAN Regional Forum (ARF) can help mitigate these difficulties because they have a high degree of political legitimacy and authority deriving from their mandates and have the capacity to develop common frameworks of interpretation and understanding among member states.

Moreover, Scheinman noted that many laws, regulations, and enforcement measures taken to control strategic materials are the same as those required to deal with illegal trafficking, transnational crime, and transnational terrorism. In this way, implementation of UNSCR 1540 at the regional and sub-regional level helps to fill gaps and reinforces other transnational security regimes while buffering concerns regarding intrusions on sovereignty and national capacity for implementation.

The discussion began with the suggestion that WMD has not been treated as a serious threat to security in Southeast Asia. As a result, strategic trade controls and implementation of UNSCR 1540 have not been very high on the agenda of regional governments. A key question is how regional organizations such as ASEAN can influence the behavior of individual governments. Several participants acknowledged that WMD issues and particularly UNSCR 1540 had not been high on the priority list for countries in the region. Rationales for the lack of progress on implementation included the lack of knowledge regarding the requirements, lack of motivation and incentives, a lack of capacity, and the denial of needed technology. One highlighted issue was the need to shift the focus away from viewing these programs as obstacles to viewing them as enabling trade and as complementary to existing regulatory and enforcement processes.

Other discussion focused on opportunities for improved cooperation in sharing intelligence, developing common control lists, and developing confidence in individual companies with strong internal control programs. While agreeing that more technical cooperation was important, it was suggested that in some cases companies were placed on lists for political

reasons. A participant emphasized the importance of focusing on the end use of strategic items, development of a “no undercut policy” among countries, and encouraging reciprocity in programs such as the container security initiative. Another emphasized the importance of multilateral inter-agency exchange among enforcement, licensing, and intelligence agencies. The session concluded with a reminder that the purpose of the current meeting was to focus on what needs to be done and how it can be done. For example, a participant pointed out that several countries have not taken the initial step of doing an internal audit and establishing a control list. Equally important is the “how” to implement strategic trade controls in the most efficient and effective way possible.

**National Enforcement Practice Overviews.** The second session examined specific practices that have been found to be beneficial in improving national enforcement capacity. David Meisner, who is currently with the U.S. Treasury and has decades of experience in customs enforcement, gave a presentation on export control investigation techniques and prosecution considerations. He offered ideas on several mechanisms that emphasize the benefits of cooperation to promote industry participation and compliance. He underscored the fact that the inability of governments to monitor all export activity makes industry participation and voluntary compliance crucial to the development of a successful enforcement program.

One organization offered as an example of effective interagency coordination to improve strategic trade management is the Exodus Command Center by the U.S. in 1981. The center is part of the Arms and Strategic Technology Investigation Unit and serves as a single point of contact for thousands of Immigration and Customs Enforcement (ICE) special agents and Customs and Border Patrol (CBP) officers for all matters relating to export license issues, port detentions, and seizures of licensable exports. Serving as the liaison with relevant agencies for all matters involving export controls, the center has been able to streamline processes and develop effective mechanisms for identifying and responding to violators.

Next, Meisner provided examples of how industry can be a more effective partner in developing and maintaining a successful export control system. It is critical 1) that the views of industry must be adequately addressed in enforcement programs and 2) that there be effective communication with industry regarding laws and regulations to encourage industry participation in strategic trade management efforts. He suggested using technical advisory committees and requests for comments on proposed laws and regulations. Technical advisory committees can provide guidance and information on the business climate and technical guidance on what should be controlled prior to the issuance of regulations. These committees are being used to examine sensitive materials, materials processing equipment, information systems, sensors and instrumentation, transportation and related equipment, regulations and procedures, and deemed exports. Industry involvement early in the process helps prevent unnecessary confrontation between government and industry over how to balance security and promoting trade.

An effective education program is also important for ensuring industry compliance. Seminars, government publications, and counseling have been effective means to ensure industry awareness of regulatory requirements. Media outreach has also been an important mechanism for ensuring the public remains aware of enforcement efforts, threats of diverters, and the need for compliance. Since governments cannot possibly monitor all export activities, it must rely on industry participation and voluntary compliance. The result of this cooperative

effort creates the most effective and least burdensome system possible.

Descriptions of several programs used to enhance outbound examinations were presented. All the programs require specially trained personnel, rely on risk management-based targeting, and utilize advanced automated information. Because Customs agencies have border search authority and are located at ports, they are the logical choice for implementing these programs. Common needs for successful programs include harmonization of control lists with a harmonized tariff schedule, inspection equipment that is non-intrusive, and both domestic and international sharing of trade data. One specific system described was the automated targeting system: a web-based system used in conjunction with the automated export system to target high-risk shipments and identify suspect shipment characteristics. Meisner concluded the presentation with a summary of investigative techniques that have been shown helpful in catching violators and ensuring successful prosecution.

Christophe Bosquillon of DNK Co. Ltd., who is actively involved in exporting agricultural chemicals in the Asia-Pacific region, provided several observations and lessons learned from the perspective of industry. He highlighted the fact that although he was not directly involved in exporting high-technology equipment nor WMD components, shipping explosive materials involved some of the same principles that could be applied to these items. Although the top priorities were always customer satisfaction and profit, company reputation and security mattered. He felt that it was the moral duty of industry to volunteer information when deviations from normal routines were noted.

Four examples of effective government-industry cooperation in Asia were presented. In describing Japan's practice, he noted that in the case of banned agriculture chemicals they applied safety regulations to cover export control concerns. In Vietnam, excellent government-industry relations resulted in building a large port and logistics infrastructure from scratch in record time. Citing the example of China, he noted that the government intervention based on economic security had developed effective trade controls and infrastructure policies. In the case of Iran it was noted that while the fertilizer industry is carefully monitored, some manage to circumvent the system through transshipment and re-shipment schemes, although the products were often found to be inferior.

Maria Sultan of the South Asian Strategic Stability Institute gave a presentation on the elements of an effective export controls program using Pakistan's experience as a backdrop. Repeating a theme of our meeting, she noted an effective program requires coordination, communications, and cooperation both within the government and between government and industry. This meant that a program should be a bottleneck to delay nonstate actors from acquiring WMD or dual-use materials by interdicting illicit transfer of controlled goods, flagging suspicious acquisition trends, facilitating high-tech trade within the international community by building trust among members as well as within the individual countries, and providing training to industry. Mechanisms to facilitate interagency multilateral communications include interagency working groups, analysis of trade patterns, due diligence on industries, development of an information technology infrastructure to support sharing real-time intelligence, closing legislative loopholes, and training legislative bodies and legal counsels. She agreed with other speakers that an effective system must contain comprehensive and clear primary legislation and implementing regulations and policy guidance including licensing procedures, a control list, a catch-all regulation, and clear

sanctions for violators. These guidelines must cover all players in the export system, which includes producers, manufacturers, shipping agents, traders, forwarders, customs brokers, courier services, and financiers.

In the case of Pakistan, export control instruments exist, but the key problem is enforcement. While industry outreach is part of the solution to improving enforcement, internal compliance systems within strategic industries and the development of better Customs and border control enforcement tools are necessary components of a successful program. She suggested that it would be better to decentralize some aspects of enforcement to regional command centers with a rapid reaction capability to deal with porous borders and illicit transshipment and illicit trafficking routes. A better system of incentives for local enforcement officials would also be helpful in developing a more robust border control system.

Discussion began with the chair highlighting the emphasis each presentation had placed on the importance of building strong relations with industry and creating a sense of responsibility for the system both within border control authorities and industry. The challenge is how to create the zeal necessary to make that a reality.

One conclusion from the presentations is that finding the right mix between automated systems and physical inspections was key to an effective border control system. The best practices must allow rapid identification of problems and a trained workforce that can respond quickly and correctly when needed. In response, someone noted that the development of templates for shipping manifests, standardized licensing codes, shared control lists and the use of “smart containers” have all helped developed a much more effective system.

Several participants noted that the issue of creating incentives for enforcement agents is a difficult problem. Creating incentives to increase the number of seizures can create inefficiencies in the system and yield unintended consequences, such as new opportunities for bribes and corruption. One participant argued the best way to create an incentive structure for Customs officials is to employ young people, provide a living wage, and develop a lifelong training and advancement program that encourages them to remain in the enforcement system. Another participant noted that effective licensing and internal compliance programs were also part of an effective incentive program. Another suggested that all things are possible with a strong national-level commitment and an informed political leadership.

**National Enforcement Capacity Building.** Session three included a discussion of enforcement capacity in seven countries in the region. Because some of the comments made by the presenters may be considered sensitive, the names of the presenters and the specific countries discussed have been left anonymous. Readers are reminded that views expressed by participants are their individual views and do not necessarily reflect government policy. The intent of the session was to highlight both best practices and problems that have been encountered in an effort to improve programs throughout the region. Accordingly, it was invaluable to have expert participants who work with export controls on a daily basis to provide insights into the process. Although there were two discussion periods during the session, they are consolidated at the end of the report as several themes emerged throughout the presentations.

The presenter from the first country stated that the top priority within the area of enforcement was preventive measures such as training and internal compliance programs. Three areas of concern were addressed: techniques for investigations, strategies to reduce violations, and the role of technology in the enforcement process. Intelligence agencies were used to identify targets dealing with specific imports, while police agencies conducted on-site investigations to raise awareness within industries. The licensing authority conducted inspections to validate the system and ensure traders remained compliant. If they are deemed to be suspicious, international goods being transshipped or in transit through domestic areas can be suspended. While there are hundreds of investigations each year, there are normally several dozen prosecutions.

The primary strategy for reducing violations is through providing assistance in the development of a centrally managed internal compliance program for major companies in the country. After providing consultations and assisting them in meeting the requirements of the program, the company is evaluated and designated as a “validated compliant trader.” While several major companies are already validated, the program will be expanded to smaller companies involved in strategic goods trade. An extensive public relations and training program are also part of the effort to increase awareness within industry.

Information technology has been used to improve the strategic trade management system. The presentation highlighted the use of an online licensing system that allows for applications and issuances of export licenses and provides classification services, which includes the ability to search for the export control code number using the harmonized commodity description and coding system (HS).

The second country report noted that while the country has exerted its best effort to enhance its export control system, there were still significant difficulties in strengthening the system without additional outside assistance. Specific problems highlighted included the lack of a single repository of laws and regulations pertaining to export controls, and a policy environment that sought to promote exports and viewed export controls as a hindrance to that goal because they require additional physical and documentary examination by Customs. The report also noted a lack of appropriate laws to implement various international agreements and conventions (e.g., no prohibition on dual-use technologies, goods in transit or transshipment) and the slow legislative process in the country.

The presenter felt that it was necessary to increase awareness in all government agencies as well as the private sector. One means being taken was the use of executive orders to create guidance to move the process of creating a legal framework for more effective strategic trade management. While this would be a temporary fix, it was starting to show progress. Examples cited included an improved interagency process to address issues such as toxic and hazardous substances and a review of policies and procedures for dealing with dual-use technologies. The country was also in the process of identifying agencies primarily responsible for specific aspects of its strategic trade management system.

The third country presentation focused on difficulties encountered with developing an effective strategic trade management system. Echoing a common theme, the presenter noted that because the prevailing attitude was that export controls ran counter to the larger policy of promoting exports, the program has faced difficulties getting adequate funding and support in

some agencies. Most inspections are done manually and there is a need for more and better equipment. Specific items mentioned include better communications equipment, a container x-ray scanner, and equipment to monitor the country's extensive land and sea borders. Another source of difficulty was the lack of interagency coordination and the overall lack of attention from agencies not directly involved in border control activities, thus making it difficult to get funding to expand capacity and improve information collection to improve enforcement.

The presenter from the fourth country emphasized steps being taken to develop capacity to improve the country's strategic trade management system. First, the country has designated specific agencies with tasks associated with implementing export control measures. The government has used both technical and policy experts in the process to ensure both sides are adequately addressed. The country has established two levels of control – the central government and the provincial level. Using a standardized control list, the first license review is done at the provincial level. If it is deemed sensitive, it is forwarded to the central government for final clearance. In the past five years, this country has worked on developing a customs HS system with more than 900 items identified as being controlled for dual use. Regulations stipulate that companies should know that technology is sensitive and must report export requests to Customs officials. The burden is placed on the company to get the necessary training and build an internal compliance program. Customs officials also actively cooperate with outside experts on identification training. They are also developing hardware for monitoring inbound and outbound freight.

The country has begun punishing companies that violate regulations. Punishment includes both criminal and civil prosecutions. Fines for violators are more than three times the value of the exported items. The fact that this action has bankrupted several companies has been viewed as an important incentive to comply.

The fifth country presentation began with an overview of the status of the national enforcement of UNSCR 1540, a catch-all control mechanism, and the Wassenaar arrangement or "military catch-all" as a means to build export control capacity. The country has an active outreach program with other countries in the Asia-Pacific region, using seminars to improve coordination among them. Domestically, it has reached out to universities to provide guidance regarding "intangible technology." Three principles that would guide future developments in export controls include adapting systems upgrades to the emerging strategic environment, more focused regulatory measures to tighten regulations where necessary (while working to ease administrative burdens where compliance is evident), and intensifying controls especially in the areas of "intangible technology" and deemed exports. The presentation concluded by identifying the top three priorities for funding: enforcement of transshipment control; monitoring and tracking of suspected cargoes, which includes assessment of risks; and information exchange among Asian countries.

The presenter for the sixth country began by outlining the statutory basis, the regulatory mechanisms governing enforcement practices in the country, and the institutional framework that governs the process. Specific enforcement mechanisms mentioned include deemed exports, intangible transfers, end users, catch-all clause, transit and transshipment, re-export, brokerage control, and a Special Chemicals, Organisms, Materials, Equipment and

Technologies (SCOMET) list, which includes a wide range of materials in seven categories. Methods of enforcement include pre-license screening at the national level, compulsory reference to the interagency body for dual-use goods trade, an automated export control system, registration of dual-use goods suppliers with the Custom offices, an accredited clients system, corruption prevention mechanisms and agencies, and graded penalties. Prevention is the thrust of the enforcement system and intelligence gathering has been a key part of that effort.

Specific enforcement challenges identified included the lack of reciprocity by international partners, the high cost of some detection equipment, the ability to share intelligence, the development of comprehensive data bases, the tension between promoting exports and implementing export controls, the effort to homogenize efforts, implementation of risk management strategies, false declarations, the need to dedicate enforcement to export controls, and the costs of developing and maintaining an effective training program. The presentation concluded that while the country's system met current standards and the country was committed to improving it, the focus should be on trade facilitation.

The seventh presentation on India began with the speaker, Rajiv Nayan, noting that Customs has primary responsibility to enforce export policy and is the principal enforcement agency in India. The government has undertaken several measures to enhance national implementation of international export controls regime to include:

- Notification when exporting items on the national control list;
- Notification of Export Controls Oversight Board;
- Participation in IAEA illicit trafficking database;
- Participation in the Container Security Initiative (CSI);
- Development and implementation of the National Nuclear Security Action Plan;
- National legislation for implementation of the Biological Weapons Convention;
- Establishment of a Strategic Export Control Division;
- Development and improvement of licensing and enforcement rules and regulations.

Challenges faced in implementing an effective export controls program include the need to improve and harmonize export control rules and regulations, development of human resources to support implementation and training, monitoring, and controlling long borders, an inability to get international technical assistance, training people in the skills and concepts associated with export controls, and developing the infrastructure and awareness programs.

During the discussion, the relationship between export controls and export promotion received considerable attention. Several participants argued that the two should not be viewed as incompatible. One pointed out that the number of export licenses applied for each year in most countries was not that great and that only a fairly small number of companies actually trade strategic goods. Further, the cost of an internal compliance program within a company is actually quite small, depending on the scope of trade involved. One participant pointed out that when state companies are involved, there is already good controls in place to monitor compliance. Another countered that the reason few companies apply for a license is because the process is too elaborate and they fail to see the value added. This was blamed on a lack of education.



A second topic of discussion was the perceived need for legislation before proceeding with implementation of strategic trade enforcement programs. One participant stated that legislation is important, but there were other ways to proceed in the absence of specific legislation. One alternative is to operate under executive orders. While it was recognized that this is a temporary solution, it did allow a country to go ahead with the program. What is most important is a mission statement in laws and customs to refer to strategic trade management and export controls. Another alternative is to use nongovernmental organizations to help educate business and government leaders on how to proceed with implementation while the legislative basis is being developed. Several agreed that using outside experts has been a great help in advancing their strategic trade program.

Another participant pointed out that it was important to include countries like North Korea into the international export controls regime. This should not be viewed as a punishment, but rather as a means to help integrate it into the international system. He suggested the topic be taken up in the Six-Party Talks Denuclearization Working Group. Given the growth of the Kaesong industrial complex, this should be included in future dialogue between North and South Korea.

**Technical Benchmarks of Enforcement Practices Implementation.** Session four focused on the status of UNSCR 1540 implementation. Seema Gahlaut of the University of Georgia's Center for International Trade and Security gave a presentation on the progress of UN member states in implementing UNSCR 1540 with specific emphasis on ASEAN and CSCAP member countries. She noted that as of July 1, 2008 all 10 ASEAN countries and all except two CSCAP member countries (North Korea and Papua New Guinea) have submitted a national report to the UNSCR Committee. Gahlaut proposed a CSCAP template that can be used to evaluate export control implementation. The template matrix allows users to evaluate progress made in the areas of legal bases and licensing, enforcement, government-industry relations, and regime adherence (vertical axis) in terms of laws and regulations, institutional development, and processes (horizontal axis). An additional optional category on the horizontal axis would be the status of implementation measured in each case by evidence of activity. The complete matrix is shown in appendix one to this report and is recommended as a best practice to be used to evaluate progress made in implementing export control programs.

A revised implementation guideline of the UNSCR 1540 Committee will focus on parsing activities regulated by laws and regulations in each of the technology areas (nuclear, biological, chemical, and delivery systems). The shift is intended to distinguish between activities that are being controlled for internal security purposes and those controlled for nonproliferation reasons. Gahlaut offered a detailed breakdown of existing regulations related to nuclear, biological, and chemical materials in all UN member countries: she highlighted ASEAN regulations contrasting those aimed at public health and internal security vs. those aimed at nonproliferation. She also offered a comparison of regulations that were aimed at public health and internal security vs. nonproliferation in the areas of munitions materials, the existence of multiple control lists, and the establishment of implementation institutions and procedures in ASEAN countries.

Her analysis showed that there are clearly different national priorities in the region that appear to be based on an assessment that WMD-related issues are less of a threat than non-

WMD terrorism and other more conventional concerns. The problem with that assessment is that it fails to take account of the threat posed by growth in science and technology and engineering, more transshipment, and the creation of new special economic zones and free trade areas in the region. Therefore, there is an immediate need for capacity building, better interagency coordination, shared control lists to improve monitoring, and coordination. An additional challenge for ASEAN and CSCAP member countries is the wide variations in the systems that filter the growing trade both within the region and with the rest of the world. A second challenge, discussed during previous sessions, is getting past the notion that export controls conflict with export promotion policies. Remedies to this challenge include better outreach to industry, better consensus between agencies, improved data collection on companies involved in trading strategic goods, and adoption of tools for targeted inspections.

Anupam Srivastava provided some clarifications and elaborations. He pointed out that the critical element of proliferation-related regulations was identifying the legal authority and legal mandate for action. It does not necessarily entail new laws. Procedures for licensing must be clearly identified to avoid an overlap in jurisdiction and control lists should be developed from existing control regimes rather than from scratch. Investments in export control measures are fungible and can be applied to a variety of other concerns such as anti-smuggling and antipiracy. A strong commitment to a regional regime would demonstrate to the outside world that the region is interested in a higher level of technical safeguards and better strategic trade management.

The ensuing discussion focused on the role ASEAN should play in developing an export control regime in the region and more generally how the process of regime formation is evolving and should evolve from here. Several participants noted that while there had been some movement within ASEAN to address export controls, the preponderance of effort has been from more advanced countries pushing for more action, sometimes without a very positive response. In one case a country refused to accept an offer of an export control system through overseas development assistance. It was also noted that several NGOs, such as Nomura Research Institute and the University of Georgia's Center for International Trade and Security, have been at the forefront of offering assistance in the region.

Several participants suggested ASEAN should take the lead in developing an effective regime. One participant stated that given the unevenness among countries, the lack of collective capacity, and other distractions, it was unlikely that ASEAN could coordinate an effort to develop an export control regime and leadership should therefore come from outside the region. Another participant disagreed: given ongoing efforts in several ASEAN member countries, the initiative need not come from the outside. Export control is not new and ASEAN is moving toward the desired end. The real need is to establish a network among member states to begin developing a coordinated approach. The discussion concluded with a reminder that although UNSCR 1540 does not make judgments about the effectiveness of national programs, it does serve as a basis for implementing effective programs and the ARF has called for national implementation and building capacity to achieve that end.

**Capacity Building for the Future.** Session six focused on the future of capacity building to improve strategic trade management in the region. William Comley, regional adviser for the U.S. State Department's Export Control and Related Border Security (EXBX) Program, provided a perspective on the topic that began by identifying the four common challenges of

developing effective laws and regulations, creating adequate licensing procedures, an effective enforcement process, and a strong program of outreach to industry.

He made several suggestions on ways to increase capacity. First, infrastructure should be expanded through workshops on developing the legal-regulatory architecture and national control lists as well as the establishment of a regional export controls academy. Second, automated tracking systems and the IAEA Regulatory Authority Information System (RAIS) should be adopted. Third, he highlighted training programs to enhance enforcement. These include commodity identification, international seaport interdiction, international border interdiction and ICE investigations. Finally, government-industry relations should be improved through the use of enterprise outreach seminars.

During the discussion period several participants again highlighted the importance of NGOs and government-sponsored consultation services designed to expand capacity. Another participant highlighted the fact that mechanisms to ensure strategic trade management require constant revision and adaptation to new threats and opportunities.

**CSCAP Memorandum on Strategic Trade Management.** Session seven was spent reviewing and reaching consensus on a proposed CSCAP memorandum on strategic trade management which is enclosed as appendix two to this report. This memorandum will be submitted to the CSCAP Steering Committee as a working document of the experts group.

## APPENDIX 1

### *Template to Tabulate EC Implementation*

	<b>Laws &amp; Regulations</b>	<b>Institutions</b>	<b>Processes</b>	<b>Implementations (optional)</b>
Legal Bases & Licensing	<ul style="list-style-type: none"> <li>- Acts</li> <li>- Lists</li> </ul>	<ul style="list-style-type: none"> <li>- Agencies</li> <li>- Jurisdiction</li> <li>- Coordination</li> <li>- Training</li> </ul>	<ul style="list-style-type: none"> <li>- Licensing Process</li> <li>- Requirements</li> </ul>	Evidence of activity
Enforcement	<ul style="list-style-type: none"> <li>- Acts for actions</li> <li>- Authority for actions</li> </ul>	<ul style="list-style-type: none"> <li>- Agencies</li> <li>- Jurisdiction</li> <li>- Coordination</li> <li>- Training</li> </ul>	<ul style="list-style-type: none"> <li>- Enforcement procedures</li> <li>- Penalties</li> <li>- Risk-analyses</li> </ul>	Evidence of activity
Govt-Industry relations	<ul style="list-style-type: none"> <li>- Provisions to inform</li> <li>- Provision to review compliance</li> </ul>	<ul style="list-style-type: none"> <li>- Mechanisms for infor-sharing, advice, consultation</li> </ul>	<ul style="list-style-type: none"> <li>- Extent of the institutionalization of contact</li> </ul>	Evidence of activity
Regime Adherence	International obligations incorporated into law?	Agencies designated to monitor compliance?	<ul style="list-style-type: none"> <li>- Responsiveness</li> <li>- Contribution to the regimes</li> </ul>	Evidence of activity

Developed for CSCAP Export Control Experts Group by Dr. Seema Gahlaut and Dr. Anupam Srivastava drawing upon methodology created by the Center for International Trade and Security, University of Georgia, USA

## **APPENDIX 2**

### **Council for Security Cooperation in the Asia Pacific Export Controls Experts Group Memorandum on Strategic Trade Management Manila, Philippines, August 2008**

Strategic trade management protects a nation's security, trade relations, and international reputation. It is fundamental to ensuring the security and integrity of the global supply chain. It also serves as a confidence-building measure for facilitating trade, economic growth, and development. This memorandum recommends specific measures involving legislation, licensing procedures, enforcement practices, and industry outreach that the CSCAP Export Controls Experts Group believes are essential to an effective strategic trade management system.

Countries developing high-tech and value-added economies increasingly depend upon their strategic trade management system to protect goods and technology from diversion, manipulation, theft, and other criminal activities. Secure supply chains are critical to the success of global nonproliferation efforts by guarding against the improper transfer of legitimate dual-use and other strategically useful commodities to those wishing to acquire Weapons of Mass Destruction (WMD) or radiological weapons capability. We must also ensure that nonstate groups ready to use these weapons do not obtain such technologies and equipment. Due diligence and risk assessment capabilities are important means to this end.

Asia's increasingly important role in the global economy, its growing capabilities in value-added manufacturing and services sectors, and its deepening integration with states within and outside the region underscore the need to strengthen national and regional capacity to implement and enforce strategic trade management. United Nations Security Council Resolution 1540 (UNSCR 1540) imposes an affirmative obligation on all member states to take active measures to prevent the proliferation of WMD. Strategic trade management is an integral component of that effort.

Increasing integration implies that effective trade management is only possible on the basis of broader international cooperation. Strategic trade management systems should be promoted by all Asia-Pacific community-building institutions including ASEAN, the ASEAN Regional Forum (ARF), Asia-Pacific Economic Cooperation (APEC), East Asian Summit (EAS), and ASEAN Plus Three. Regional efforts to develop strategic trade management systems will ensure that national programs are harmonized to the extent possible, respecting and reflecting particular domestic circumstances and capabilities. Insofar as differences among states exist, all nations should commit to assist other governments in need to improve their capabilities, participate meaningfully in such regimes, and enjoy the full range of economic and security benefits. To accomplish this objective, we urge all governments to conduct a rigorous assessment of their capabilities and requirements for strategic trade management.

An effective strategic trade management regime should be based upon a common set of elements. These elements include, *inter alia*, comprehensive legislation, effective procedures for licensing and enforcement, associated incentives and penalties, as well as mandatory and

sustained outreach to industry.

## 1. Legislation

- (a) Each member state should establish a comprehensive law that provides for controls on *all activities* by unauthorized individuals, organizations, and groups regarding all goods, equipment, materials, software and technologies related to Weapons of Mass Destruction (WMD) and their delivery systems.
- (b) Controlled *activities*, as per UNSCR 1540, must include possession, stockpiling, transport, exports, re-exports, transfers, imports, transit, transshipment, brokering, and warehousing, complementing and consistent with prohibitions on manufacture, sale, use, and intent to use that already exist in regulations of most states.
- (c) The legislation should establish either a unified control list or individual control lists, drawing upon models such as the European Union list of items and technologies (e.g., nuclear, chemical, biological, missile, munitions) to which these controls apply. Such lists will provide a clear frame of reference for enforcement agencies such as Customs, border security, national police, and armed forces as they train their staff to identify proliferation-relevant items and prohibited activities.
- (d) Member states should consider establishing a region-wide common control list and common minimum licensing criteria, keeping in mind individual national capacity, capability, and state structure. This would allow for uniform standards and controls across the region and greatly reduce time and cost incurred in the review of license and Customs documents relating to regional trade in advanced goods, technologies and services.

## 2. Licensing Procedures

- (a) An inter-agency license review process that involves all the concerned ministries/agencies should be established to ensure all relevant factors (national security, foreign policy, trade promotion, and technology development) are duly considered in reaching each decision.
- (b) In addition to the inter-agency license review process, a consolidated electronic database on exporters, importers, and foreign end-users involved in transactions relating to controlled items should be established. The database would allow governments to monitor the number of licenses issued for each technology-type over time – a useful statistic for domestic and foreign policy purposes. It would also be a useful tool for enforcement agencies as they develop risk-based systems for cargo inspections.

## 3. Enforcement

- (a) All states should consider consolidating authority into a limited number of ministries/agencies with specific authority to serve as the nodal enforcement mechanism for strategic trade violations.

- (b) Authorized and empowered ministries/agencies should work with strategic trade management mechanisms and regimes, such as the World Customs Organization, irrespective of their membership in such regimes to establish a positive correlation between each of the licensed commodities on the country's internal control lists and the trade-relevant harmonized tariff system codes (HS), to ensure that enforcement officials (Customs, border guards, and coastal patrol service) are easily able to identify potentially controlled products on the documents that they review (shippers export declaration, shipping manifest, and Customs declaration, etc).
- (c) The agency empowered with inbound and outbound trade monitoring, should develop an automated risk management system that will assist these officers, licensers, and others in conducting risk review on manifests quickly and prior to the goods transiting, transshipping, arriving, or departing at the nation's port.
- (d) Enforcement agencies should strive to share information to ensure this information is used for assessing transfer risk and aiding in investigations.
- (e) The agency designated with investigative responsibility should be authorized to take the lead in investigations related to sensitive commodity trade violations as well as an active role in the prosecution of civil and criminal cases related to WMD-related violations.
- (f) WMD proliferation and crimes related to illegal strategic commodity transfers, including corruption, should be treated with the utmost severity by assessing fines and criminal penalties in accord with the intent and extent of the transfer.
- (g) The enforcement and legal community should be clear about the severity attached to different types of transfers that violate national security so penalties are in accord with intention and the proportional damage to state security.
- (h) All agencies involved in enforcing WMD-relevant laws and regulations, including prosecutors and the judiciary, should be provided relevant training.
- (i) All agencies involved with enforcement should have a dedicated process in which to seek expert national or international technical assistance on a potential controlled item.
- (j) All enforcement agencies should take advantage of assistance being offered by the international community in the area of enforcement and reach out to the United Nations and relevant assistance providers with requests for any required training support.

#### **4. Industry-Government Relations**

- (a) Either the lead agency for license review or the lead agency for enforcement should establish standard operating procedures to provide outreach to industry. This should include developing and updating a website devoted to clarifying WMD-relevant regulations. This website could provide texts of all relevant laws, regulations,

guidelines and forms, along with links to all concerned ministries, contact information, and appropriate explanations that would help businesses direct their queries relating to compliance or commodity classification or other issues.

- (b) Governments and industry should institutionalize dialogue on strategic trade management. This should include events where government officials and industry representatives exchange views on WMD-relevant regulations and implementing procedures. Annual meetings of various manufacturers and industry associations, or technology exhibitions and trade fairs, might be utilized to organize such interactive meetings.
- (c) Agencies participating in investigations should actively work with their strategic industry to develop a close relationship to develop leads related to illicit transfer of controlled commodities as well as having a “hotline” available for other informants.
- (d) Governments and industry should create incentives to encourage compliance with strategic trade systems to promote trade.
- (e) Relevant companies should establish internal compliance procedures, and governments should be ready to advise and assist them in that process.

## **5. Financial and Technical Assistance**

- (a) ASEAN and/or the ARF should create a pool of technical and financial resources that will be made available to strengthen capacity building in strategic trade management.
- (b) Countries with superior strategic trade management systems are should provide financial and technical assistance to those with recognized deficiencies. This assistance is best sourced bilaterally and recipient countries should make a thorough evaluation of their needs prior to seeking assistance from donor countries.
- (c) Donor and recipient countries should meet periodically to review and evaluate assistance given and to guide further action.