



Ensuring enforcement and compliance for effective export controls

This report summarises the discussions held at a workshop of experts on strategic trade controls in Vienna, Austria.

Policy workshop on effective export controls

Forty participants from 13 countries¹ gathered in Vienna from 21-22 June 2018 to discuss how they could work together to reduce the illegal trade and diversion of goods and technologies to illicit end users and to prevent their use in the development, manufacture, deployment and/or delivery of conventional arms and weapons of mass destruction (WMD).

The workshop, titled 'Ensuring enforcement and compliance for effective export controls', brought together officials and policy experts on strategic trade controls (STC), industry representatives from various sectors, as well as diplomats and representatives from international organisations based in Vienna.

It was organised by Saferworld, the Center for Policy Research (CPR) of the State University of New York at Albany (SUNY), and the Chinese Academy of International Trade and Economic Cooperation (CAITEC), in cooperation with the China Arms Control and Disarmament Association (CACDA), with sponsorship from the Government of Canada. It included a working group of policy experts and practitioners from Europe, Asia and the United States (US).

The workshop provided a platform to share information, ideas and expertise, and to explore practical approaches for government-industry outreach and industry internal compliance programmes (ICPs). It was the seventh in a series of workshops since 2015, alternating between Vienna and Beijing. It has marked the emergence of the working group as one of the most advanced multilateral East-West dialogue processes on STC.

Participants highlighted the shared interest of all the participating countries in ensuring that strategic goods and technologies are not destined for undesirable end users and end uses. To prevent this from happening, countries must identify and advance common approaches to STC and make sure that those involved in their trade are both willing and able to comply with STC by minimising the risks of illegal transfers and diversions.

The proceedings

The workshop was divided into six sessions. First, participants examined existing guidelines on government outreach and industry compliance. This was followed by three sessions mapping key challenges and good practices in controlling intermediary activities, implementing catch-all controls and regulating e-commerce and intangible transfer of technology (ITT). Session five focused on preventing diversion. The workshop closed with a discussion on the content and development of a draft toolkit for government-industry outreach and for facilitating industry compliance.

¹ Austria, Canada, China, Hungary, Japan, Malaysia, Pakistan, the Republic of Korea, Russia, Sweden, Switzerland, the UK and the US.

Session one: guidelines on government outreach and industry compliance

While participants accepted the requirement that all transfers of controlled items be licensed, there was greater diversity of opinion with respect to the topic of business registration. These ranged from the belief that there should be an obligation to register to sell defence and dual-use items, to registration only for specifically defence items to no formal registration requirement at all. Considerations of the oversight and outreach role of provincial as well as central government, in jurisdictions where this is relevant, was mentioned. There was also a similar diversity of views regarding government instruction in ICP – they could be obligatory or completely voluntary, or recommended on the basis that they could provide practical advantages to the companies concerned.

All of this was seen as useful in creating awareness among industry of its responsibilities, but it was suggested this was not enough, and that governments should communicate the message in a wide variety of ways, such as at conferences and tradeshows.

It was suggested that industry should take responsibility and consider national security concerns, and that even if ICP is not compulsory it is good practice. It was noted that companies intending to be active in multiple jurisdictions need to allow for this in their approach to compliance, and that those with ambitions to operate globally should be at the forefront of global good practice. It was stressed that compliance needs to be driven from above, with the active, ongoing engagement of senior management and not just compliance officers. The act of whistleblowing was also identified as important but often overlooked.

Academics were seen as particularly challenging, especially when it came to intangible transfers. They were described as being difficult to reach, and inclined to prioritise academic freedom above proliferation concerns.

Session two: strengthening control of intermediary activities: brokering, transit and transshipment

Participants observed that brokers come with their own challenges, with some tending to operate at the fringes of compliance and without the full knowledge of the authorities. This is evidenced by authorities who are unsure of the extent or scope of brokering activities in their jurisdictions or by their nationals. Controlling brokers is also complicated by jurisdictional questions – is control based on the location or nationality of the broker, or on the location of the source or destination – or even the transportation route?

Some jurisdictions require brokers to register, though this is more straightforward in the context of military items. Another way of bringing these actors within the regulatory framework is to identify them at the point of company registration – in many jurisdictions companies are required to declare the nature of their business and are at that point informed of their obligations.

There is a very strong facilitation component when it comes to a government's role regarding movement of cargo, including transit and transshipment, which competes with concepts of export control. The issue of free-trade zones or customs-free zones was raised as an additional challenge. Customs officials would typically have the right to inspect or seize cargo in free-trade zones, and officials within them can and do alert customs to potential problems. However, participants suggested that this is not usually a priority and so happens rarely.

Problems can be compounded by freight forwarders and carriers not only failing to alert exporters of their obligations but choosing to ignore or even creating work-arounds to avoid export control compliance regulations. Hungary, for example, seeks to address this by having regular contact with the sector, including through customs associations.

Session three: implementing catch-all controls

The difficulties in defining and implementing catch-all controls were discussed at some length. Speakers noted that these controls emphasised an assessment of the end user and what they were likely to use the

goods or technologies for. It was also noted that, on occasion, catch-all controls may have a political dimension and that they can be used to prevent particular customers accessing goods and technologies.

Although it was acknowledged that catch-all controls are difficult to enforce and that such controls do not provide a guaranteed solution to the problem of proliferation, it is important to ensure that governments have the capability to take action when relevant cases come to light. It was also noted that proliferators are well aware of how export controls work in the European Union (EU) and elsewhere and are often adept at avoiding them.

The issue of exporter obligations – and how to define them – was also raised by participants: for example, how is the exporter to know when a licence is required? It was noted that this could be handled in different ways, with the responsibility to consider potential illicit intent falling primarily on the authorising government, the exporter, or, as is the case under Article 4 of the EU dual-use regulation, both. It was also noted that in cases where destinations are subject to sanctions, banks will not support business transactions.

Session four: regulating e-commerce and ITTs: elements of emerging best practice

Participants raised the importance of government information technology (IT) systems being designed to regulate e-commerce as well as the adoption of a systematic approach to the analysis of supply chains to identify cases where the final goal of the importer is to manufacture WMDs.

Whereas the traditional approach to violations of e-commerce has generally been intelligence-led, the potential for ‘big data’ analysis of e-commerce was highlighted as a potential way forward. It was considered important to narrow down the search and to focus on the most important sectors and items from the perspective of trade management and non-proliferation, focusing on different sectors that are particularly relevant and building up a database. Character recognition systems and specially designed search engines can help identify where there is trade in strategic technologies.

A number of problems associated with regulating ITT were raised. The discussions highlighted several challenges, including the variety of companies and institutions that may be involved, the ease with which technology can be transferred across international boundaries and the lack of attention paid to this issue. Also, participants noted that the rules governing ITT differ by country, with different national jurisdictions applying different rules.

The need for an international standard for the use of cloud storage of sensitive technology was raised, and this was contrasted with the fact that currently different standards may apply within one country. For example, the US Department of Commerce allows cloud storage of controlled technology for which it has regulatory responsibility as long as it is encrypted, whereas the State Department, concerned with military items, does not. In Europe, the United Kingdom (UK) allows cloud storage of military technology if encrypted, while the German government does not.

A standardised approach was proposed involving a clear legal basis for control, strong involvement of law enforcement and cooperation between government, industry and academia. Participants noted that in recent years the Chinese government has been strengthening its approach in this area including through the establishment of an expert committee within the government to review laws around e-commerce, ITT and internet security.

Session five: ensuring effective action to prevent diversion

Speakers noted that many countries in Southeast Asia do not have adequate export control legislation and lack the capacity and the appetite for bringing prosecutions against those who violate export controls. It was argued that companies need to integrate export control compliance into their daily business and that increased interaction between government and industry would also help.

A number of strategies were highlighted that could help prevent diversion of strategic goods. For example, it was suggested that the law should be more transparent and accessible. Participants also recommended that licence applicants for transfers of strategic goods should need checks on intermediaries, modes and routes of transport and shipping agents with the licensing authority routinely assessing the risk of diversion. Information sharing between exporters and governments was highlighted as important with small companies often a bigger target for proliferators. The need for prosecutors to understand export control violations and for adequate penalties to be imposed was also noted.

Attendees raised the role of customs in preventing diversion. They urged vigilance on the part of enforcement agencies so that they can interrogate vague customs declarations, and emphasised the importance of intelligence sharing across law enforcement. And as in session two they highlighted the risks posed by free ports with minimal or no customs control.

The case was made for reaching out to countries not currently involved in, or who are not members of the multilateral export control fora so that they can better understand the benefits of effective STC.

Session six: key elements for a toolkit on government outreach and industry compliance

Participants at the workshop noted that the toolkit on government outreach and industry compliance must be practical and of use not only to companies but also governments. They recognised the need for developing a culture of compliance within industry, for adequate training and for any ICP system to be continually updated according to new risks and concerns.

Several key questions were raised relating to components of an industry ICP, including:

- **What** is being exported? Potential exporters should begin with export classification of goods and technologies for export – the most critical part of the whole process. The technical nature of this task can pose difficulties for a small company where one person may be responsible for a range of specialist issues.
- **Where** are the items going? Companies operating in different jurisdictions will need to adhere to different export control laws and regulations which can also change from year to year. Again this can pose a challenge for small and medium-sized enterprises (SMEs) with fewer resources.
- **Who** will receive the items? Exporters must know who the customer (end user) is. Check-lists of sanctioned entities and denied persons can help. Knowledge of real-world examples of how illicit actors operate can help identify red-flagged companies and individuals.
- **Why** does the customer want the items (end use)? The intended end use of the export needs to be clear and credible – any doubt in either regard could mean that the goods are intended for illicit purposes. The exporter should be certain that the goods are not intended for use in WMD programmes or by a military end user in an embargoed destination.

Key considerations for government outreach were identified, including:

- **Why outreach is necessary:** developing an appreciation of how government outreach can support adherence to export controls.
- **Knowledge of industry:** does the government have a full understanding of who is operating in the field of strategic goods' exports, where they are based and what they are producing and exporting?
- **Developing capacity:** can governments muster the resources required to conduct effective outreach?
- **Where to reach out:** is there a need for outreach centres across a given country?

Participants also highlighted the importance of developing a government-industry partnership and for industry to work cooperatively – possibly through industry associations – to share information and best practices.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. With programmes in Africa, Asia, Europe and the Middle East and North Africa, we work with people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. We believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

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About Chinese Academy of International Trade and Economic Cooperation (CAITEC)

CAITEC is an interdisciplinary and multifunctional institution of social science research and a consultative body directly under the Ministry of Commerce (MOFCOM) of China, which undertakes research, information consultancy, publishing, education and training. CAITEC conducts research on the world economy and international trade, economic cooperation, regional economies, country-level economies, domestic trade and market development. It also conducts important research relating to export controls. It is one of the first national high-end think-tanks in China and in recent years has played an essential role in academic research, expert team building, personnel training and international communication.

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About Center for Policy Research, University at Albany, State University of New York (SUNY)

Center for Policy Research (CPR) was formally established in September 1987. Research conducted under the auspices of CPR addresses policy-relevant topics in the fields of international affairs, political science, public administration, and public policy. CPR serves multidisciplinary and cross-departmental needs at the Rockefeller College of Public Affairs & Policy and promotes the goal of increasing the University at Albany's level of sponsored research activity. CPR supports fundamental research, applied research, and outreach activities. CPR's Project on International Security, Commerce, and Economic Statecraft (PISCES), provides those forms of support in the area of strategic trade controls and non-proliferation.

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Annex 1 – Agenda



Ensuring enforcement and compliance for effective export controls

A workshop under the project ‘Tackling the illicit transfer and diversion of proliferation-sensitive goods and technologies: supporting government outreach and encouraging a culture of compliance among industry’, and supported by the Department of Foreign Affairs, Trade and Development of Canada

Großer Saal, Albert Schweitzer Haus, Garnisongasse 14-16, 1090 Vienna
21-22 June 2018

Agenda

Day one, Thursday, 21 June

13:00–13:15 Opening remarks

- **Bernardo Mariani**, Head, China Programme, Saferworld
- **Dr Cheng Hui**, Director, Institute of Trade and Investment Security, Chinese Academy of International Trade and Economic Cooperation (CAITEC)
- **Jay Nash**, Research Fellow, Center for Policy Research (CPR), University at Albany, State University of New York (SUNY)

13:15–14:15 Session I: Guidelines on government outreach and industry compliance

Moderator: Bernardo Mariani, Saferworld

Speakers:

- **Andrew Horton**, Senior Policy Technical Advisor, Export Control Joint Unit, Department for International Trade, UK
- **Tian Yiling**, Assistant Researcher, CAITEC

Discussion

14:15–14:45 Coffee break

14:45–16:00 Session II: Strengthening control of intermediary activities: brokering, transit and transshipment

Moderator: Jay Nash, SUNY

Speakers:

- **Mariann Mezey**, Independent Consultant, Strategic Trade Controls, Hungary
- **Peter Cheah**, Senior Principal Assistant Director, Strategic Trade Secretariat Division, Ministry of International Trade and Industry, Malaysia

Discussion

Day Two, Friday, 22 June

09:00–09:10 Opening remarks and summary of previous discussion

- **Bernardo Mariani**, Head, China Programme, Saferworld

09:10–10:30 Session III: Implementing catch-all controls in different countries

Moderator: **Peter Cheah**, Senior Principal Assistant Director, Strategic Trade Secretariat Division, Ministry of International Trade and Industry, Malaysia

Speakers:

- **Dr Helmut Krehlik**, former Head of Division for Export Controls, Federal Ministry for Digital and Economic Affairs, Austria
- **Liu Tong**, Managing Director, Internal Export Compliance Office, China Machinery Engineering Corporation

Discussion

10:30–11:00 Coffee break

11:00–12:15 Session IV: Regulating e-commerce and ITTs: elements of emerging best practice

Moderator: **Dr Patrick Edgar Holzer**, Head, Dual-use Export Policy Division, State Secretariat for Economic Affairs (SECO), Federal Department of Economic Affairs, Education and Research (EAER), Switzerland

Speakers:

- **Dr Se-Hee Ryu**, Officer, Office of Analysis and Classification, Export Control Support Department, Korean Security Agency of Trade and Industry (KOSTI)
- **Wu Jinhuai**, Director, Non-proliferation and Strategic Trade Control, China Arms Control and Disarmament Association (CACDA)

Discussion

12:15–13:30 Lunch

13:30–14:45 Session V: Ensuring effective action to prevent diversion

Moderator: Dr Zafar Ali, Director General, Strategic Export Control Division (SECDIV), Ministry of Foreign Affairs, Pakistan

Speakers:

- **George Tan**, Principal, Global Trade Security Consulting Pte Ltd., Singapore
- **Spencer Chilvers**, Head of Export Control Policy, Rolls-Royce plc

Discussion

14:45–15:15 Coffee break

15:15–16:30 Session VI: Key elements for toolkit on government outreach and industry compliance

Moderator: Elizabeth Kirkham, Senior Advisor, Arms Unit, Saferworld

Speakers:

- **Kevin J. Cuddy**, Senior Manager, International Trade Compliance, GE Global Operations
- **Han Shuang**, Assistant Researcher, CAITEC

Discussion

16:30–16:45 Concluding remarks

- **Bernardo Mariani**, Saferworld
- **Dr Cheng Hui**, CAITEC
- **Jay Nash**, SUNY

Annex 2 – List of participants



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21-22 June 2018

List of participants

1. **Dr Zafar ALI**, Director General, Licensing, Strategic Export Control Division (SECDIV), Ministry of Foreign Affairs, Pakistan
2. **Peter CHEAH Hee Keong**, Senior Principal Assistant Director, Strategic Trade Secretariat Division, Ministry of International Trade and Industry, Malaysia
3. **CHEN Lingling**, Project Manager, Legal Office, China National Aero-technology Import & Export Corporation (CATIC)
4. **Dr CHENG Hui**, Director, Institute of Trade and Investment Security, Chinese Academy of International Trade and Economic Cooperation (CAITEC)
5. **Spencer CHILVERS**, Head of Export Control Policy, Rolls-Royce plc
6. **Kevin J. CUDDY**, Senior Manager, International Trade Compliance, GE Global Operations
7. **David FULLER**, First Secretary, US Mission to International Organizations in Vienna
8. **Dr GUO Xiaobing**, Deputy Director, Institute of Arms Control and Security Studies, China Institutes of Contemporary International Relations (CICIR)
9. **HAN Shuang**, Assistant Researcher, Institute of Trade and Investment Security, CAITEC
10. **Lisa HILLIARD**, Senior Officer, Wassenaar Arrangement Secretariat
11. **Dr Patrick Edgar HOLZER**, Head, Dual-use Export Policy Division, State Secretariat for Economic Affairs (SECO), Federal Department of Economic Affairs, Education and Research (EAER), Switzerland
12. **Andrew HORTON**, Senior Policy Technical Advisor, Department for International Trade, UK
13. **Roy ISBISTER**, Head, Arms Unit, Saferworld
14. **JIN Shan**, Compliance Specialist, Internal Export Compliance Office, China Machinery Engineering Corporation (CMEC)
15. **Phoebe KEMP**, Second Secretary IAEA, UK Mission to the International Organisations in Vienna
16. **Elizabeth KIRKHAM**, Senior Advisor, Arms Unit, Saferworld
17. **Leonid KOZLOV**, First Secretary, Permanent Mission of Russia to the International Organisations in Vienna
18. **Dr Helmut KREHLIK**, former Head of Division for Export Controls, Federal Ministry for Digital and Economic Affairs, Austria
19. **LI Zhiqiang**, Second Secretary, Permanent Mission of China to the United Nations and other International Organizations in Vienna

20. **LIU Tong**, Managing Director, Internal Export Compliance Office, CMEC
21. **LU Difan**, Third Secretary, Permanent Mission of China to the United Nations and other International Organizations in Vienna
22. **Nicholas LUKUMBUZYA**, Department of Disarmament, Arms Control and Non-proliferation, Federal Ministry for Europe, Integration and Foreign Affairs, Austria
23. **LUO Jing**, Managing Director, Internal Compliance Programme Office, CATIC
24. **Bernardo MARIANI**, Head, China Programme, Saferworld
25. **Amber Morgan**, U.S. Mission to International Organizations in Vienna
26. **Mariann MEZEY**, Independent Consultant, Strategic Trade Controls, Hungary
27. **Jay NASH**, Research Fellow, Center for Policy Research (CPR), University at Albany, State University of New York (SUNY)
28. **NIE Lei**, Deputy Director, Business Department, CATIC
29. **Natalie NG**, Project Officer, China Programme, Saferworld
30. **Tom OSTROWSKI**, Political Specialist, U.S. Mission to International Organizations in Vienna
31. **Pascal RESTEL**, First Secretary, Embassy of Sweden
32. **Dr Se-Hee RYU**, Officer, Office of Analysis and Classification, Export Control Support Department, Korean Security Agency of Trade and Industry (KOSTI)
33. **Sing-En TAM**, First Secretary, Embassy of Canada to Austria in Vienna
34. **George TAN**, Principal, Global Trade Security Consulting Pte Ltd., Singapore
35. **Yuki TANAKA**, Counsellor, Permanent Mission of Japan
36. **TANG Jianming**, Vice President, CATIC
37. **TANG Xiaomin**, Project Coordinator, China Programme, Saferworld
38. **TIAN Yilin**, Assistant Researcher, Institute of Trade and Investment Security, CAITEC
39. **WU Jinhuai**, Director, Export Control Program, China Arms Control and Disarmament Association (CACDA)
40. **Sergei ZAMYATIN**, Senior Officer, Wassenaar Arrangement Secretariat