

International experts discuss support for strategic trade controls and international sanctions

This report summarises the discussions held at a policy seminar on strategic trade controls in Vienna, Austria, on 11 June 2019

On 11 June, an international policy seminar on building capacity and strengthening collaboration to enforce strategic trade controls (STCs) and international sanctions was held in Vienna – bringing together 44 officials, policy experts, researchers and representatives from the private sector and civil society organisations from Asia, Europe and North America. International policy experts and practitioners exchanged ideas on how government agencies and the business sector could work together to reinforce STCs and compliance, and shared experiences on national approaches to enforcing international sanctions. The policy seminar also saw the launch of a resource manual titled ‘Strategic trade control outreach and industry compliance: tools and resources.’

The policy seminar was co-hosted by Saferworld, the Centre for Policy Research of the State University of New York, and the China Arms Control and Disarmament Association, under the framework of 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.’ This project facilitates the work of an expert working group on export controls, and provides a platform for international dialogue and cooperation on STCs.

Proceedings

The policy seminar started by looking at how industry compliance initiatives can link to and support government STC enforcement programmes. The importance of raising awareness of STCs among small and medium-sized enterprises (SMEs) was stressed, especially where understanding of this topic is generally low. It is crucial that outreach is specific to the national legal and regulatory context in which companies are operating. It was suggested that good practice for an SME would include designating one person who would be responsible for STC compliance and ensuring that they are properly trained. However, all staff – in particular those involved in any aspect of exporting, transferring and shipping items – should be aware of issues related to STCs and compliance. Training sessions that are provided for SMEs should, as far as possible, be free and held close to their location.

From the perspective of a multinational corporation, it was argued that internal compliance programmes (ICPs) should be comprehensive and multifaceted, with elements ranging from official management commitment and a culture of compliance, to e-compliance systems (such as product and recipient screening tools), record-keeping, regular training and auditing. Relevant ICP systems should be updated regularly and should also be accessible from different locations around the world, providing access to information relating to STCs and international sanctions. Staff should be able to share information easily among themselves on STC compliance issues.

The benefits of industry and governments working together on STC compliance were highlighted. The industry working group associated with the US government’s Export Enforcement Coordination Center was cited as a good example of how industry can engage directly with enforcement officials from different government agencies, and receive updates on regulations and information on current best practices to ICP.

Industry-to-industry benchmarking sessions were also considered a useful way of sharing information on practical matters, from dealing with budget cuts to reporting on compliance issues.

The discussion then moved to government enforcement efforts that could support and encourage STC compliance among industry. The importance of developing a partnership between government and industry, where STC authorities reach out to companies that are not aware of STCs and assist those that are having difficulties complying with such controls, was highlighted. A number of different outreach strategies were addressed, including building relationships with trade associations and chambers of commerce, attending trade shows and placing STC-related articles in trade publications. It was noted that a range of online resources can also be helpful, such as the use of an STC website, as a checker-tool that will help identify whether goods are controlled and provide information on proscribed end-users or sanctioned parties. Training courses were also considered useful and can be based on the level of expertise or focused on a particular type of industry. The importance of feedback from industry on STCs to governments, including best practices and what needs to be improved, was also highlighted.

It was stressed that the purpose of the Strategic Trade Management Act (STMA) of the Philippines is to create business opportunities and a safe environment for trade. It was noted that if a company is STC compliant, it is more likely to feel safe in exploring new business opportunities. At the same time, a safe trading environment promotes peace and security which is also good for business. At the core of the STMA is an inter-agency approach and the establishment of a strategic trade management committee, involving all government agencies concerned with supporting national security and trade facilitation, within which three sub-committees are set up to deal with risk assessment, technical support and enforcement. Company audits will be carried out but the aim is not to be antagonistic; rather, they are to distinguish between mistakes that occurred in good faith and those from wilful negligence.

The Japanese experience was also shared, beginning with outlining the legal basis for STC in the country – which included the Foreign Exchange and Foreign Trade Act, various cabinet orders, and subordinate legislation including numerous ordinances. In terms of government outreach to industry, the main aim is for government to explain clearly the importance of STCs and encourage best practice. Commodity classification, for instance, is seen as an important element of STC compliance, along with end-user checks that ensure that a buying company is not a front for something else. The establishment of an ICP is the ultimate goal and SMEs are encouraged to develop this as much as possible. The government also takes the opportunities for outreach to understand what difficulties industry is encountering.

The seminar then focused on sanctions implementation in the case of the Democratic People's Republic of Korea (DPRK). The work of the UN Panel of Experts on DPRK in examining the effectiveness of the sanctions against DPRK and in investigating violations was outlined. Despite wide coverage of the UN sanctions on goods and technologies since 2015, the illicit missile and nuclear programmes of the DPRK remain intact and the country continues to try to source proscribed materials. Banking and insurance companies should be aware of the risk for such illicit activities. The role of shipping in the illicit trade in commodities such as coal and petroleum was explored in some depth. It was noted that the international community needed to do more to raise awareness among industry about the illicit trade with DPRK, and look into the opaque and complex ownership and leasing structures in the area of shipping.

The growing phenomenon of proliferation financing was also discussed. This concerns the financial infrastructure, products and front company bank accounts that facilitate the trade in goods and materials that could be used in the proliferation of weapons of mass destruction (WMDs), and involves the creation and movement of funds and the acquisition and disposal of products that enable the movement of illicit funds around the world. It was suggested that banks could do more in this area – for example, small branches of larger banks are often targeted because they do not have the capacity to conduct proper screening of entities or activities – particularly in the areas of monitoring and network analysis.

Three case studies were then presented addressing different national approaches to sanctions implementation. In Malaysia, the backdrop to the adoption and enforcement of sanctions is UN Security Council Resolution 1540, a commitment which is included in the Strategic Trade Act of 2010. Specific sanctions regimes are adopted and implemented through a process involving a range of government ministries and agencies, with the Ministry of International Trade and Industry as the lead agency on implementing sanctions through awareness raising, screening of different types of transactions, licensing and enforcement activities. Challenges to the implementation of sanctions include the rotation of staff in prominent agencies, a lack of wider understanding of the importance of sanctions, and the constantly changing picture of international sanctions. Since 2016, Malaysia has ensured – through additional national legislation linked to the UN sanctions portal – that new sanction provisions are automatically adopted.

In Switzerland, the Embargo Act states that the government can only enforce sanctions that have been developed elsewhere – for example by the UN, the Organisation for Security and Cooperation in Europe and significant trading partners such as the European Union. Foreign policy approaches, and economic and legal criteria all contribute to the decision to implement sanctions. The government must consider issues such as: is armed conflict likely? Would adopting sanctions call into question Swiss neutrality? What are the economic cost implications? Are the sanctions compatible with international law? Are they proportionate?

When exporting dual-use items that can be easily diverted, the first thing that an exporter should consider is – who is this for? One case study discussed by participants involved transponders – which are used to open and close garage doors, but can also be used in improvised explosive devices – being exported from the US to Singapore, but which were ultimately destined for Iran. These were shipped via Malaysia and Thailand to try to confuse regulators and led the US government to adopt a voluntary disclosure programme where companies are encouraged to report such situations when they think export control violations may have taken place.

The 'STC outreach and industry compliance: tools and resources' resource manual was presented at the final session of the policy seminar. Participants shared ideas on how the manual can be used to facilitate ICP development and STC compliance. It was noted that the resource manual is the product of a collaborative effort and that it provides a solid foundation on which cooperation between government and industry on STC compliance can be based. While it does not provide all the details required, it points to where further information can be obtained. The importance of the manual in providing a pathway to greater cooperation between government and industry, and helping foster exchange of information that can support STC compliance was also highlighted. It was noted that industry compliance has come a long way in the past three to four decades, but there is still considerable progress required in some regions – for example in Asia. In sharing best practices, SME concerns need to be brought to the fore, while more detailed step-by-step guidance is required.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. 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. Our priority is people –we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity. We are a not-for-profit organisation working in 12 countries and territories across Africa, Asia and the Middle East.

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