

Brokering- Transit/Transshipment—FTZ Strategic Trade Management In APAC

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Presentation Topics

- **Importance of effective brokering—transit/transshipment—FTZ strategic trade management (STM)***
- **Challenges to the adoption and implementation of brokering—transit/transshipment—FTZ STM**
- **International foundations and standards for brokering—transit/transshipment—FTZ STM**
- **Brokering—transit/transshipment—FTZ STM in APAC (including select examples)**
- **Conclusion and Q+A**

** This presentation focuses primarily on the legal/regulatory basis and licensing aspects of STM for brokering, transit/transshipment, and FTZs, but a truly effective system requires those elements, as well as the corresponding enforcement and industry outreach efforts*

Concepts In STM Context

- **Brokering (or “Intermediary”) STM** – requiring a license or special procedure for arranging, negotiating, or facilitating the sale, purchase, or transfer of a strategic (or “catch-all”-controlled) item from one foreign country to another
- **Transit/Transshipment STM** – requiring a license or special procedure when a strategic (or “catch-all”-controlled) item passes through a country’s port or territory (on same or different conveyances) on a through-bill en-route from one foreign country to another
- **Free Trade Zone (FTZ) STM** – the extent to which strategic trade management requirements apply to items entering, exiting, and within free trade zones and special economic zones

Importance Of Brokering— Transit/Transshipment—FTZ STM

- **High-volume of business and trade involving these types of transfers and activities**
- **All have been primary target points for proliferators over the last several years**
- **High proportion of strategic trade violation cases involving brokering, transits/transshipments, or FTZs**
- **Having legal basis, procedures, and enforcement in these areas, is moving from an international “best practice” to an international standard**
- **General supply chain security implications and benefits**

Importance Of Brokering— Transit/Transshipment—FTZ STM

- **From the Missile Technology Control Regime (MTCR) 26th Plenary Meeting Chairman's Statement (October 2012):**

Partners shared information and evaluations on recent developments in missile proliferation-related activities worldwide. Special emphasis was placed on rapid technological change, the role of intangible technology transfers, including through access to sensitive scientific knowledge, catch-all controls, brokering, transit and transshipment. In this context, they expressed concern about proliferators' efforts to exploit these phenomena.

Importance Of Brokering— Transit/Transshipment—FTZ STM

- **From the *Report of the Committee Established Pursuant to [UNSC] Resolution 1540 (2004)*, September 2011:**
 - Approx. 30% increase (61→78) in number of countries with legislative measures on brokering of WMD materials from 2008 to 2011
 - Approx. 23% increase (81→100) in number of countries with transit STM legal framework, and 25% increase (62 → 77) in number of countries reporting a transshipment STM legal framework (***though likely a result of transit/transshipment measures for nuclear-related materials***) from 2008 to 2011
 - Approx. 20% increase (61→73) in number of countries with end-user processes of some kind from 2008 to 2011

Challenges In Brokering— Transit/Transshipment—FTZ STM

- **“Political”**
 - Economic interests at stake
 - How to coalesce with regional trade arrangements and integration efforts
 - Resource and infrastructure constraints
- **“Practical”**
 - Volume and speed of transfers (sometimes hours, not days)
 - Who is the responsible party or what are the responsibilities of the parties?
 - Tracking consignments and the associated documentation

International Foundations

- **UN Security Council Resolution 1540 (2004)**
 - OP 3(c): Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat . . . Illicit trafficking and brokering . . .”
 - OP 3(d): “Establish, develop, review and maintain 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 . . .”
- ***Arms Trade Treaty (2013), Article 2(2)***
 - “For the purposes of this treaty, the activities of international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as ‘transfer’.”

Regional Foundations

- **APEC, *Key Elements for Effective Export Controls* (2004), Section 1 (“Legal and Regulatory Framework”):**
 - Controls on arms brokering and other intermediary activities
 - “Controls that extend to items that are transiting or being transshipped through an economy”
- **CSCAP, *Guidelines for Managing Trade of Strategic Goods* (2009)**
 - Recommendation 1(b): “Controlled activities, as per UNSCR 1540 should include . . . transit, transshipment, brokering . . . warehousing . . .”
 - Recommendation 3(c): “Procedures should be developed for evaluating parties in export, re-export, transit and transshipment transactions”

Brokering—Transit/Transshipment—FTZ STM Landscape In APAC

- **10 countries and areas in Asia-Pacific (out of 24)* currently have dual-use export control systems; of those:**
 - All with some form of controls on transits and/or transshipments (most with exceptions and/or end-use-based)
 - 6 with controls on brokering dual-use items (3 end-use-based only)
 - Several with “uniform application” to FTZs, and some with exemptions under certain conditions

** Using one of several definitions of who and how many constitute “Asia-Pacific”*

APAC EXAMPLES: Brokering STM

- **Korea**
 - A license required if ROK resident (person or company) arranges the sale or transfer of a strategic item from one foreign country to another, where that resident receives some direct or indirect benefit or compensation
 - A dedicated “Brokering Permit Application” Form and licensing process
 - Exemptions for items transferred under license from country of export
- **Other examples in APAC**
 - Permit required for brokering munitions transfers, and items subject to “end-use” controls
 - “Catch-all”-based brokering controls
 - No controls on brokering strategic items

APAC EXAMPLES: Transit/Transshipment STM

- **Singapore**

- A license required in all cases for transshipment of certain strategic items
- A license required for transits of strategic items that do not directly enter (and later exit) an FTZ or that remain in FTZs for more than specified time periods (depending on the mode of transfer)
- A dedicated “Transshipment/Transit Permit” and licensing process; permit required 5 days before the item transits/transships Singapore

- **Other examples in APAC**

- Transit/transshipment controls on nuclear items only
- “Catch-all”-based transit/transshipment controls
- UN sanction-based transit/transshipment controls
- Exemptions for the air transshipment of select strategic items

APAC EXAMPLES: FTZ Transfer STM

- **Mainland China**

- A license required for “the in-and-outs of dual-use items and technologies between the areas without the territory of the PRC and such customs specially-supervised zones and bonded localities as bonded zones and export processing zones etc.”
- No license required for “in-and-outs of dual-use items and technologies between the areas within the territory of the PRC and such customs specially-supervised zones and bonded localities as bonded zones and export processing zones etc., or between the aforesaid customs specially-supervised zones and bonded localities”

- **Other examples in APAC**

- Strategic items that directly enter and then exit the territory via an FTZ may be exempted from licensing requirements
- Transfers into, out of, and through FTZs treated the same as every other type of transfer of a strategic item from the territory
- No specific reference to the application of STM to FTZs

Concluding Points

- **In today's world of complex trade and complex proliferation, effective brokering—transit/transshipment—FTZ STM is critical to strengthening regional and global nonproliferation**
- **Different economies in APAC take different approaches to brokering—transit/transshipment—FTZ STM; brokering STM currently is not very prevalent across the region, and proliferators may be able to exploit gaps in current transit/transshipment and FTZ approaches**
- **Recommend three simultaneous efforts for the region:**
 - Countries and areas that have not yet established STM systems continue working to do so;
 - Countries and areas that have not yet established any form of brokering or transit/transshipment or FTZ STM approaches strive to do so; and,
 - Together with the development of regional trade cooperation and integration, gradually work towards common regional approaches to brokering—transit/transshipment—FTZ STM that balance trade and economic realities with nonproliferation goals.

Q+A And Discussion

Thank you for your time and attention, I will be glad to answer any questions now, or you may contact me any time at:

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