



**Fifth Meeting of the CSCAP Export Controls Experts Group
Hanoi, Vietnam, Dec. 9-10, 2009
Chairman's Report**

The fifth 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 Dec. 9-10, 2009 in Hanoi, Vietnam. Over 20 people attended from 13 Council on Security Cooperation in the Asia-Pacific (CSCAP) member committees and other institutions. An additional 11 members of the Pacific Forum CSIS Young Leaders program were present to contribute next-generation perspectives on these issues. While some participants came from government agencies, all took part in their private capacities. USCSCAP extends sincere thanks to CSCAP Vietnam and the Diplomatic Academy of Vietnam for their excellent work organizing this meeting. The purpose of the meeting was to review the CSCAP Memorandum on the Guidelines for Managing Trade of Strategic Goods and discuss ideas for future work of the group. The report that follows reflects the opinions of the chair; it is not a consensus document, although it has been reviewed by XCXG participants.

Feedback on the CSCAP Memorandum No. 14 on Guidelines for Managing Trade of Strategic Goods. Following opening remarks by the chair, *Brad Glosserman (USCSCAP)*, the meeting began with session that offered the opportunity for participants to provide feedback on CSCAP Memorandum No.14. Several participants who attended the inaugural ASEAN Regional Forum (ARF) Inter-sessional Meeting (ISM) on Disarmament and Nonproliferation in Beijing in June 2009, where the memorandum was tabled, provided insights. Those who attended the ARF ISM on Disarmament and Nonproliferation reminded the group that just getting the memorandum on the agenda should be considered a major accomplishment; they also pointed out that it was generally well-received. An observation was that there was a great deal of emphasis at the ISM on UN Security Council Resolution (UNSCR) 1540, which has mandates, but generally lacks details on how to proceed. Similarly, there was a general understanding of the current export control regimes in individual countries, but there seemed to be a lack of understanding of what was needed to make national capacity more robust. This reflected the need to promote transparency and reassure countries that effective management of strategic goods promotes trade.

Several participants also provided feedback from national governments regarding the memorandum. One concern expressed was of those who fear that “export controls” will hinder a country’s interest in economic growth through trade. Therefore, it will be important to find other avenues to sustain interest and promote further action in implementing the recommendations contained in the memo. Another questioned the

value of the ISM as a vehicle for implementing the CSCAP memorandum as the group has a broad agenda that will probably not return to a discussion of strategic trade management for several years. Others reported that the memorandum had been well-received and that their governments were working on implementing several of the recommendations.

A Thai participant suggested that the memorandum be introduced to the ASEAN Senior Official's Meeting in the near future to ensure it receives appropriate attention by national-level officials in Southeast Asia. He argued that the recommendations should be integrated into ASEAN's new master plan on connectivity, which is intended to enhance the regional transportation network, as this would be an ideal vehicle for integrating security into the regional trade architecture and harmonize regional trade standards. Given APEC's focus on economic and trade relations in the Asia-Pacific region, another participant urged the group to explore APEC's various trade management initiatives to ensure consistency and take advantage of the existing relationships.

One criticism of the memorandum concerned the recommendation for the development of a regional control list and common licensing criteria as a means to allow uniform standards and reduce time and costs incurred in review of documentation. While several noted the intent of the provision was to encourage synchronization in projects such as the ASEAN connectivity initiative, others pointed out that the recommendation had been a source of confusion because several countries in the region rely on the European Union (EU) control list or the list developed by the Nuclear Suppliers Group (NSG). This led to concern that the recommendation would create overlapping requirements which would result in conflicting priorities and confusion. Others suggested that although a universal list is desirable, perhaps administered under the auspices of the UN, the best approach at the current time would focus on a national-level control list that is consistent with the EU and NSG lists in anticipation of a regional list that would address specific aspects of the Asia-Pacific trade and security environment.

There was a consensus that the success of any effort to institutionalize export controls in the region means taking advantage of all multilateral trade, customs, and law enforcement regimes to avoid duplication and ensure that when regional initiatives are undertaken, national-level control lists are as compatible as possible. Also, there should be ongoing efforts to encourage industry to view the management of strategic goods as trade enhancing rather than as limiting business opportunities. Several participants agreed that this approach was a key to growing interest within their countries for implementing recommendations in the memorandum.

Proliferation Networks and Export Controls. The second session examined the relationship between proliferation networks and export controls. *Mark Fitzpatrick*

(International Institute for Strategic Studies) began by noting that over a dozen countries have acquired nuclear technology through the international black market for nuclear-related materials. The so-called AQ Khan network involved at least 30 different companies and middlemen located around the globe and were motivated by individual profits and involved several techniques that continue to be used by North Korea and Iran to subvert existing nonproliferation regimes. Fitzpatrick pointed out that even though UNSCR 1540 imposes legally binding obligations to adopt export control measures to counter these activities, there continues to be a great deal of suspicion and several misperceptions regarding the value of strategic trade management, making the threat of nuclear proliferation a serious concern for all countries in the region.

Next, *Ali Sarwar Naqvi (South Asia Strategic Stability Institute)* offered his view of the AQ Khan network. He began by saying that most nuclear programs, including the French, Russian, Chinese and Indian programs, were begun through clandestine acquisitions of nuclear technology. While acknowledging that the Khan network was linked to Pakistan's development of nuclear weapons, Naqvi argued that Khan took advantage of his position in the program to create exceptions to national policy and established trading accounts that were not subject to government oversight. He also suggested that Pakistan's decision to openly declare its nuclear weapon program helped lead to the exposure of the Khan network. The Pakistani government learned the need to institutionalize the safety and security of its nuclear complex, improve the transparency of the supply system, establish a robust export control system that adopted international best practices, and the need for active cooperation with the IAEA. He concluded by warning that even though Pakistan's aggressive action to manage strategic trade had greatly reduced the likelihood of another similar proliferation network emerging, without strong action by all countries another network would emerge. Therefore, close cooperation among all countries in the region and the world is paramount.

Doug MacKinnon (CSCAP Australia), a co-chair of the CSCAP Study Group on Transnational Crime Hubs, outlined his study group's project on predicting and countering the development of transnational crime hubs in the Asia-Pacific region and the relationship with proliferation networks. Given that 140 countries have passed legislation to address transnational crime based on the UN Convention on Organized Crime, a well-developed institutional framework exists. MacKinnon argued that the key relationship between export controls and transnational crime is that criminal networks are indiscriminant in their targets. If strategic goods can be smuggled or traded for profit, they represent opportunities to expand the scope of the network. Therefore, it is important to seek synergies between organizations and agencies involved in monitoring and responding to transnational threats.

Commentators concurred that it was important to leverage institutional relationships to both avoid duplication of effort and realize economies of scale in enforcement operations. Another key aspect of crime networks that was highlighted as an ongoing

problem was that of brokering. One participant noted that one constant factor in the disclosures following the uncovering of the AQ Khan network and other crime syndicates is the utilization of transshipment hubs to mask the origins of items and identities of the sellers. It is dangerous for a government to assume that because it produces nothing it does not have to worry about export controls.

Another issue raised was the fact that many proliferators, like Khan, operate in both their public and private capacity. Even when enforcement agencies are able to identify cargoes with contraband, they are reluctant to take action because of perceived national interests or in the hope that a low-level proliferator will lead them to the larger proliferation network, both of which occurred in the Khan case. To address this issue, UNSCR 1540 has mandated that countries must take action to create a legal regime to deal with those involved as third parties or transshipment hubs.

Regional Capacity Building. *Anupam Srivistava (Center for International Trade and Security)* opened the session with an overview of how strategic trade controls can be managed to make them trade-enhancing while maximizing security. He emphasized the legal and regulatory framework established in the US and the EU. His examination of national regimes around the world revealed five trends. They are:

- Licensing is done through interagency coordination,
- Customs agencies lead on enforcement and seizure,
- Justice departments take the lead in prosecution,
- Intelligence agencies are involved in identifying potential targets,
- Foreign affairs departments are involved in providing advice on advisability of prosecution and policy implications.

He concluded that the most effective national control lists are developed by borrowing from other lists such as the EU list, the Australia Group list, and the Nuclear Supplier Group list and adapting them to local requirements.

The discussion produced several suggestions on how to encourage regional capacity building, especially within ASEAN. Several noted that because management of strategic good straddled so many functional areas, it was important to ensure the topic was on the agenda of as many agencies as possible. It was crucial that the topic be kept high on the agenda of the ASEAN Senior Officials Meeting (SOM) and that it is on the agenda of the current ASEAN chair country for top-level exposure on the national agendas. Another participant suggested that it was also important that member countries understood that strategic trade management was critical to being able to move up the value-added supply chain. Investors will demand security of the systems and governments have to be responsive to those concerns.

Another focus of the discussion was the need to maintain a dual-track approach in Southeast Asia. While it was important to work toward ASEAN-level policies, it is equally

important to recognize that national governments will have to implement them. This approach has worked in counterterrorism where a training course was developed for ASEAN and implemented at the national level with consultation. Similarly, the ASEAN Commission on Human Rights was created with the intent of being able to create momentum for national implementation. In short, regional initiatives must be seen as a means to backstop national efforts and not as a substitute.

Other organizations such as the World Customs Organization and APEC have significant resources available for improving the management of trade in strategic goods, especially in the area of enforcement. Several countries, specifically Singapore in Southeast Asia, have developed sophisticated and efficient strategic trade management systems that should be used as benchmarks and sources of ideas to ensure effective implementation in the region.

Capacity Building: Role of Enforcement. The fourth session examined ways that enforcement has improved regional strategic trade management capacity. *Heigo Sato (CSCAP Japan)* began by outlining Japan's outreach programs to improve enforcement in the region. These include multilateral dialogues to exchange ideas on policy issues, seminars and training programs on inspection procedures, improving detection capacity, enhancing information sharing and intelligence gathering techniques, and developing joint investigation techniques. One of the significant features of the evolving outreach programs is that the emphasis has shifted away from increased awareness to improved enforcement and implementation. He argued that several challenges remain in improving enforcement capacity including improved interagency cooperation, better intelligence-sharing among national law enforcement agencies, and improving industry compliance programs, which tend to burden industry to comply with strategic trade management regulations and often places companies at a disadvantage in comparison to companies from other countries.

Next, *Hwang Dong-hwang (CSCAP Korea)* provided a briefing on South Korea's online export control system named *Yes trade*[®]. He argued that the system has streamlined the licensing process by automating classification and greatly reduced the cost burdens of export control compliance for industry and improved the government's control of strategic goods while ensuring compliance with USNCR 1540 requirements. The Korean government has offered this system to several countries in the region.

Mohamed Yasin Sudin (CSCAP Malaysia) presented an overview of Malaysia's approach to complying with export control requirements through its nuclear and radiological material detection network. The system has been deployed at entry points throughout the country and consists of an environmental radiation monitoring system (ERMS) and a portal monitor for radiation detection for vehicular and pedestrian traffic. The ERMS offers continuous detection capability and is monitored in real time at an emergency response facility. He concluded the presentation by outlining challenges facing Malaysia

as it contemplates ways to improve its strategic trade management system in accordance with IAEA and UNSCR 1540 requirements.

Discussion began by noting the importance and difficulty of matching donor capacity with recipient need. Even though there are several mechanisms including the UNSCR 1540 committee, the IAEA outreach programs, and individual outreach efforts available, there still seems to be a disconnect between what countries need and what is available to assist them. Several participants responded to the observation with comments. One noted that the IAEA has a wide range of assistance programs and should be the primary source for assistance in meeting requirements for safeguards. Another noted that the US EXBS program has worked to ensure adequate liaison is established to minimize the overlap and duplication among outreach providers. Nevertheless, there was growing frustration among governments providing assistance because it is increasingly difficult to see tangible results and outcomes from the efforts. The frustration also extends to recipient countries who complain that the programs are too general and do not meet their specific needs. There were several recommendations to consolidate outreach programs and increase coordination among by designating lead and coordinating agencies.

Regional Mechanisms and Linkages. The first presentation in this session was provided by *Suriya Chindawongse (CSCAP Thailand)* and focused on regional approaches to implementing strategic trade management in Southeast Asia. He observed that there is a great diversity in interest and development of strategic trade management legislation in the region, no clear policy or strategy on managing trade in strategic goods in any of the blueprints for the ASEAN Community, and limited capacity and mandate to support regional trade policies. Therefore, the first step in implementing a regional approach would be to elevate its priority on the agenda of the ASEAN Community through a “Leaders Initiative” that would require consensus support from all ASEAN member states and be formalized in a declaration or some other framework document. It would be useful to examine ways to integrate strategic trade management principles and policies into initiatives such the Southeast Asia Nuclear Weapon Free Zone (SEANWFZ) Treaty and Action Plan, the ASEAN Master Plan on Enhancing Regional Connectivity, the ASEAN Maritime Forum, and the ASEAN Work Plan on Transnational Crime. Some short-term measures that could be taken to integrate strategic trade management into these initiatives include:

- Identifying and developing networks among national contact points to share best practices and exchange intelligence;
- Encourage development of national legislation and control lists that are compatible with those of other countries in the region;
- Develop regional database of relevant national laws, regulations, control lists, and policies related to strategic trade management;
- Develop a roster of trained experts that can be use to promote capacity building in the region;

- Enhance capacities at regional organizations to support the management of trade in strategic goods.

Long-term measures include harmonization of national laws, regulations, control lists, and polices along with the development a regional regulatory body with an inspection agency. These measures could be used to develop and sustain synergies with other organizations such as ASEAN Plus 3, East Asia Summit and the ASEAN Region Forum.

Bill Comley (US Export Control and Related Border Security (EXBS) Bangkok Office) provided an overview of the approach taken by the US EXBS and lessons learned in efforts to assist in the implementation of UNSCR 1540 and build national capacity in the region to strengthen export control mechanisms. While noting that it was important to work through existing regional and international organizations, it was critical to avoid the perception that implementation would interfere with efficiency or reduce profits for industry. Although there have been technical difficulties with installing and operating detection equipment, partnerships with organizations affiliated with the ASEAN Regional Forum and ASEAN have been a key component of implementing UNSCR 1540 and building national capacity for better management of strategic goods in the region.

Rajiv Nayan (CSCAP India) offered a slightly different perspective in his presentation on the growing partnership between India and Southeast Asian countries. He argued that implementation of an effective trade management system for strategic goods would be best done at the national level. Regional mechanisms might be desirable, but they should remain voluntary and developed with individual countries rather than at the regional level and enforced by the state. This would allow maximum flexibility and encourage participation by a wider array of governmental and nongovernmental agencies. Therefore, the focus of the agenda should be on international best practices and intelligence sharing while working to ensure that national legislative and regulatory frameworks are compatible. With increased interaction between India and Southeast, it is important to ensure political sensitivities are properly addressed, over-regulation avoided, and the emphasis on integrating and not isolating the region within the global economy. The best way to do that is to avoid regional regimes and ensure national-level polices are both consistent with those of the regional partners and the rest of the world.

The focus of the discussion centered on the growing trade and economic relationship between South Asia and ASEAN and the need to promote better cooperation while ensuring the management of strategic goods is integrated into the trade infrastructure. Several participants noted that one of the keys to successful integration of strategic trade management will be timely and actionable sharing of intelligence. Another issue raised was that although ASEAN has the most potential to move forward with a regional approach to strategic trade management, the organization has a large number of initiatives that demand the attention of member states. Therefore, it would remain important for those promoting export controls in ASEAN to work to integrate these requirements in other region-wide initiatives.

Wrap-up. The meeting concluded with a brief session on ideas regarding the future direction of the experts group. While there should be a great deal of satisfaction with the CSCAP Memorandum on Managing Trade of Strategic Goods, several areas could be the focus of future discussions. There could be more coordination with other groups working on transnational crime and more involvement by members of the UNSCR 1540 committee. Another suggestion was to have the group identify key stakeholders in their respective countries and examine how individual countries prioritize requirements associated with strategic trade management.

There was also a cluster of recommendations that focused on regional issues. One participant suggested that there be more emphasis on other regional perspectives. Another suggested that the group examine the influence UN sanctions or the threat of these sanctions have had on regional responses to strategic trade management. Another argued that more work should be done to identify regional initiatives that could be usefully integrated into a framework for improving strategic trade management. Given the overlap between agencies involved in influencing trade and the large number of ad hoc groups such as the NSG, Australia Group, Zangger Group, etc, there would be value in trying to create economies of scale and eliminating duplication.

Another set of suggestions focused on further elaboration of recommendations in the four areas (legislation, licensing, enforcement, and outreach) included in CSCAP Memorandum No. 14. This would enable a better understanding of the level of development in the region and serve as a mechanism for making recommendations on specific improvements and match those needs with assistance providers.

The chair closed the session by thanking participants for their valuable contributions and CSCAP Vietnam for its excellent work in hosting the meeting. There is currently no date set for the next meeting of the group. In the meantime, participants were encouraged to provide any ideas on topics that might be useful in future meetings.