

## **Effective Elements of Export Control Cooperation for APEC Economies Conference- Overview**

Co-sponsored by the United States and Vietnam, the Effective Elements of Export Control Cooperation for APEC Economies Conference was held from November 1-3, 2005, in Hawaii. The conference, as part of the U.S. Department of State's Export Control and Related Border Security (EXBS) program, brought together 71 participants representing 16 member economies and one international organization (the United Nations) to discuss recent strategic trade control-related events, trends and developments in an effort to both promote security and facilitate free trade.

The keynote speeches were delivered by Ambassador Michael Michalak, Senior U.S. Representative to APEC, Bureau of Asian and Pacific Affairs, U.S. Department of State, and Mr. Vu Ngoc Anh, General Department of Customs, Vietnam. Ambassador Michalak noted the increasing threat posed by proliferation networks and stressed that no economy can remain unaffected from the proliferation of weapons of mass destruction (WMD). Mr. Vu noted the importance of preventing the spread of WMD and reaffirmed Vietnam's commitment to international agreements to support these efforts.

The conference was organized into larger plenary sessions with presentations that appealed to all participants, and two smaller, more in-depth breakout sessions focusing on Legal and Policy, and Enforcement. The overarching theme of the conference was the concept that effective strategic trade controls facilitate trade while promoting security. This was highlighted by presentations on Singapore's export control system from a Singapore Customs official and on the meaning of security for APEC economies by a representative from the U.S. Department of Commerce. Other plenary presentations focused on recent trends in WMD proliferation; an overview of and update on United Nations Security Council Resolution 1540 from an expert on the UNSCR 1540 Committee; a briefing on the proliferation of Man-Portable Air Defense Systems (MANPADS); an outline of best practices for export controls from a legal, licensing, enforcement, and outreach viewpoint; and a briefing on Japan's approach to industry outreach.

The two breakout sessions gave participants an opportunity to focus on issues in a much more in-depth fashion, with an eye towards facilitating open discussion and a sharing of experiences among the participants. The Legal and Policy breakout session focused on the need to create an effective global export control system through the harmonization of policies and establishment of universal norms. Discussion in the Enforcement breakout session centered on strategies such as targeting and risk management that serve to both secure and enhance trade between economies.

A reception hosted by Ambassador Michael Michalak and Mr. Paul van Son, Bureau of International Security and Nonproliferation, U.S. Department of State, provided an opportunity for participants to meet their international counterparts in a more informal environment.

## **The Keynote Speeches**

In the U.S. keynote speech, Ambassador Michael Michalak, Senior U.S. Representative to APEC, recalled that two years ago in Bangkok, Thailand, the leaders of APEC economies agreed that the concepts of security and prosperity were indispensable. While noting the region's deep economic interdependence and growing prosperity, Ambassador Michalak pointed to proliferation concerns—particularly those posed by secondary procurement networks, such as the nuclear smuggling ring run by Pakistani nuclear scientist A.Q. Khan—as posing fundamental challenges to this continued growth. Ambassador Michalak also noted that member economies must look beyond traditional states of proliferation concern, such as North Korea and Iran, to focus on supplier states, transshipment points, and legitimate trade routes. Revelations learned from the dismantling of the Khan network, as well as Libya's decision to abandon its weapons of mass destruction programs and the adoption of United Nations Security Council Resolution 1540, represent some of the positive nonproliferation developments. Through active cooperation between economies and the utilization of the most recent technologies, it is possible to make trade more secure and to reduce operational costs in the long run, Ambassador Michalak stated. He concluded his keynote speech by expressing hope that this conference would help promote trust and guide work towards the identification of “best practices” in export control in the APEC region.

The Vietnamese keynote speech, delivered by Mr. Vu Ngoc Anh of the General Department of Customs, Vietnam, noted that in 2004, APEC Ministers adopted key elements of export controls to facilitate the flow of goods and to work together to stop the proliferation of weapons of mass destruction. While noting that trade facilitation between member economies is vital to the continued economic development of the region, Mr. Vu also stressed the importance of preventing the spread of WMD. Mr. Vu then reaffirmed Vietnam's commitment to international agreements that support this fight, and pledged that Vietnam would not provide any assistance to non-state actors that have the intention of working to develop WMD.

## **The Plenary**

Plenary sessions were chaired by Paul van Son, Director of the U.S. Department of State's Office of Export Control Cooperation in the Bureau of International Security and Nonproliferation.

In the first plenary address, John Sullivan, Assistant Secretary in the Department of Foreign Affairs and Trade, Australia, highlighted the growing importance of efforts to combat the spread of WMD by identifying a number of current proliferation trends and challenges. Through the phenomenon of globalization and industrialization, the problem of secondary proliferation has emerged as a serious threat, he stated. Coupled with that challenge, there is also the problem of controlling intangible technology transfers, as it is fundamentally difficult to distinguish between genuine students and “knowledge shoppers.” Mr. Sullivan also noted that to address these challenges, effective export controls are needed to fill in the gaps between the multilateral arms control regimes. He

concluded by highlighting the vital role that international cooperation has in the success of these efforts.

Ionut Suseanu, an expert on the 1540 Committee, then provided an overview and update on United Nations Security Council Resolution 1540. Mr. Suseanu described UNSCR 1540 as the first resolution passed by the Security Council to address WMD proliferation as a global threat. Among the key objectives of Resolution 1540 are: filling in the gaps in existing international law; preventing illicit trafficking of WMD; and supporting the capacity of nations to respond to WMD proliferation. Mr. Suseanu stated that reporting by states is vital because it informs the U.N. Security Council about domestic efforts to effectively implement the resolution. To date, 124 states and one organization (the European Union) have submitted reports. Providing an update on the work of the 1540 Committee, he stated that they are currently in the process of requesting additional information from states before making the final assessments, which will be shared with member-states. Finally, he displayed a copy of the matrix being used by the committee as a tool for assessing national reports.

Ms. Cindy Yeo from Singapore Customs gave a presentation on Singapore's experience in establishing an export control system, including identifying challenges currently faced, the domestic legal framework, and industry outreach efforts. Stating that Singapore sees counter-proliferation as complementary to counter-terrorism, the official cited Singapore's support for such international cooperative efforts such as the Container Security Initiative (CSI), the Proliferation Security Initiative (PSI), and the Radiation Detection Initiative. Ms. Yeo also detailed the inter-agency process and the role of control lists, including "catch all" controls, in regulating the flow of strategic goods in and out of Singapore.

Conference participants then heard a presentation on the proliferation of Man-Portable Air Defense Systems (MANPADS) given by a representative from Mr. John Albert from U.S. Department of State. The speaker began by outlining the gravity of the situation—since 1960, about 1 million MANPADS have been produced, with approximately 10,000 of those outside domestic inventories. Recognizing this growing threat to tourism, economic viability, the airline industry, and civilian lives, the speaker pointed out that at Santiago, Chile in 2004 the foreign ministers agreed to guidelines to control MANPADS. Stating that effective export controls form the basis of efforts to control the spread of MANPADS, Mr. Albert used the U.S. system as an example of an effective license review process, as it relies on the close scrutinization of licenses and monitoring end-uses, along with information sharing and stockpile security.

A representative from the U.S. Department of Commerce, Bureau of Industry and Security (BIS) spoke about the meaning of security for APEC economies and the importance of export controls for economies' growth and security. The main assertion was that, contrary to common misperceptions, trade security efforts actually enhance an economy's competitive advantage by attracting international partners who are conscious of security and proliferation issues and are seeking to do business with others who are like-minded. Overcoming such misunderstanding has proven to be difficult for APEC

economies and, in the post-September 11 era, continued failures to affect such trends may mean decreased trade and business for APEC economies.

The next section focused on the effective elements of export controls and was divided into four parts—Legal, Licensing, Enforcement, and Outreach to Industry. The first two parts were presented by a representative of BIS in the U.S. Department of Commerce. With regards to the legal aspects of effective export controls, the speaker identified some best practices for establishing the necessary legal and regulatory framework, ranging from transshipment controls to laws and regulations controlling both tangible and intangible items. A final legal point raised was the importance, while drafting legislation, of not including provisions for judicial appeal of licensing decisions, noting that in the United States, trading is a privilege, not a right.

In discussing licensing as an effective element of export controls, the speaker noted that transparency is vital as businesses need to know what is happening and how long the process will take. Additionally, end-use checks are very important to ensure that licensed items are being used for their stated end-uses and by their stated end-users.

A representative from the U.S. Department of Homeland Security (DHS) then identified key aspects of the role that enforcement plays in effective export controls. Because of the need to balance trade facilitation with enforcement, risk management and targeting strategies are vital. Additionally, the presenter noted that interagency cooperation makes certain that laws are enforced effectively.

The final identified aspect of effective export controls was outreach to industry, a topic presented by Mr. Abe Nobuhiro from Japan's Ministry of Economy, Trade and Industry (METI). Mr. Nobuhiro noted that industry outreach is the first step in raising awareness among the private sector. To promote end-user and end-use verification, internal compliance programs were emphasized.

In the final plenary presentation of Day 1, Mr. Nobuhiro from Japan's METI spoke about Japan's example in industry outreach efforts. Between 1998 and 2004, only 12% of illegal exports were due to willful violation or negligence. The remaining illegal exports were instead due to private companies' lack of awareness of export control laws, he noted. Mr. Nobuhiro then identified various types of unintentional illegal exports—such as insufficient export control systems, misjudgment of applicable items, mistakes in confirmation shipping, and noncompliance with licensing conditions. The speaker noted that Japan has sought to raise awareness through distribution of pamphlets, internet websites, company seminars, and telephone consultations. Mr. Nobuhiro then identified a number of advantages to establishing and implementing an internal compliance program (ICP): minimizing the burden of the company, helping in controlling intangible technology transfers, and promoting communication between the national authority and the industry.

## **Legal and Policy Breakout Session**

The key themes in the Legal and Policy breakout discussions revolved around the need for harmonization and creation of global export control system norms. The group concluded that such norms could be achieved through increased cooperation among APEC economies, establishment of clear policies and legal authorities, tackling new dimensions of modern and sophisticated diversion schemes, and cooperating with the industries.

Looking towards future conferences and workshops, the Legal and Policy breakout session also agreed on three “ways forward.” First, they concurred on the importance of harmonization for an effective global export control system. Second, they highlighted the need for international and regional cooperation and information sharing. Third, they noted the need for increased export control capacity building, such as training.

The group identified the lack of a common baseline of export control systems among economies as being one of the most pressing issues that needs to be addressed. Discussions underscored how this may present particularly significant challenges for APEC economies, in which a number of countries are still non-member states to many of the nonproliferation and export control regimes. Variances in lines of authority, proscribed exports control violations, and enforcement capabilities were just some of the discrepancies noted during these discussions. For example, with the range in enforcement capabilities among APEC economies being so vast, cooperative efforts will likely require clear planning and implementation.

The group suggested, however, that cooperative mechanisms already do exist. Mechanisms such as training programs, sharing of forfeiture funds and the PSI were mentioned by some delegations as examples of effective international collaborations. It was noted that such tested methods should be expanded in both scope and range.

In addition, a presentation delivered by an expert from DHS highlighted some of the similar challenges of collaboration between government agencies. As was the case in the U.S. experience, changes in the government organization may bring about both challenges *and* advantages. Some of the challenges may be overlap and costs of new training; some of the advantages may be extended authorities and increased resources.

The group heard from a U.S. proliferation expert who discussed the evolving characteristics of proliferation from traditional schemes to secondary supplier networks (SSN). The presentation and subsequent discussions highlighted the need to be more creative and proactive in export control implementation to address sophisticated diversion schemes. Of particular interest to the group was the fact that there are operations of front companies and brokers within transit states and “secondary suppliers” that elude many of the existing export controls. The group, after a presentation on foreign trade zones (FTZ), formed a consensus opinion that investigative and enforcement authorities need to be extended to cover special economic zones.

Another area that generated particular interest was the idea that transit and transshipment controls were a part of effective export controls. This idea was voiced in the discourse

and conclusion that UNSCR 1540 obliged all states to implement transit and transshipment controls and that they have particular importance to APEC economies and non-traditional manufacture-based exporters of strategic items.

The discussions on these modern problems underscored the need for universal adherence to export control norms, and the need to extend subject jurisdiction to all parties in a transaction to close the loopholes. The presenter stressed to the group that this might be viewed as still having to address the traditional scheme of diversion, except that export control systems now need to expand and address newer elements and schemes to prevent diversion.

The delegations concluded that assessments and intentions regarding exports of dual-use goods might be subjective but, ultimately, “unacceptable risk” of proliferation can be assessed and avoided with great accuracy after analysis based on intelligence, pre-license checks, and other shared information.

The group explored issues concerning controls over transfers of technology, recognizing that “technical know-how” is as important as transfers of the “technological end-product.” The group also noted that the method of technology transfer can take many forms—including everything from phone conversations and emails to blueprints and manuals—but all transfers of controlled technology need to be regulated among APEC economies. The delegates discussed the difficulties associated with the frail boundary between discriminatory hiring policies against foreign nationals and protection of technology from foreigners. This was viewed to be all the more complicated by questions regarding intentions, academic research and Deemed Exports, but the consensus was that it is still possible to hire a foreign national and restrict access to controlled technologies successfully.

Finally, the group noted there needs to be more overall consistency in policies and legal authorities among APEC economies and suggested that cooperation with industries, as well as with governments, can provide one such way to achieve it.

### **Enforcement Breakout Session**

Discussions in the Enforcement breakout session focused on risk management and targeting strategies, data collection, and the need to balance trade with effective security measures. A theme present in almost all discussions was the necessity of international cooperation among economies, particularly with regards to training and information sharing. The group identified four key points upon which all participants were in agreement.

The first consensus point was that using the principles of risk management and targeting allows officers to identify high risk cargo, facilitating and promoting legitimate trade among economies. The second consensus point was that the timely collection of data—such as manifest, container and conveyance data—is the key to effective targeting strategies. It was further noted that as an economy, you want to collect as much

information as possible, which is why the U.S. system requires both transit and transshipment cargo to submit manifest details. The third point of consensus focused on the concept of a national targeting center to support local officers in their work by providing them access to a centralized data system, which doesn't require large amounts of manpower. This approach was summed up by the adage: Work smarter, not harder. The fourth consensus point emphasized the importance of cooperation among economies to successfully fight secondary proliferation networks and cyber crime.

Initially, the group focused on advanced cargo targeting techniques, and generated much discussion about transshipment versus transit, risk management, and automated systems to screen manifested cargo. While emphasizing that the more data collected the more effective the targeting will be, there were questions about how an economy requires traders to submit manifest data, and about the timeframe for traders to submit the appropriate information. One of the speakers presented information about the U.S. National Targeting Center (NTC), its role in supporting local officers, and its staffing. It was emphasized that the NTC has only 16 Customs and Border Patrol (CBP) officers, showing how through automated systems and interagency cooperation, the manpower required to secure trade was quite minimal.

Discussion then shifted to advanced investigation techniques and authorities, where it was noted that a significant number of investigations begin with data that comes from targeting, demonstrating the importance of targeting strategies in overall enforcement activities. This led to a series of questions as to which U.S. government agency has authority to control various items, while the U.S. presenters emphasized that since authority issues are not always clear cut, it is the role of the Exodus Command Center (ECC) to figure out who has licensing authority. It was also mentioned that the U.S. State Department has been working with foreign governments to set up similar concepts to the ECC and assist in necessary staff training.

Highlighting the increasingly diverse threats posed by willful violators of export control laws, the problems posed by secondary proliferation networks and cyber crime received much attention. A U.S. presenter from the Department of Energy discussed some of the recent trends in proliferation procurement networks, noting that since the 1990s, such networks have taken on a life of their own. They are mostly working on behalf of themselves, not for proliferant countries, and these networks—including agents, brokers, and front companies—are consistently trying to maneuver around and through national export control regulations.

The presentation on cyber crime noted that 9/11 showed the increasing role that the internet and cyber-communication plays in terrorist activities. Network intrusions—such as hacking, Spyware, and phishing—are increasing steadily and, the speaker stated that internet payment methods can be used to hide the source of funding, which can also facilitate money laundering. The speaker made two recommendations in his presentation. The first was that economies should stay up on technology because it is advancing so fast. The second recommendation was that there should be international task forces to investigate cyber crimes. Finally, he noted that regional or international protocols on

cyber crimes are not necessarily needed. Mentioning that the U.S. only has a few cyber-related laws, the speaker emphasized that cyber crime needs to be treated as an export control violation, and that to get wrapped up in the technology is to focus on the wrong aspect of the violation.

In discussing the developing and maintaining of sources in industry and ports, it was noted that when an industry source provides information about a competitor, that information is correct usually 75 percent of the time. There was some discussion involving the use of monetary rewards for information and the regulations that govern such rewards. It was reported that monetary rewards are never given to a company, only to individuals, are based on the type of information provided and the successful prosecution of the case, and that there are extensive regulations in the U.S. that govern such payments. Responding to a question whether or not the U.S. conducts industry outreach activities overseas, a U.S. representative said that while some outreach does occur, it is not very much. He then expressed interest in expanding such cooperation through working with member economies and demonstrating to them how the U.S. does it and what type of materials are used.

Articulating the common theme of international cooperation was a presentation on requesting investigative information from foreign entities using treaties and international cooperation. There was also discussion of international diffusion techniques, such as INTERPOL notices. Through the use of Red Notices, the speaker stated that the U.S. Drug Enforcement Agency (DEA) and Federal Bureau of Investigation (FBI) located 26% and 25% of their reported fugitives, respectively. Asked if it would be possible to establish a cooperation mechanism in a multilateral forum such as the World Customs Organization, the speaker said that because of wide differences in privacy laws, and other rules and regulations, no regulatory body would allow it. Therefore, each agreement has to be negotiated separately.

The group also received a briefing on the U.S. MegaPorts Initiative, in which the U.S. partners with foreign governments to install radiation equipment at major foreign seaports. The presenter noted that container terminals are naturally configured to resemble chokepoints, so radiation monitoring equipment can be placed at a port without hindering trade. There was some discussion revolving around the differences between the MegaPorts Initiative and the Container Security Initiative (CSI). The presenter responded by pointing out that while CSI is personnel focused, the MegaPorts Initiative is equipment focused. There were also some questions about whether this equipment would be used only to scan cargo bound for the U.S., to which U.S. representatives said that it could be used to scan both inbound and outbound cargo.

Expanding upon the discussion of detection equipment was a presentation focusing on non-intrusive inspection (NII) technology and radiation monitoring. The presenter detailed a number of different NII technologies such as rail and pallet Vehicle and Cargo Inspection System (VACIS), as well as the Radiation Detection Program. One economy specifically mentioned the need for additional training in utilizing such technologies and equipment.

The final presentation in the Enforcement Breakout was on WMD incident response from a member of the U.S. Coast Guard. The speaker began by noting that the National Response Plan changed significantly after 9/11, and also includes major disasters, emergencies, and terrorist acts including threats. He emphasized that while the federal government can provide resources to respond to a significant event, there are also area contingency plans that are more on a port- or region-specific level.