

CSCAP MEMORANDUM NO. 14

Guidelines for Managing Trade of Strategic Goods



**A Memorandum from the
Council for Security Cooperation in the Asia Pacific (CSCAP)**

March 2009

GUIDELINES FOR MANAGING TRADE OF STRATEGIC GOODS

Introduction

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. Using the guiding principles outlined in Appendix 1, *this memorandum recommends specific measures involving legislation, licensing procedures, enforcement practices, and industry outreach* that are essential to an effective management system for trading strategic goods.

Countries developing high-tech and value-added economies increasingly depend upon their trade management system to protect strategic 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. Raising awareness, 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, its highly developed transportation systems, including key transshipment hubs, and the deepening integration of states within

and outside the region underscore the need to strengthen national and regional capacity to implement and enforce a management system for trading strategic goods. 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. Managing the trade of strategic goods is an integral component of that effort.

Increasing integration implies that effective trade management is only possible on the basis of broader international cooperation. Management systems for trading strategic goods 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 trade management systems for strategic goods 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 assisting 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 and economies to conduct a rigorous assessment of their capabilities and requirements for managing the trade of strategic goods.

Recommendations

An effective management regime for strategic goods 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, fostering good inter-ministry cooperation as well as mandatory and sustained outreach to industry. CSCAP offers the following recommendations in the interest of establishing such a regime in the region:

1. Legislation

- (a) Each member state should establish a comprehensive law

or amend existing laws to provide 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, should include possession, stockpiling, transport, exports, re-exports, transfers, imports, transit, transshipment, brokering, intangible transfers, and warehousing, complementing and consistent with prohibitions on manufacture, sale, use, and intent to use that already exist in regulations of most states.
- (c) National legislation should establish either a unified control list that covers items related to all types of WMD and their delivery systems (i.e., nuclear, chemical, biological, missile, munitions) or individual WMD control lists for each type, drawing upon models such as the European Union list of items or technologies 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) The legislation should have provisions for “catch-all” controls. Exporters must pay attention to end users and end uses and should have the ability to regulate any export transaction regardless of whether the product or technology is on a control list or not, when it is known that the item will be used in a program of proliferation of WMD or related materials. The primary responsibility for ensuring proper use rests with original manufacturers.
- (e) 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) Criteria should be established for a transparent licensing process that includes national security, foreign policy, trade promotion, and technology development.
- (b) 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.
- (c) 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.
- (d) Procedures to confirm, as appropriate, the legitimacy of stated end users and end uses.

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) Policies, laws, and regulations should provide enforcement agencies the mission, authority, training, and resources necessary to detect, identify, and deter transfers that violate export control laws and regulations.
- (c) Procedures should be developed for evaluating parties

involved in export, re-export, transit, and transshipment transactions.

- (d) Legal authorities should permit routine advanced review of detailed manifest data (including electronic manifest) to analyze for suspicious transfers.
- (e) Authorized and empowered ministries/agencies should work with trade management mechanisms and 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).
- (f) The agency empowered with inbound and outbound trade monitoring, should develop a risk management system, including automated and targeting strategies, 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.
- (g) Enforcement agencies responsible for risk management should strive to share information to ensure this information is used for assessing transfer risk and aiding in investigations.
- (h) 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.
- (i) 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.

- (j) 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.
- (k) All agencies involved in enforcing WMD-relevant laws and regulations, including prosecutors and the judiciary, should be provided relevant training.
- (l) 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.
- (m) 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) Effective outreach should be conducted to raise the awareness of companies and commercial individuals about their responsibilities under the country's/economy's export control system, including penalties for violations.
- (b) 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.
- (c) Governments and industry should institutionalize dialogue on the management of strategic goods trade. 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.

- (d) 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.
- (e) Governments and industry should create incentives to encourage compliance with strategic trade systems to promote trade.
- (f) Seek voluntary compliance by industry, including encouragement of relevant companies to establish internal compliance procedures that incorporate checks on end users and end uses of concern, 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 promote the creation of a pool of technical and financial resources that will be made available to strengthen capacity building in managing the trade of strategic goods. This effort should complement bilateral efforts.
- (b) Countries with more advanced management systems should provide financial and/or technical assistance to those with nascent or less developed systems. This assistance should be 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.

Appendix 1

Principles for Managing Trade of Strategic Goods

The Export Controls Experts Group 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).

About CSCAP

CSCAP is a non-governmental (second track) process for dialogue on security issues in the Asia Pacific. Membership in CSCAP is on an institutional basis and consists of Member Committees. Current membership comprises Australia, Brunei Darussalam, Cambodia, Canada, China, the European Union, India, Indonesia, Japan, the Democratic People's Republic of Korea, the Republic of Korea, Malaysia, Mongolia, New Zealand, Papua New Guinea, the Philippines, Russia, Singapore, Thailand, Vietnam and the USA.

The functions of CSCAP are as follows:

- (a) to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and others in their private capacities;
- (b) to encourage the participants of such individuals from countries and territories in the Asia Pacific on the basis of the principle of inclusiveness;
- (c) to organise various working groups to address security issues and challenges facing the region;
- (d) to provide policy recommendations to various intergovernmental bodies on political-security issues;
- (e) to convene regional and international meetings and other cooperative activities for the purpose of discussing political-security issues;
- (f) to establish linkages with institutions and organisations in other parts of the world to exchange information, insights and experiences in the area of regional political-security cooperation; and
- (g) to produce and disseminate publications relevant to the other purposes of the organisation.

Study groups are the primary mechanism for CSCAP activity. As of March 2009, there were seven CSCAP Study Groups. These are concerned with: (i) Countering the Proliferation of Weapons of Mass

Destruction in the Asia Pacific; (ii) Export Controls; (iii) Multilateral Security Governance in Northeast Asia/North Pacific; (iv) Naval Enhancement in the Asia Pacific; (v) Safety and Security of Offshore Oil and Gas Installations; and (vi) Security Implications of Climate Change; and (vii) Transnational Organized Crime Hubs in the Asia Pacific.

This memorandum was produced by the CSCAP Export Controls Experts Group (XCXG), a subgroup of the CSCAP Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific and was approved by the 30th CSCAP Steering Committee Meeting in Bangkok, Thailand, on 22 January 2009.

Further information on CSCAP can be obtained from the CSCAP website at www.cscap.org or by contacting the CSCAP Secretariat:

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