



A publication of the Center for
Nonproliferation Studies, Monterey
Institute of International Studies.

ASIAN EXPORT CONTROL Observer

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Recent Developments in the Region

Indonesia Mulls DPRK Weapons Offer While U.S. Resumes Military Ties with Jakarta

North Korea has offered to sell Indonesia various arms including radar systems and submarines in an attempt to foster defense cooperation between the two countries, according to comments made January 27, 2005, by Major General (Ret.) Sudrajat, Indonesia's Director General for Defense Strategy. [1]

The comments came after a meeting between Indonesian Defense Minister Juwono Sudarsono and North Korean Deputy Defense Minister for Military Industries Kim Chol Min, at the Department of Defense in the Indonesian capital of Jakarta. Referring to North Korea as "an old friend," Major General Sudrajat said that Indonesia, which has received offers from several countries, would have to first study the North Korean package to see "if [the weapons] are compatible with our weapons systems." He added that "the North Korean weapons are cheaper and more competitive." [1]

Until recently, Indonesia had been forced to turn to military suppliers like Russia and potentially North Korea because the United States imposed arms embargoes on Indonesia in 1991 and 1999, and due to Washington's severing of military ties with Jakarta as a result of various alleged human rights abuses. But U.S. Deputy Secretary of Defense Paul Wolfowitz, who served as U.S. ambassador to Jakarta for three years in the 1980's, indicated on January 16, 2005 that the United States was considering fully lifting the arms embargo on Indonesia. He said that in an effort to help the Indonesian military with its relief efforts in tsunami-stricken areas of Indonesia, the United States had already partially lifted the embargo by providing the Indonesian army with spare parts for C-130 military aircraft. [2] Furthermore, in February 2005, U.S. Secretary of State Condoleezza Rice certified to Congress that Indonesia had "satisfied legislative conditions for restarting" U.S.-Indonesia military cooperation under the International Military Education and Training (IMET) program, which had been suspended since 1992 in response to the Indonesian military's massacre of civilian protesters in East Timor. [3]

Sources: [1] "Indonesia: North Korea Offers to Sell Submarines, Radar," *Jakarta Tempo Interaktif*, January 27, 2005, in FBIS SEP20050128000034. [2] "U.S. Indicates Readiness to Resume Military Ties with Indonesia," Xinhua News Agency, January 17, 2005, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [3] Richard Boucher, "Indonesia: Secretary Rice's Decision to Certify International Military Education and Training," U.S. Department of State Press Statement, February 26, 2005, <www.state.gov/r/pa/prs/ps/2005/42752.htm>.

South Korea Launches Online Database for Strategic Items Exports

On February 17, 2005, the South Korean Ministry of Commerce, Industry and Energy (MOCIE) launched an online database system to help exporters determine whether their products are classified as strategic items and subject to South Korean export control regulations. [1]

The Korea Strategic-Item Export Control Information System (available at <http://www.sec.go.kr>) is intended to allow registered users easy access to information and thereby increase the efficiency and accuracy of Korea's export control system. By utilizing a specialized search engine, Korean companies are now able to request and receive approvals for exports online, minimizing administrative paperwork, which in turn reduces the amount of time required to approve export licenses. [1]

Additionally, a standardized 10-digit commodity description and coding system for parts and materials was designed to ease the processing of export applications and decrease application errors. Previously, exporters had to refer to a 500-page manual when applying for export licenses. Korean companies complained that the manual was unmanageable and difficult to use. As a result, South Korean companies have reportedly shipped controlled items inadvertently without proper authorization, leaving themselves open to punitive actions by the government. [2] The announcement of the new database system was accompanied by a declaration from MOCIE that recent violators will not be held legally responsible if companies self-report the violations and

learn the new system during a four and a half month grace period, running from February 18 to June 30, 2005. [3]

Sources: [1] “S. Korea Launches Strategic Item Export Screening Database,” *Asia Pulse*, February 17, 2005 in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [2] Lee Kyong U, “Chollyakmulcha ‘such’ulip sis ut’em’ kaet’ong” (Strategic Goods Export System Launched), *ETNews*, February 18, 2005, <<http://www.etnews.co.kr>>. [3] Kang Hui Chong, “Chollyakmulcha onrain ch’ek’u such’ulipkwalli sis ut’em kaet’ong” (Strategic Goods Export Control Online System Launched), *Digital Times*, February 18, 2005, <<http://www.dt.co.kr>>.

Kaesong Industrial Complex near ROK/DPRK Border Opens

On December 15, 2004, the first products were shipped from the Kaesong Industrial Complex to South Korea. The complex, located in the North Korean city of Kaesong about 10 km north of the Military Demarcation Line, is a joint project of North Korea’s Asia-Pacific Peace Committee and South Korea’s Hyundai Asan Company and the Korea Land Corporation. [1]

The project is a result of the June 2000 summit in Pyongyang between former South Korean President Kim Dae Jung and North Korean leader Kim Jong Il. The two sides agreed to establish the economic project as part of peace and reconciliation efforts between the two Koreas. The pilot phase of the three-phase project includes 15 South Korean firms that are primarily engaged in labor-intensive manufacturing. The first phase of the Kaesong project is scheduled for completion in 2006, and approximately 2,000 enterprises are expected to have set up operations in the industrial complex when the final phase is completed in 2012. [2]

Many U.S. officials have been concerned that the Kaesong Industrial Complex could become a transit point for the transfer of strategic materials to North Korea, and in 2004, the United States and South Korean governments held talks over this issue. [3] In order to ensure compliance with South Korean and international export control regulations, the South Korean government reviews all investment applications for the Kaesong project and the Ministry of Unification grants final approval for all equipment transfers. [4] Following South Korea’s inter-agency approval process, the Ministry of Unification and the South Korean Ministry of National Defense also consults with the United Nations Military Armistice Commission, which controls the transit of people and materials across the Demilitarized Zone to North Korea. [5]

Sources: [1] “DPRK, ROK Anticipate Benefits, Obstacles to Kaesong Industrial Zone—Multimedia,” FBIS Report, February 24, 2004, in FBIS KPP20040224000111; South Korea Ministry of Unification, “Kaesonggongdan saopch’ujin hyonhwang” (The Current Status of Efforts to Promote the Kaesong Industrial Complex), December 31, 2004. [2] Hyundai Asan, “Kaesong Special Economic Zone Development Project,” 2003, <<http://www.hyundai-asan.com>>. [3] Lee Young-jong, “Gaeseong (sic) Prompts Tech Transfer Worry,” *Joongang Ilbo*, August 5, 2004, <<http://joongangdaily.joins.com>>; “ROK Daily: U.S. Concerned Kaesong Project May Feed N.K. Military,” *Chosun Ilbo*, December 17, 2004, in FBIS KPP20041216000120. [4] “S Korean Cos Check Strategic Goods Status in Transfer to N Korea,” *Asia Pulse*, February 4, 2004, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [5] Interview with United Nations Military Armistice Commission official, December 2004.

Illicit Trafficking in the Region

Russian Scientist Charged with Selling Dual-Use Materials to South Korea

On March 2, 2005, Oskar Kaybyshev, a physicist and director of the Russian Academy of Sciences Institute of Metals Superplasticity Problems (IPSM) located in Ufa, Bashkortostan, was officially charged with illegally selling a titanium alloy to the South Korean tire producer Artisan Spirited Alloy (ASA), a subsidiary of Hankook Tire, which is based in Seoul. [1] The sale took place in 2003. The metal was produced using a method known as superplasticity that the Russian Federal Security Service (FSB) avers constitutes a state secret.

Specifically, Kaybyshev was charged with violating Articles 203 (on state secrets), 189 (on illegal export of dual-use technologies), 285 (on abuse of office), 160 (on misappropriation of funds), and 327 (on using falsified documents) of the Russian Criminal Code. [2] The charge of revealing state secrets was later

dropped due to a lack of evidence. [3] [Editor's Note: The Russian law enforcement authorities also charged Mr. Kaybyshev's deputy, Irina Zeygman, with fraud, but this charge, too, has been dropped. [2]] The FSB originally opened its case against Kaybyshev on March 29, 2003. On January 18, 2005, Kaybyshev was fired from his job and put under house arrest.

Dr. Kaybyshev has denied all charges, explaining that the metal cannot be used for military applications. [2,4] Further, he noted that the production of superplastic metal has not been considered a secret for a long time, and has been sold abroad on multiple occasions in the past. [2,5] Superplasticity, the process of lining up molecules in a metal to provide resistance to breaking under stress, was patented by Dr. Kaybyshev in the United States, and has been the subject of several scientific research articles. [6] The technology in question is also described in a forthcoming book by Kaybyshev and Farid Utyashev, to be published by Futurepast, a Virginia-based training and consulting firm, with funding from the International Science and Technology Center. [3,7] Kaybyshev has noted that IPSM has not been involved in any secret work in the past 15-20 years. [4]

IPSM has been cooperating with foreign countries that wish to use IPSM technology in the manufacture of automobile tires, and exported the metal to India in 1987, as well as to Italy in 1990. Kaybyshev stated that IPSM has been involved in a related joint research project with India since 1987. In addition, IPSM twice requested that the Russian Academy of Sciences (RAS) conduct an independent expert examination of the metal to make certain that no dual-use technology would be compromised; in both cases, RAS experts determined that the technology was indeed not restricted. [4]

According to the Russian news organization Gazeta.ru, the Russian Ministry of Economic Development and Trade, when contacted about the Kaybyshev case, responded that the South Korean deal "does not fall under the category of 'dual use technology'." However, Kaybyshev was quoted as saying that the FSB has ordered an expert evaluation from another institute, which it hopes will come to a different conclusion. [4] Kaybyshev has also accused the FSB of opening the case against him at the behest of a competitor. [5]

Scientific work at IPSM has been halted due to the FSB activity at the facility. Two doctors of science and five individuals with master's degrees, all of whom are experts in superplasticity, have reportedly left Russia since the FSB action. [4] The American Association for the Advancement of Science (AAAS) has issued an action alert concerning the case of Dr. Kaybyshev, as well as an article detailing why the scientist's actions should not be considered illegal. [6]

Sources: [1] Bryon MacWilliams, "Russian Security Arrests Institute Head for Spying," *Nature*, Vol. 433, No. 789, February 24, 2005, <<http://www.nature.com>>. [2] Gulchachak Khannanova, "Akademika otchislili iz shpionov" (Academic Removed from List of Spies), *Kommersant*, March 3, 2005; in Integrum Techno, <<http://www.integrum.com>>. [3] "Ufimskomu fiziku predyavleny obvineniya po chetyrem statyam" (Ufa Physicist Charged with Violating Four Articles), *Gazeta.ru*, March 2, 2005; in Integrum Techno, <<http://www.integrum.com>>. [4] Fazil Kashayev, "Sharoballony massovogo porazheniya" (Metal Spheres of Mass Destruction), *Gazeta.ru*, March 2, 2005; in Integrum Techno, <<http://www.integrum.com>>. [5] Gulchachak Khannanova, Natalya Pavlova, "Na akademika katyat shar-ballon" (They are Throwing a Metal Sphere at an Academic), *Kommersant*, February 21, 2005; in Integrum Techno, <<http://www.integrum.com>>. [6] "AAAS: 'Release Russian Scientist Dr Kaibyshev'," Network for Education and Academic Rights website, <<http://www.nearinternational.org>>. [7] "World Renowned Russian Scientist Under Investigation by FSB For Allegedly Divulging 'State Secrets'," Press Release, FuturePast Incorporated website, February 16, 2005, <<http://www.futurepast.com/kaib20050216.pdf>>.

Proliferation Issues in the Region

Chinese Semiconductor Company Declares Technology Advances Homegrown; Questions Raised about Efficacy of U.S., Taiwan Controls

A China-based semiconductor manufacturer's announcement of a technology breakthrough at the "Taiwan + China Semiconductor Industry Outlook" in San Jose, California, in December 2004 heightened U.S. and Taiwanese concerns regarding the efficacy of export controls on semiconductor technology. The concerns were first triggered when Richard Chang, president of the Shanghai-based Semiconductor Manufacturing

International Corporation (SMIC), announced development of 90-nanometer (nm) etching technology at SMIC's Technology Symposium in September 2004. In response to industry murmurs that his company had benefited from an illicit transfer of semiconductor technology from Taiwan or the United States, Chang stated at the December 2004 conference that his company's breakthrough development of 90-nanometer Static Random Access Memory (SRAM) technology had been accomplished "in-house." [1,2]

The revelation of SMIC's new capabilities appeared to validate the company's October 2004 projection that by 2005, SMIC, under an agreement with Texas Instruments (TI), Inc., would use the state-of-the-art 90 nanometer technology in its fabrication facilities in China to produce logic circuits for the mobile phone chip giant. The announcement of the SMIC-TI deal fueled concerns among industry officials of improper technology transfers from TI to the Chinese company. At the San Jose conference, Chang insisted the technology was developed "in-house" and was not a result of technology transfers. Furthermore, Chang gave the assurance that the technology would not be used or acquired by the Chinese military. According to Chang, a native of Taiwan, "China's government has not asked us to take part in any military projects. SMIC has no idea what China's military is doing." [3]

The rapid rise in the last few years of SMIC's semiconductor business has been clouded by controversy, and SMIC has been in the center of several disputes involving illegal technology transfers and patent violations, particularly involving technology allegedly originating in Taiwan. In separate incidents between November 2000 and January 2001, illegal transfers of technology by an employee of the Taiwanese semiconductor giant Taiwan Semiconductor Manufacturing Company, Ltd. (TSMC) to rival SMIC were reported. [4] TSMC has also accused SMIC of violating its patents, a dispute that was recently settled out of court. [5]

Representatives of the Taiwanese semiconductor industry argue that these incidents demonstrate the futility of controlling technology transfers to the Mainland, and that Taipei should permit investment in China to exploit its low cost production base and growing market. However, some Taiwanese politicians have remained concerned about technology transfers to China and their possible contribution to China's militarization. In response to arguments from both sides, Taiwan's Ministry of Economic Affairs (MOEA) announced in 2002 a new policy regarding investment in China's semiconductor industry. Under the policy, Taiwanese companies may only relocate older and less sophisticated 8-inch wafer fabrication facilities (or fabs) to China if they first invest in the construction of a state-of-the-art 12-inch fab plant in Taiwan. [6] (*See related story on Taiwan's export control system on page 11 of the current issue.*)

The United States has also taken a careful approach in licensing exports of semiconductors to China. Currently, the United States bans the export of precision tools necessary to produce 90-nanometer chips due to concerns of their dual-use application in producing chips for missiles and other weapons systems. [7] According to the U.S. General Accounting Office, the United States has an official policy of remaining three "generations" ahead of China by limiting access to sub- 250-nanometer chip production technologies. [7] However, SMIC's latest announcement indicated that the Chinese company leapfrogged the 180-, 150-, and 130-nanometer sizes to almost reach parity with U.S. chip technology. [3] The significance of skipping three generations is that China now has the domestic capability to produce chips commonly made only in Europe, North America, Japan, and Taiwan. [8]

U.S. companies point to the recent SMIC announcement as proof that U.S. controls on semiconductor technology are not working. On November 3, 2004, Craig Barrett, CEO of Intel Corp., responded to SMIC's October announcement by criticizing U.S. government export controls, stating that they "do not help U.S. companies compete in China relative to our competition." Barrett continued that he did not "like fighting with one hand tied behind [his] back." [9]

Editor's note: The U.S. semiconductor industry has been skeptical of U.S. export controls on transfers to China. Industry officials have noted in the past that in an industry where profit margins are razor-thin, investment in manufacturing and research and development in low cost production base countries such as China is necessary in order to compete. [10] They argue that U.S. controls on investment and technology transfers prevent domestic companies from competing with foreign rivals who are able to invest in China.

Sources: [1] During the manufacturing process, producers use fine etching technology to place chips upon silicon or another semiconducting material. These so-called wafers are then cut to meet the customer's preference for size and processing power. However, the chips on the edge of these wafers cannot be used in final products and are scrapped. Consequently, expanding the wafer size and creating finer etching technology increases the cost-effectiveness--more chips can be added to a wafer—and performance per a square inch of the wafer. [2] Dan Nystedt, "China SMIC Sees Strong China Chip Market Through 2008," *The Wall Street Journal Online*, December 8, 2004, <<http://online.wsj.com>>. [3] Peter Clarke, Mark LaPedus, Brian Fuller, "TSMC Takes Pass on Taiwan-China Event," *EE Times*, December 9, 2004, <<http://www.eetimes.com/article/showArticle.jhtml?articleId=55300637>>. [4] Michael Chase, Kevin L. Pollpeter, James C. Mulvenon, *Shanghaied? The Economic and Political Implications of the Flow of Information Technology and Investment across the Taiwan Strait*, RAND National Defense Research Institute, July 2004, <http://www.rand.org/pubs/technical_reports/2005/RAND_TR133.sum.pdf>. [5] SMIC agreed to settle with TSMC over the incident. Under the settlement's terms, SMIC will pay TSMC US\$175 million in exchange for TSMC dropping its legal action. "SMIC Reaches Settlement with TSM," Semiconductor Manufacturing International Corporation Press Release, Shanghai, January 30, 2005, <<http://www.smics.com>>. [6] "TSMC Signs Accord for First China Plant of Local Chipmaker," *The Taipei Times*, August 30, 2002, pg 1. [7] U.S. General Accounting Office, "Export Controls: Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental U.S. Policy Review," April 2002, <<http://www.gao.gov/new.items/d02620.pdf>>. [8] 130 nanometer etching allows a greater number of chips to be placed onto a wafer, expanding the wafers overall capability relative to its size. Shrinking the size of chips is primarily to reduce costs. For military use, chips generally do not need to be smaller than 300 nanometers. U.S. General Accounting Office, "Export Controls: Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental U.S. Policy Review", April 2002, <<http://www.gao.gov/new.items/d02620.pdf>>. [9] Mark LaPedus, "Intel's Barrett Cries Foul over Export Controls in China," *Silicon Strategies*, November 4, 2004, <<http://www.siliconstrategies.com/showArticle.jhtml?articleID=51202676>>. [10] David Rose, Director of Export/Import/Infosec Affairs for Intel, "U.S. Taiwan Business Council Conference: Dual-Use Export Controls and China," U.S. Taiwan Business Council Conference, San Jose, September 2003.

Plans to Export Russian-Indian Missile Raise MTCR Concerns

In a January 2005 presentation to students and faculty at the Chitkara Institute of Engineering and Technology, Dr. V.K. Saraswat, director of the Research Center Imarat, India's premier missile development agency, praised India's indigenous missile programs and suggested that the country may be in a position to export missiles in the future. "Exporting missiles could be a possibility. These missiles will be the ones that could be used in local warfare," said Dr. Saraswat. [1,2]

Media reports over the past several years point to a number of proposed Indian exports of various missile technologies, including possible exports of ballistic missile systems. Historically, Indian leaders, scientific and political, have made it clear that India has no intention of exporting ballistic missiles. However, they have also made clear that India will export the 280 km range BrahMos supersonic cruise missile, now under co-development with Russia. Here some sensitivity could conceivably arise with the United States, which has recently embarked on establishing a strategic partnership with India, including possibly authorizing the sale to India of the Patriot missile defense system. [3] Unlike the United States and Russia, India is not a member of the Missile Technology Control Regime (MTCR), but exports of BrahMos could raise concerns in Washington. Although the missile does not appear to warrant the MTCR's strongest measure of restraint, called Category I (stipulated for missiles capable of delivering a 500 kg payload to 300 km or more), the BrahMos does appear to fall under Category II controls (a missile capable of 300 km range with any payload). This may obligate Russia to conduct a case-by-case export review and to receive government-to-government end-use and end-user assurances from the receiving government, if the system could contribute to the delivery of a weapon of mass destruction.

Indian government officials have also suggested that India might export anti-tank and air-defense surface-to-air missiles, and perhaps subsystems of the Prithvi ballistic missile system. While anti-tank and most surface-to-air missiles would not be covered under the MTCR, exports of Prithvi subsystems, or worse, of the complete missile system, could raise concerns in Washington, even though India is not an MTCR member. [4] The MTCR directs its members to assess whether recipient states could modify missiles by means of range/payload trade-offs so as to develop missiles meeting the 300 km/500 kg Category I threshold. The Prithvi-1 missile system, which carries a 1,000 kg payload to 150 km, is right on the edge of being considered a Category I system.

For more information on Indian missile exports, see the India country profile missile export table on the Nuclear Threat Initiative website at: http://nti.org/e_research/profiles/India/Missile/1756_1830.html.

Sources: [1] Prerna Uppal, "India Could Be Exporting Missiles," January 12, 2005, *ExpressIndia* online edition, <<http://www.expressindia.com/fullstory.php?newsid=40692>>. [2] "India May Export Missiles, Official Says," Global Security Newswire, January 18, 2005, Nuclear Threat Initiative website, <<http://www.nti.org>> [3] Shyam Bhatia, "India to Discuss F16, Terrorism with Rice," *Bangalore Deccan Herald*, March 16, 2005; in FBIS SAP20050316000048. [4] Under the MTCR, air defense interceptors become a subject of export concern to the extent that their propulsion systems can propel an offensive missile to Category I range and payload limits.

Regional Cooperation

Senior Asia-Pacific Officials Meet to Discuss Nonproliferation

On February 9, 2005, Japan's Ministry of Foreign Affairs hosted the second Asian Senior-Level Talks on Nonproliferation (ASTOP) in Tokyo. The meeting included high ranking officials from nine Association of Southeast Asian Nations (ASEAN) countries, as well as from Australia, China, the Republic of Korea, and the United States. [1] Speaking prior to the 2005 meeting, U.S. Undersecretary of State John Bolton described ASTOP as "a forum for countries in the region to discuss efforts like PSI [the Proliferation Security Initiative], ways to impede black market networks that evade legitimate export controls, and other challenges in the region. Since the first ASTOP meeting [in November 2003], Asian-Pacific participation in PSI has increased with rapid speed. In short, consensus is growing that more can and must be done to impose consequences on countries and businesses that seek to evade laws to trade in WMD." [2] (The Proliferation Security Initiative is an informal cooperative arrangement aimed at interdicting WMD and missile-related missile shipments.)

During the talks, participants evaluated regional commitments and efforts to prevent WMD proliferation. In particular, the meeting focused on the nonproliferation activities of ASEAN, the ASEAN Regional Forum (ARF), the Asian-Europe Meeting (ASEM), and the progress since the first ASTOP in November 2003. Meeting participants also continued discussions regarding recent developments in WMD proliferation in East Asia, including the North Korean nuclear issue, Pyongyang's missile proliferation activities, and the illicit trafficking of nuclear materials and technology by Pakistani scientist A.Q. Khan. The delegations stressed the importance of continuing the Six Party Talks with North Korea in order to find a peaceful resolution to the North Korean nuclear problem, and came to an understanding on the importance of developing measures to prevent the reoccurrence of underground trafficking networks. [3] (The other participants in the Six Party Talks are China, Japan, Russia, South Korea, and the United States.)

According to the meeting's agenda, participants discussed a number of topics aimed at improving regional nonproliferation efforts, including strengthening participation of Asian states in the International Atomic Energy Agency's Additional Protocol to strengthen nuclear inspections on their respective territories; the Hague Code of Conduct against Ballistic Missile Proliferation; and the Proliferation Security Initiative. [4]

Delegates also focused on the "difficulties and obstacles Asian countries may face in implementing treaties and norms related to disarmament and nonproliferation" and "the possibilities for cooperation in overcoming the obstacles." [4] The participants identified steps to take, stressing the importance of raising domestic awareness and strengthening the implementation of international nonproliferation obligations through both "soft" approaches, such as capacity-building, and "hard" approaches, such as improved equipment and facilities. The participating nations agreed that developing countries in the region should receive assistance to help them improve domestic export controls to stem the flow of nuclear materials and technology. [5]

Sources: [1] The participating countries from ASEAN were Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. Myanmar was unable to attend due to "domestic circumstances." "Dai Nikai Ajia Fukakusan Kyougi" (Second Asian Senior-Level Talks on Nonproliferation), Japanese Ministry of Foreign Affairs, February 10, 2005, <<http://www.mofa.go.jp>>. [2] John Bolton, "Stopping the Spread of Weapons of Mass Destruction in the Asian-Pacific Region: The Role of the Proliferation Security Initiative," Speech at the Tokyo

American Center, Tokyo, Japan, October 27, 2004, <<http://usinfo.state.gov/eap/Archive/2004/Oct/29-875974.html>>. [3] "Dai Nikai Ajia Fukakusan Kyougi" (Second Asian Senior-Level Talks on Nonproliferation), Japanese Ministry of Foreign Affairs, February 10, 2005, <<http://www.mofa.go.jp>>. [4] "The Second Asian Senior-Level Talks on Non-Proliferation (ASTOP)," Foreign Ministry of Japan website, February 3, 2005, <<http://www.mofa.go.jp/policy/un/disarmament/arms/astop/talk0502.htm>>. [5] "Fourteen Asian-Pacific Countries, Including Japan and ASEAN Members, on Wednesday Agreed on the Need to Help Developing Nations Prevent the Spread of Equipment and Materials Related to Nuclear Weapons," Jiji Press Ticker Service, February 9, 2005, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>.

Maritime and Port Security

Japan Supports Strengthening Maritime Safety Treaty as Means of Fighting Proliferation

On January 26, 2005, the Japanese government, as part of its ongoing effort against WMD proliferation, announced support for an international initiative aimed at strengthening the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention). The initiative, currently under debate at the International Maritime Organization (IMO), would revise the convention so as to further legitimize interdiction activities under the U.S.-led Proliferation Security Initiative (PSI), of which Japan is an active participant. [1]

The SUA Convention entered into force in 1992, and currently 116 nations are signatories to the treaty. The original purpose of the convention was to ensure protection of seafaring ships against persons committing unlawful acts. These acts include "the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it." [2]

As a response to the increasing risks posed to maritime navigation by international terrorism and illicit WMD-related transfers, over 60 countries are currently debating revisions to the SUA Convention. The revisions under discussion aim primarily to prevent proliferation and strengthen the international community's ability to block non-state actor's access to WMD-related items. [1]

At the up-coming review conference for the SUA Convention, planned for October 2005, the changes to the treaty are expected to be adopted. The Legal Committee of the IMO, made up of state parties to the convention, is currently finalizing the changes, and agreement on these revisions is expected to be reached at the Committee's April 2005 meeting. The Committee's decision will then be forwarded on to the review conference for approval in October. [1,2]

The final version of the revision is expected to criminalize the smuggling of WMD and missile-related cargo. Currently, international law recognizes only five crimes that allow interdiction of vessels at sea. These are piracy, transportation of slaves, unauthorized broadcasting, sailing without a flag, and improper use of flags. [1]

In earlier conferences held by the IMO on the SUA Convention, general agreement existed on revising the convention so as to allow it to be utilized for fighting international terrorism and proliferation of WMD-related materials. However, several delegations expressed their concern that revisions could contradict the principles of freedom of navigation and the right of innocent passage as granted by the UN Convention on the Law of the Sea. [3]

While countries participating in the PSI claimed no desire to marginalize the existing international legal framework, they have been in favor of strengthening and expanding existing international conventions in order to further legitimize PSI activities. At the PSI meeting held in Lisbon in March 2004, the participants discussed the proposed amendments to the SUA Convention. [4]

Sources: [1] "Japan Eyes Changes to Convention to Allow WMD Searches at Sea," *Asia Pulse*, January 27, 2005, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [2] "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988," International Maritime Organization Website,

<<http://www.imo.org/Conventions>>. [3] "SUA Convention," CNS Inventory of International Nonproliferation Organizations & Regimes, <<http://cns.miiis.edu/pubs/inven/pdfs/maritime.pdf>>. [4] "Proliferation Security Initiative: Lisbon, 4-5 March 2004, Chairman's Conclusions," PSI Website, <<http://www.proliferationsecurity.info/meetings2.php?meetingsid=25>>.

Indian Government Boosts Maritime Security; Stays Cool to Proliferation Security Initiative

In January 2005, the Indian Cabinet Committee on Security (CCS) approved an Rs 7.4 billion (US\$170 million) plan to strengthen maritime security and protect the coast against smugglers, trespassers, criminals, and terrorists. [1] The plan authorizes the Indian Coast Guard to build a series of "stations" aimed at protecting important sea channels, including areas near India's exclusive economic zone (EEZ). The stations are currently planned for eight locations throughout India: Jakhau, Pipavav, Ratnagiri, Bepur, Kakinada, Nagapattinam, Pondicherry, and Hut Bay in the Andaman Islands.

The new plan aims to establish a well-structured division of labor for patrolling the seaways around India: the Maritime Police will secure the coasts and the area up to 5 km from the coastline, the Coast Guard will patrol the area within a 350 km radius of the Indian coast, while the Indian Navy will patrol the high seas. [2,3] The Coast Guard will use funding provided by India's Defense Ministry to acquire and upgrade equipment such as new helicopters, a hovercraft, five fast patrol vessels, and interceptor crafts in order to improve its ability to patrol the coast. [4]

India has recently been keen on building cooperation with other regional navies to deal with maritime security threats. In December 2004, India hosted a seminar on maritime security where India and Sri Lanka discussed a common law to combat maritime terrorism with the goal to crack down on illegal shipments of weapons from entities in India to Sri Lanka. [5]

Despite the recent increase in New Delhi's concern over maritime security, Defense Minister Pranab Mukherjee stated in January 2005 that India was not yet ready to join the U.S.-led Proliferation Security Initiative (PSI). [7] India has accused the United States of double standards in its use of the PSI, noting that the proliferation activities of Pakistani scientist A.Q. Khan were ignored by the United States, while Iran and North Korea have been repeatedly targeted.

New Delhi has indicated that it would only become active in the PSI if it were to be included with the original "core" group of PSI countries. India also wants assurance that activities of the PSI, such as raiding ships and checking inventory, were consistent with international maritime law. [8]

Sources: [1] "CCS Clears Rs. 742-CR Scheme to Boost Maritime Security," *Indian Express*, January 29, 2005. [2] "Coast Guards [sic] Starts Constructing a Series of Stations," *The Press Trust of India*, January 31, 2005, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>. [3] "Indian Coast Guard Welcomes Setting Up of New Coastal Police," *Hindustan Times*, January 31, 2005. [4] "Guarding Against Shipments of WMDs," *Indian Express*, January 31, 2005. [5] "Meet Focuses on Maritime Security," *The Hindu*, 19 December 19, 2004; C. Jaishankar, "Smuggling of Explosives to Sri Lanka Still On," *The Hindu*, October 12, 2004. [7] "US-Backed Proposal on WMDs Needs to be 'Examined': Pranab," *The Press Trust of India*, January 29, 2005. [8] Saurabh Shukla, "India to US: Address Our Concerns on Anti-WMD Plan," *Hindustan Times*, October 19, 2004.

Regional Round-up

Temporary Denial Order Issued for Unauthorized Transfers of Electronic Components: On February 7, 2005, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced that a Temporary Denial Order (TDO) had been placed on Wen Enterprises, the company's president Ning Wen, and his wife Hailin Lin, as well as on the Chinese entity Beijing Rich Linscience Electronics Company (BRLE). Wen Enterprises is based in the state of Wisconsin, near the U.S. border with Canada. Wen and Lin, through Wen Enterprises, were accused of conspiring to sell electronic components controlled under U.S. Export Administration Regulations (EAR) to BRLE without the proper licenses over thirty times from June 2002 through September 2004. BRLE acted as the local distributor to unspecified end-users in China. Under

the TDO, all four entities will be prohibited from being involved in the export of EAR controlled commodities, software or technology for a period of six months. [1]

Taiwanese Businessman Arrested for Illegal Trade: On February 24, 2005, Hsieh Chin-yi, a Taiwanese businessman from Taoyuan County, was arrested for allegedly selling turbo propeller components for Scud missiles to Libya in 1999. Hsieh is believed to have ordered the parts custom-made from Taiwanese factories and declared the items as “car parts” on customs declarations, in violation of domestic trade and anti-smuggling laws. The case was first brought to the attention of Taiwanese officials after the mislabeled missile components were detected and confiscated during transshipment through the United Kingdom. During a raid on Hsieh’s company in February 2005, Taiwanese investigators seized customs declaration documents but found no missile components. Hsieh had been previously caught and later expelled by Swiss officials at Zurich airport in 2000 for carrying missile components in his luggage. [2]

Westinghouse Offers Bid to Supply Nuclear Reactors to China: On February 18, 2005, the Export-Import Bank of the United States approved a preliminary commitment to offer a package of guaranteed and direct loans worth up to US\$5 billion to Westinghouse Electric Company in support of its bid to construct four AP1000 1000-megawatt nuclear power reactor units at the Sanmen Nuclear Power Station in Zhejiang province and the Yangjing Nuclear Power Station in Guangdong province in China. Some concerns were raised about the proliferation history of the China National Nuclear Corporation (CNNC) that will be managing the reactors. CNNC has been accused of providing specialized ring magnets, usable in centrifuges, to Pakistan in the mid-1990s. However, U.S. officials stated recently that both the Bush administration and the International Atomic Energy Agency have determined that there is no proliferation risk associated with the reactor sales. [3] On February 25, 2005, the U.S. Nuclear Regulatory Commission issued a license authorizing Westinghouse to export the reactor systems and related equipment and services to China. Westinghouse still faces competition from the French firm Areva and the Russian firm AtomStroyExport, which both offered bids before the February 28, 2005, deadline. China is expected to announce the winner of the construction bid by early 2006 and shipments of reactor systems and components would then begin in mid-2007. [4] (*See related story in the October/November 2004 issue of the Asian Export Control Observer, pg. 13.*)

Singapore Joins Megaports Initiative: The United States signed an agreement with Singapore on March 10, 2005, to provide state-of-the-art radiation detection equipment for the Port of Singapore. The agreement is part of the Megaports Initiative, which is administered by U.S. Department of Energy’s National Nuclear Security Administration (NNSA). Singapore is the seventh country and the first in Southeast Asia to join the Initiative, which is designed to detect and intercept illegal shipments of nuclear and radioactive materials. The portal-like equipment, provided free by the U.S. government, will scan entire containers as they are driven through on container trucks. The system will eventually be used to scan all containers entering and leaving the port, regardless of destination or source. Franklin Lavin, U.S. Ambassador to Singapore, stated, “The agreement . . . sends a clear message to terrorists: There will be no safe havens in Singapore for the smuggling of nuclear and radioactive materials.” Malaysia, Thailand, Indonesia, and the Philippines are also expected to conclude Megaports Initiative agreements in the coming months. [5]

U.S. Undersecretary Bolton Urges China to Intensify Export Control Efforts: While in Tokyo for the ASTOP meeting, (*see related story on page 7 of the current issue*) U.S. Undersecretary of State John Bolton delivered a speech entitled “Coordinating Allied Approaches to China,” at an event co-sponsored by the Tokyo American Center and the Japan Institute for International Affairs. In the speech, Bolton stated that, although China has made efforts to improve its nonproliferation record, “the behavior of Chinese companies and responsiveness on the part of the Chinese government remain issues of great concern.” According to Bolton, these companies, dubbed by U.S. government officials “serial proliferators,” continue to trade in missile-related materials, without the interdiction of the Chinese government. He continued that while “there have been some success stories, such as when China acted on U.S. intelligence to interdict a shipment to North Korea of chemicals necessary for reprocessing plutonium...[these successful cases have] now set a much higher standard for Beijing to vigorously enforce its own export controls.” Bolton also expressed the U.S. government’s strong concerns about the possibility of the EU lifting its arms embargo on China. [6]

Sources: [1] U.S. Department of Commerce Bureau of Industry and Security, "Action Affecting Export Privileges; Wen Enterprises, Ning Wen, Hailin Lin, and Beijing [sic] Rich Linscience Electronics Company; Order Temporarily Denying Export Privileges," *Federal Register*, February 7, 2005, Vol. 70, No. 24, pp. 6410-6412, <<http://www.gpoaccess.gov>>. [2] "Taiwan Man Arrested for Selling Missile Components to Libya," Hong Kong AFP, February 25, 2005, in FBIS CPP20050225000097; "Man Held over Missile Deal," *Taipei Times*, February 26, 2005, <<http://www.taipetimes.com>>. [3] U.S. Export-Import Bank, "\$5 Billion Preliminary Commitment Approved by Ex-Im Bank for Proposed U.S.-Built Nuclear Power Plants in Mainland China," Press Release, February 18, 2005, <<http://www.exim.gov>>; Adam Entous, "White House Sees Little Risk in China Nuclear Deal," Reuters, March 15, 2005, <<http://www.reuters.com>>. [4] "NRC Issues Licenses Allowing Westinghouse to Export Nuclear Reactor," *Financial Times*, February 25, 2005 in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>; "Foreign Firms Compete to Design, Build Nuclear Reactors in PRC," *China Daily*, December 14, 2004, in FBIS CPP20041214000020. [5] "Singapore Port First in the Region to Use Radiation Detection System," *Channel News Asia*, March 10, 2005, in Lexis-Nexis Academic Universe, <<http://www.lexis-nexis.com>>; Koh Gui Qing, "U.S. Installing Nuclear Detectors in Singapore Port," Reuters, March 10, 2005, <<http://www.reuters.com>>. [6] John Bolton, "Coordinating Allied Approaches to China," Remarks at event co-sponsored by the Tokyo American Center and the Japan Institute for International Affairs, Tokyo, Japan, February 7, 2005, <<http://www.state.gov/t/us/rm/41938.htm>>.

Export Controls In Focus

Growing Pains - An Overview of Taiwan's Export Control System

Special report by Mark Wuebbels and Patrick Heiman, East Asia Nonproliferation Program, Center for Nonproliferation Studies

Introduction

Over the last two decades, Taiwan has committed itself to bringing all of its export control regulations in line with international standards. Taiwan's initial efforts were partly in response to U.S. pressure to conform to international nonproliferation practices. Initially, export-dependent Taiwan saw export controls as a hindrance to its economic growth. However, Taipei, as a recipient of vital U.S. high-technology transfers and security assurances, also recognized the need to adhere to Washington's wishes with regard to controlling the flow of sensitive items. Today, Taiwan's push for stronger export controls is both an acknowledgement of its technological sophistication and a reflection of its growing awareness of the potential adverse effects of unregulated exports of its homegrown technologies that could be used for WMD development.

History of Taiwan's Export Controls

Beginning in the 1960s, Taiwan implemented an export-led growth strategy in order to transform itself from a poor agrarian country to an industrialized economy. The subsequent decades saw Taiwan quickly climb the production ladder from light manufacturing to more technology-intensive production. However, as Taiwan became increasingly isolated internationally, its access to capital and technology became quite limited, endangering this economic strategy. The United States and, to a lesser extent, Japan stepped in to fill this void with large flows of investment and technology. Following an incident in 1987 in which the United States imposed sanctions on the Japanese company Toshiba and a state-owned Norwegian firm, Kongsberg, for transferring sophisticated milling machines and computer controllers to the Soviet Union, the United States became concerned that its technology might be diverted to other Warsaw Pact countries. In response to these concerns, the United States initiated export control consultations with Taiwan in 1988. Through a series of discussions, Washington pressured Taipei to adopt export controls as set forth in the Coordinating Committee on Multilateral Strategic Export Controls (COCOM) guidelines intended to constrain flows of strategic goods, including advanced technology, to the Soviet Bloc. Consultations proceeded slowly, as both sides confronted the problems related to Taiwan's inability to join multilateral regimes and Taipei's insistence that it "did not produce any high technology products." [1] Taiwan's reluctance to restrict trade was understandable since many of its high-tech companies, such as the now formidable Taiwan Semiconductor Manufacturing Corporation (TSMC), were just beginning operations. However, sustained U.S. pressure, including reported threats of a technology cut-off, led to the signing of the *Memorandum of Understanding Between the American Institute in Taiwan and the Coordination Council for North American Affairs on the Protection of Trade in Strategic Commodities and Technical Data* (or "MOU") in 1990.[2]

The MOU committed Taiwan to following COCOM regulations and establishing a viable export control system for strategic goods and goods and technologies related to the development of weapons of mass destruction (WMD). However, Taiwan's progress lagged for two years until the government initiated serious efforts to implement export controls by promulgating the Foreign Trade Act and beginning testing of an Import Certification and Delivery Verification (IC/DV) program. Taiwan implemented its IC/DV program in 1993 through the promulgation of Article 13 in the Foreign Trade Act, but did not have a complete export control system in place until the middle of 1995. [2] Some analysts have also attributed Taiwan's slow progress to the end of COCOM in 1994 and the slow emergence of the less comprehensive Wassenaar Arrangement. Taiwan further strengthened its export control system in 1997 by partially revising the Regulations Governing the Export and Import of High-Tech Commodities and beginning to address the issue of "catch-all" controls. Taiwan's "catch-all" controls were finally implemented in January 2004. [3] These brought Taiwan's export controls more in line with international regimes, incorporating some of the control lists from the Nuclear Suppliers Group and Australia Group. A year later, Taiwan further clarified its export control policies through the introduction of the "Categories of Control List of High-Tech Commodities," the "Country Chart of Export Control Regimes Members," and the "Administrative Guidelines on Export of High-Tech Commodities." [2]

Ministries and Agencies Active in Export Controls

The Board of Foreign Trade (BOFT) under the Ministry of Economic Affairs (MOEA) plays a prominent role in formulating export control policy. The revised 1999 FTA made the MOEA the "competent authority" for export controls and grants policy making, enforcement, and reviewing powers to the Ministry. Under Article 5 of the FTA, MOEA, in conjunction with other relevant authorities such as the Ministry of National Defense (MND) and the Ministry of Finance (MOF) may propose "bans or controls on trading activities" with specific countries subject to later verification by Taiwan's parliament, the Legislative Yuan. However, the MOEA can "short-cut" this requirement and suspend exports to specific countries or "take any other necessary measures" when "national security is endangered." In addition, the MOEA promulgates export control regulations, procedures for export licensing and enforcement measures, and participates in regional activities such as the Asia Export Control Seminar. [4]

While the MOEA is in charge of the implementation of export controls, it relies on the Directorate of Customs Administration under the Ministry of Finance (MOF) to enforce legislation and prevent illegal exports. [5] The Directorate General of Customs is in charge of preventing smuggling, customs clearing information, and post-customs audits of imports and exports. The Taiwan Economic Research Institute (TERI), a non-governmental think-tank engaged in economic analysis and outreach programs for the business community, has conducted training for customs officials and agents on export control procedures. [1]

Controls Lists

The FTA requires Taiwan's export control lists to be published in Chinese. [6] As the control lists for the Wassenaar Arrangement (WA), the Missile Technology Control Regime (MTCR), Nuclear Suppliers Group (NSG), and Australia Group (AG) are written in English, the BOFT requested several agencies to assist in the creation and translation of its corresponding lists. The Industrial Development Bureau under MOEA created control lists regarding biological and chemical weapons. The Ministry of National Defense (MND) created the control list for missile-related items, paralleling the Missile Technology Control Regime (MTCR), while the Atomic Energy Council of the Executive Yuan created the control lists corresponding with the Nuclear Suppliers Group (NSG) lists. [2] This division based on agency expertise was a logical first step in initiating export controls. However, since December 1999, the MOEA has become solely responsible for revising and compiling Taiwanese control lists. [7] According to the MOEA, the Ministry has created control lists based upon the "Wassenaar Arrangement (WA), Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR) and other relevant controls lists." Since Taiwan cannot participate directly in these supplier regimes, it is not privy to all available intelligence and the reasoning for inclusion of specific items into control lists. Nonetheless, the MOEA maintains its lists by receiving information from regime members or accessing recent revisions online and translating them into Chinese. Taiwanese export control officials also coordinate with Japanese and U.S. counterparts to discuss control list issues and revisions in export control legislation. [6]

According to an assessment by the University of Georgia’s Center for Trade and International Security (CITS), the MOEA in the past classified export destinations into three categories. The first category of countries were considered restricted areas and included North Korea, Iran, Iraq, Libya, and countries under UN embargo. The second category was made up of countries that held membership in the export control regimes. The final category contained all other countries not falling into the previous two categories, including the People’s Republic of China. [1] In light of new international developments, the MOEA issued a public notice on December 30, 2003, revising these categories. Under the revision, the MOEA now designates Iraq, Iran, Libya, North Korea, Sudan, Syria, Cuba, and the People’s Republic of China as restricted destinations. [6] The People’s Republic of China, while technically still in the third category, is also subject to additional regulations, which require prior approval of investment and technology transfer in industries such as semiconductors. [8]

Export Destination	Countries	Licensing Process
Category 1	Iraq, Iran, Libya, North Korea, Sudan, Syria, Cuba, and countries under UN embargo, or a threat to peace	Prior approval required on a case-by-case basis by the certifying authority (agency); however, in principle, licenses are denied
Category 2	Members of Export Control Regimes	Export permit required; applications must be made in accordance with regulations
Category 3	Countries not falling into the preceding two categories	Export permit required; applications must be made in accordance with regulations
Sources: “Introduction to Export Control Regulatory Work,” Website of the Taiwan’s Ministry of Economic Affairs, Board of Foreign Trade, 2002 (http://www.doc.trade.gov.tw/BOFT); E-mail interview with official at the Board of Foreign Trade by Mark Wuebbels, August 13, 2004, (official’s name withheld by request).		

Licensing Procedures

MOEA regulations require all exporters and importers of strategic goods and technologies to register and apply for import and export permits. In general, exporters and importers direct their applications to BOFT for review. However, exporters and importers located in the Hsin-chu Science-based Industrial Park and Export Processing Zones apply directly through the Hsin-chu Science-based Industrial Park or the appropriate Export Processing Zone Administration. [9] As part of the application process, exporters and importers must comply with Article 13 of the FTA and “truthfully” declare the intended use and user of the item being transferred. Upon application approval, BOFT or the above agencies will issue an Individual Export Permit (IEP) for the stated intended use. In the area of munitions and MTCR-related technologies, MOEA consults with the Ministry of National Defense (MND) during the review process. In total, MOEA oversees export controls on 862 items or approximately eight percent of all items listed in Taiwan’s current tariff schedule. [10]

Policing and Enforcement Issues

A 1999 assessment by CITS questioned Taipei’s ability to effectively enforce export controls. Of prime concern was the lack of significant penalties for export control violations. Article 27 of the FTA stipulated that violators can be imprisoned for up to two years and fined up to NT\$300,000 (approximately US\$9,000). However, this fine was not considered a significant deterrent, considering that the average value of items receiving export licenses was about US\$250,000. [11] While violators could receive up to two years in prison, the infrequency of suspects being charged or convicted made this penalty, too, an ineffective deterrent.

The CITS report pointed out that Taiwan’s inability to enforce export control legislation also stemmed from the difficulty that authorities had in communicating with and policing its numerous small and medium-sized enterprises. [1] MOEA officials assert currently that no serious enforcement or compliance difficulties exist with regard to Taiwan’s small and medium-sized businesses. [6] However, recent export control violations

raise some doubt about the strength of this assertion. Since 2000, Taiwanese firms have been involved in a number of cases involving illicit transfers to the Middle East, and the recently released report by the U.S. Iraq Survey Group (the “Duelfer Report”) paints a negative picture of Taiwan’s ability to enforce export controls. According to the report, the former Iraqi regime began contacting several Taiwanese companies in January 2001 seeking to augment its military capabilities. United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC) inspectors were able to confirm the sale of computer numerical controlled machines and other military equipment to Iraq by the She Hong Machinery Company. (*See related report in the October/November issue of the Asian Export Control Observer.*) Additionally, on December 27, 2004, the United States imposed sanctions on the Taiwanese company Ecoma Enterprise for violating the Iran Nonproliferation Act of 2000. [12] In light of these recent illicit transfers of machine tools to Iran and Iraq, BOFT announced on January 13, 2005, that exporters who falsified customs declarations would be blacklisted and subject to stricter inspections of their future exports. [13]

Other recent violations of Taiwan’s export controls have involved sensitive transfers to China. One highly publicized incident involved the transfer of sensitive technologies to China by the Taiwanese firm Queening Hi-Tech Corporation. This firm is currently under investigation for selling infrared thermal imagers (ITIs)—a technology used for night vision and thermography—to China in 1998. [14] This case was notable since the Hsin-chu Science-based Industrial Park company received significant publicity after briefing Taiwan’s then-President Lee Teng-hui on its products’ contribution to national security and delivering an electronic warfare system to the Taiwanese military. The technology it transferred to China originated from Queening’s California subsidiary and the transaction was uncovered by U.S. officials. [15] In separate incidents between November 2000 and January 2001, illegal transfers of technology by a Taiwan Semiconductor Manufacturing Corporation (TSMC) employee to the Shanghai-based Semiconductor Manufacturing International Corporation (SMIC) were reported. [15] Due to the prominence of the firm domestically and internationally, the TSMC incident has underscored the issue of national security and export controls for the Taiwanese government.

Growing Export Control Debates

The TSMC incident, along with the company’s subsequent efforts to gain approval for the construction of a semiconductor plant in China, raised a debate in Taiwan concerning national security and the need to control high-technology transfers to China, as well as the transfer of technology through visits of highly trained Taiwanese specialists to the Mainland. As a result, pan-Green coalition partners, the Democratic Progressive Party (DPP), and the Taiwan Solidarity Union (TSU), have contended that stronger regulations regarding technology transfers should be viewed as a matter of national security. These parties argued that the relocation of Taiwanese industries to China and high technology transfers capable of assisting China’s military modernization fundamentally undermine Taiwan’s national security. In contrast, the Nationalist Party (Kuomintang or KMT), which is more receptive to political and business relations with China, has opposed any restrictions on foreign direct investment on the Mainland.

National Technology Protection Act and Other Legislation

In addition to establishing a task force to investigate illicit high-tech transfers to China in December 2000, the administration of President Chen Shui-bian (member of the DPP) delegated the task of drafting new legislation on high-tech transfers to the National Science Council (NSC). In 2002, the NSC presented draft legislation known as the National Technology Protection Act. This act would supplement many existing laws such as the National Security Law, National Secrets Protection Law, Copyright Law, and the Statute Governing Relations between the People of the Taiwan Area and Mainland Area. [16] If passed, the NSC, in conjunction with a cross-section of ministries would enforce new regulations dividing high-tech items into three broad categories: 1) technologies of significance to national security; 2) technologies of significance to economic competitiveness; and 3) technologies of less significance to national security and economic competitiveness.

In addition to shifting regulatory power from the MOEA to the NSC, the Act sets out to strengthen the criminalization of exports of select high-tech products, technology, research results, and other relevant information by levying fines up to NT\$10 million (approximately US\$370,000) and imprisonment up to seven and a half years. [17] These proposed fines are significantly higher than current penalties. Moreover, the National Technology Protection Act would take into account “deemed exports” by regulating personnel

in semiconductor production, semiconductor design, aviation, shipbuilding, and anesthetics and banning these experts from employment positions in China. [18]

The still-pending legislation is not without its critics. Industry leaders and scientists in Taiwan, in particular, have protested against the initiative. Many industry leaders argue that banning experts from future employment in China would hinder human resource recruitment efforts. Lee Yuan-tseh, a highly regarded scientist in Taiwan and President of Academia Sinica (the equivalent to the American Academy of Sciences) spoke out against the proposed regulations on controlling migration to China. [19]

To date, the National Technology Protection Act has failed to pass in the Legislative Yuan and has come into conflict with other competing legislation. One such piece of legislation is the Sensitive Technology Protection Act. Legislator Lin Chih-lung, a member of the Taiwan Solidarity Union, drafted this legislation to include mainland investments as part of national security and further restrictions on specialists in the high-tech sector. Additionally, his legislation calls for regulating technologies through the creation of a more robust cross-ministerial committee including MOEA, Ministry of Education (MOE), MND, Ministry of Transportation and Communications (MOTC), and a special agency charged with designating and regulating investment and transfers of high technology in China. However, Lin stated in an interview that he doubted the KMT would agree to such far-reaching legislation. [20]

Conclusion

Taipei has met many of the requirements expected of members of multilateral export control regimes, repeatedly revising export control legislation, coordinating frequently with counterparts in the United States and Japan, and participating in regional activities such as the Asia Export Control Seminar. Nonetheless, there remain several weaknesses in Taiwan's export control system, particularly in the area of administrative penalties and licensing.

Taipei's early efforts concerning export controls were aimed at appeasing U.S. demands and preventing a cut-off of technology transfers. More recently, however, internal Taiwanese debates on technology transfers to China show a growing recognition of the link between export controls and Taiwanese national security. The Chen administration and independence leaning parties in the pan-Green coalition have begun to use export controls as a possible means of bolstering Taiwan's leverage vis-à-vis China. As a result, export controls have become entangled in the broader (and highly politicized) issue of Taiwan's relations with China. Legislation on technology transfers remains a priority for pan-Green parties, but new laws have yet to pass in the currently divided Legislative Yuan. As a result of the pan-Green parties' failure to win a majority in the 2004 Legislative Yuan elections, further legislation on technology transfers and investment in strategic industries appears unlikely in the near future.

Sources: [1] Richard T. Cupitt & Morgan Flo, "Export Control in Taiwan (ROC)," Center for International Trade and Security, <http://www.uga.edu/cits/documents/html/nat_eval_taiwan.htm>. [2] "Introduction to Export Control Regulatory Work," Website of the Ministry of Economic Affairs, ROC (Taiwan), Board of Foreign Trade, 2002, <<http://wwwdoc.trade.gov.tw/BOFT>>. [3] "Taiwan to Enforce Catch-All Provision Beginning January 1, 2004," *NIS Export Control Observer*, October 2003, <http://cns.miis.edu/pubs/nisexcon/pdfs/ob_0310e.pdf>. [4] "Fifteen Countries and Regions Attend the 12th Annual Asia Export Controls Seminar," *Asian Export Control Observer*, October/November 2004, <http://cns.miis.edu/pubs/observer/asian/pdfs/aeco_0410.pdf>. [5] "Directorate General of Customs," Website of the Ministry of Finance, ROC (Taiwan), <<http://wwweng.dgoc.gov.tw/ep01-frames.htm>>. [6] Yun Chao, Ministry of Economic Affairs, Board of Foreign Trade (BOFT), e-mail correspondence with author, on February 23, 2005. [7] *The Foreign Trade Act* promulgated on February 5, 1993, <<http://wwwdoc.trade.gov.tw/BOFT>>. [8] "Zaidalu dichu cong shi touzi huo jishu hezuo xuke banfa" (Statute on Investment and Technology Cooperation in Mainland China), Website of the Ministry of Economic Affairs, Board of Foreign Trade, <<http://twbusiness.nat.gov.tw/claw6.asp>>. [9] As part of its export and technology oriented industrial policy, the Taiwanese government established several special technology parks and Export Processing Zones throughout Taiwan. Companies within these special zones receive preferential treatment such as tax breaks and expedient process clearance. [10] "2003 Taiwan Commercial Guide," US & Foreign Commercial Service, <<http://www.buyusa.gov>>. [11] Average export volume per licenses was calculated using statistics provided by Taiwan's Board of Foreign Trade. [12] "Imposition of Nonproliferation Measures Against Nine Foreign Entities, Including a Ban on U.S. Government Procurement, and Removal of Penalties From One Entity," *Federal Register*, Vol. 70, No. 1, January 3, 2005, pg. 133. [13] "Export Controls on Strategic Hi-Tech Commodities Tightened," Central News Agency (Taiwan), January 13, 2005 <<http://www.gov.tw>>. [14] "Taiwan Military Tech Firm Executives 'Cooperative' in Illegal PRC Sale Probe," *The China Post*, June 7, 2004, in FBIS CPP20040607000185. [15] "Task Force Formed to

Check Leaks of High-Technology Secrets: Official,” Central News Agency (Taiwan), March 13, 2002. [16] Michael Chase, Kevin L. Pollpeter, James C. Mulvenon, *Shanghai'd? The Economic and Political Implications of the Flow of Information Technology and Investment across the Taiwan Strait*, RAND National Defense Research Institute, July 2004, <http://www.rand.org/pubs/technical_reports/2005/RAND_TR133.sum.pdf>. [17] Ko Shu-ling. “Sensitive Technologies’ Bill Goes before Cabinet,” *Taipei Times*, September 25, 2002. [18] “Deemed exports” are transfers of knowledge or “know-how” to foreign nationals. [19] “Top Scientist Speaks Against Regulations Limiting Cross-Straight Employment,” *Taipei Times*, April 23, 2002. [20] Interview with Legislative Yuan Member Lin Chih-Lung, by Mark Wuebbels, Taipei, Taiwan, July 14, 2004.

International Developments

Ukraine Investigates Alleged Illicit Weapons Sales to Iran and China

(An earlier version of this story was published in the February 2005 issue of the NIS Export Control Observer)

On February 2, 2005, Hryhoriy Omelchenko, Deputy Chair of the Ukrainian parliament’s Committee on the Fight against Organized Crime and Corruption, made public information about ongoing investigations into the alleged illegal export of 12 Kh-55 (NATO designation AS-15A) and Kh-55SM (AS-15B) nuclear-capable air-launched cruise missiles (ALCMs) from Ukraine to Iran and China. [1]

The transfer of the missiles was in violation of Kiev’s START I Treaty obligations. Under the treaty, to which Ukraine became a party by signing the Lisbon Protocol in 1992, Ukraine committed to dismantling or returning to Russia the Tu-160 and Tu-95MS bombers and accompanying Kh-55 ALCMs that remained in the country after the dissolution of the Soviet Union. [2] However, according to Omelchenko, the Progress trading firm (a subsidiary of the state arms trader Ukrspetseksport) illegally transferred missiles to China in April 2000 and to Iran in May 2001. In addition, Progress supplied Iran with an associated ground targeting system, referred to as the KNO-120. [1]

Omelchenko’s letter began with a request to arrest Valeriy Shmarov, head of Ukraine’s arms export company Ukrspetseksport. According to the letter, a criminal case regarding the missile sale was opened in February 2004. Director of the air cargo company UkrAviaZakaz and former Ukrainian Security Service (SBU) staffer V.V. Yevdokymov, along with three Russian citizens (Oleg G. Orlov, Ye. V. Shilenko, and G.K. Shkinov) stand accused of collaborating with S.M. Samoylenko, then director of Progress, in the missile sale. [1] Orlov, a Russian arms trader accused by the U.N. Security Council in 2001 of selling illegal weapons to Angola, and Shilenko approached Ukrspetseksport in early 2000 regarding the sale. [1,3] The Russians had fictitious documents from the Russian Ministry of Defense and the state-owned Rosvooruzheniye arms trading company, as well as end-user certificates to support their request to purchase 20 Kh-55 missiles. These false documents were evidently accepted by Ukraine’s State Export Control Service, which allowed the sale to move forward. Yevdokymov arranged for the missiles to be transported by air from Ukraine to China in April 2000. [1] He provided customs with documents indicating that the flight was departing for an airport in Russia, but instead the six missiles were flown to China. [4] Former Ukrspetseksport head V.I. Malyev reportedly knew that the paperwork was fictitious and that the missiles were headed for China. Progress was paid US\$600,000; the payment was made by two firms based in Cyprus via the U.S. firm Technocality Inc. through the Central European International Bank in Budapest. [1]

Six missiles destined for Iran similarly were sold for US\$600,000, and related ground targeting equipment for an additional US\$200,000, also paid through Technocality Inc. This time, a fictitious contract between a Cypriot firm and Iranian firm for the provision of equipment to oil refineries was used as a cover for the money transfer. Further, the Iranian deal included servicing of the missiles; Ukrainian specialists visited Iran for this purpose several times in 2001-2003.

In October 2004, the SBU opened a criminal case regarding the embezzlement of more than US\$13 million by Ukrspetseksport staff, including Director Shmarov, through these and other illegal weapons sales. Omelchenko related that it was only in the fall of 2003, when SBU head Leonid Derkach was replaced by Ihor Smeshko, that the SBU began to investigate illegal exports, including the Kh-55 sales as well as other illegal arms sales to Sierre Leone and Eritrea. [1]

Editor's Note: The Kh-55 missile, also known in the West as a "Kent" missile, is a strategic ALCM (a missile with a range exceeding 600 km) under START I rules. The Kh-55SM is a long-range variant of the missile, with a maximum range of 3,000 km. The Kh-55 and Kh-55SM are designed to carry a 200-kt nuclear warhead; the conventional variant of the Kh-55 was never adopted into service; the conventional variant of the Kh-55SM missile is the Kh-555. [5]

Several Kh-55—as well as short-range Kh-22—missiles remained in Ukraine after Russia purchased most heavy bombers and related weapons from Ukraine after the breakup of the Soviet Union. If the illegal export took place, it is likely that the missiles were purchased for parts and possibly also reverse engineering of the Kh-55's highly efficient turbofan engine, the R95-300. Kh-55s were designed only for nuclear warheads and only for heavy bombers (Tu-95MS and Tu-160). Iran or China would have to modify their Kh-55s to make them capable of being launched from underneath the wing of an aircraft. Although such a conversion is conceivable, given the small number of missiles, it hardly seems worth the effort.

Sources: [1] "Deputatskiy zapit" [Deputy's Request], Sobor website, February 2, 2005, <http://www.sobor.org.ua/vr/dep020205_2.htm>. [2] "Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Arms," in NIS Nuclear and Missile Database, Nuclear Threat Initiative website, <<http://www.nti.org/db/nisprofs/fulltext/treaties/start1/s1lis.htm>>. [3] Pavel Felgenhauer, "Great Weapons for Rogues," *Moscow Times*, February 15, 2005, <<http://www.themoscowtimes.com>>. [4] "Utechka informatsii iz Apellyatsionnogo suda Kiev: rakety iz Ukrainy okazalis v Kitaye i Irane!" (Leaked information from Kiev's Appellate Court: Missiles from Ukraine turn out to be in China and Iran!), *Obozrevatel* (Kiev), February 3, 2005, in Integrum Techno, <<http://www.integrum.com>>. [5] "Russian Heavy-Bomber Delivered Missiles," NIS Nuclear and Missile Database, Nuclear Threat Initiative website, <<http://www.nti.org/db/nisprofs/russia/weapons/bombers/bombers.htm>>.

DirecTV Fined for Violating U.S. Export Control Regulations

The DirecTV Group agreed to pay US\$5 million in fines for 56 counts of violating U.S. export control and arms control regulations, in particular for failing to restrict sales of VSAT (Very Small Aperture Terminal) equipment used for satellite voice and data transmission systems between 1993 and 2003. According to the U.S. State Department, DirecTV, through its Germantown, Maryland subsidiary, Hughes Network Systems, modified and sold equipment to China, South Korea, India, Turkey, and South Africa that could provide "the foreign recipients with a new capability to enhance secure satellite communications." Additionally, Hughes provided services to help Chinese customers resolve technical problems with external encryption equipment. According to State Department documents, the Chinese military sought to use this equipment in connection with their own encryption devices to transmit secure data over Hughes networks. [1] DirecTV offered a voluntary disclosure of the violations to the U.S. government in June, 2004. [2]

The violations in question occurred while DirecTV, previously known as Hughes Electronics Corporation, was negotiating a settlement agreement for previous export control violations. In 2003, Hughes Electronics Corporation agreed to pay \$32 million in fines to settle charges of illegally transferring sensitive U.S. space technology to China in violation of the International Traffic in Arms Regulations (ITARs). Under the settlement, Hughes was required to appoint an independent Special Compliance Officer charged with strengthening internal export compliance programs and overseeing all activities subject to ITARs for a period of three years. [2]

DirecTV waited six months after discovering the latest violations before notifying the Special Compliance Officer (SCO), and thereby also violated the 2003 settlement agreement. Lincoln Bloomfield, Assistant Secretary of State for Political-Military Affairs, stated that the infractions "raise serious concerns on the part of the Department as to [DirecTV's] adherence, commitment and implementation of the terms and conditions" of the 2003 agreement. According to the State Department, DirecTV demonstrated an inability to "convey to their employees the legal and regulatory requirements to monitor the export of defense articles and technical data." Under the settlement, DirecTV is required to appoint a new SCO and will not be granted licenses to sell defense equipment overseas until May 14, 2005. [1]

Sources: [1] Renae Merle, "DirecTV Fined Over Subsidiary's Export Violations," *Washington Post*, February 2, 2005, <<http://www.washingtonpost.com>>. [2] Giovanna Cinelli, "First State Department Enforcement Action of 2005: In the

Workshops & Conferences

Australia and Indonesia Co-Host Regional Workshop on Biological Weapons Convention

On February 21-25, 2005, a regional workshop on the Biological Weapons Convention (BWC) co-hosted by the governments of Australia and Indonesia was held in Melbourne, Australia. [1] Officials and experts representing health and foreign ministries, disease control centers and scientific institutions from 12 Southeast Asian and Pacific nations attended the event, the first of its kind in the region. [1,2] The workshop aimed to demonstrate the continued strong commitment in the region to halting the proliferation of weapons of mass destruction (WMD) and keeping the Asia-Pacific region free of biological weapons. Workshop participants discussed ways to reduce the possibility of bioterrorism in the region, improve security and oversight of pathogens and toxins, and establish effective codes of conduct for biological scientists. The workshop was also intended to assist regional officials in introducing the BWC provisions into appropriate national legislation and preparing progress reports for the sixth BWC Review Conference, to be held in Geneva in late 2006. Participants also discussed national implementation of effective exports controls as mandated by the UN Security Council Resolution 1540. [2, 3, 4]

Speaking at the workshop’s opening ceremony, Senator Robert Hill, Australia’s Minister of Defense, said that regional cooperation is the key to stopping the proliferation of biological weapons, stressing that “the prevention of bio-terrorism and the proliferation of biological weapons cannot be assured by any one country acting in isolation.” Hill continued that: “The threat [of bioterrorism] is not only real but a growing one, because of the rapid advances in the biological sciences and bio-technology, and the widespread availability of this information and associated material. These trends have coincided with the emergence of non-state actors determined to seek weapons of mass effect to use against civilian populations.” According to Hill, “the Australian government would support further meetings of this kind,” and Canberra was also prepared to offer “short courses of familiarization training on disarmament and arms control issues to officials throughout the region.” [2]

Senator Hill noted that in 2004 Australia hosted two significant regional nonproliferation-related events: a ministerial-level Asia-Pacific Conference on Nuclear Safeguards and Security which focused on the prevention of nuclear and radiological terrorism, and a meeting of countries participating in the Proliferation Security Initiative (PSI) which examined ways to open PSI further to more practical involvement by other states, particularly in the Asia Pacific region. Additionally, in 2005, Australia will host the 20th Anniversary Plenary meeting of the Australia Group and the third senior-level meeting of the Asian Export Control Policy dialogue. In 2006, Australia will chair the Wassenaar Arrangement in Vienna, which seeks to control transfers of conventional arms and sensitive technologies. [2]

Sources: [1] “Australia Hosts Conference on Bio-Terrorism, Melbourne: 21-25 February 2005,” Australian High Commission in Malaysia press release, February 22, 2005, <<http://www.australia.org.my/home/index.cfm?ArtID=231>>. [2] “Opening Speech: Biological Weapons Convention Workshop, Melbourne, 21 February 2005,” Website of Australia’s Minister of Defence, <<http://www.minister.defence.gov.au/HillSpechtpl.cfm?CurrentId=4646>>. [3] “Defence Minister to Open Biological Weapons Convention Regional Workshop,” Australian Department of Defence website, February 20, 2005, <<http://www.defence.gov.au/media/AlertTpl.cfm?CurrentId=4642>>. [4] “Regional Cooperation Will Stop Bioterrorism, Hill Says,” ABC News Online, February 21, 2005, <<http://www.abc.net.au/news/newsitems/200502/s1307323.htm>>.

Special Report

East Asian Governments Report on Export Control and Nonproliferation Progress: Review of Reports to the 1540 Committee

On April 28, 2004, the UN Security Council unanimously approved Resolution 1540, which mandated that all UN members enact and enforce “appropriate effective laws” to prevent terrorists from developing, acquiring, or using weapons of mass destruction and their means of delivery. Paragraph four of Resolution 1540 called upon States “to present a first report no later than six months [October 28, 2004] from the adoption of this resolution to the committee on the steps they have taken or intend to take to implement this resolution.” (See related story in the December 2004/January 2005 issue of the *Asian Export Control Observer*.)

As of March 7, 2005, 105 countries, along with the European Union, had submitted reports. The 1540 Committee received reports from many countries in East Asia, including Brunei Darussalam, China, Indonesia, Japan, Malaysia, the Philippines, Singapore, South Korea, Thailand, and Vietnam. The reports that are publicly available range from cursory to detailed, though all help to shed at least some light on each nation’s nonproliferation policies. Given that Resolution 1540 also called for all states to “establish, develop, review and maintain appropriate effective national export and trans-shipment controls,” the national reports serve to provide valuable updates on the status of domestic export controls within the region.

Editor’s note: According to the 1540 Committee’s website, the reports from Brunei Darussalam, South Korea and Vietnam have been submitted, but are awaiting translation. For purposes of this article, a copy of the report from the Republic of Korea was made available to the editors by ROK government representatives. However the editors were not able to access the reports for Brunei and Vietnam. Cambodia, Laos, Mongolia, Myanmar, and North Korea have not submitted national reports. All publicly available reports can be found at: <http://disarmament2.un.org/Committee1540/report.html>.

Northeast Asia

China

Submitted on October 4, 2004, China’s national report reaffirmed Beijing’s commitment to WMD nonproliferation and provided a detailed discussion of the ongoing efforts to strengthen domestic export control mechanisms and to meet international obligations. The report also briefly discussed the legislative basis and implementation of WMD nonproliferation in two of China’s Special Administrative Regions—Hong Kong and Macau.

The report provided a detailed discussion and explanation of the implementation, enforcement, and punitive measures of China’s export control system. Summarizing the key export control regulations introduced since the late 1990s and particularly those promulgated in 2002, the report also emphasized that the control lists used internally by the Chinese government closely follow those maintained by the multilateral export control regimes. The report also provided new information on relevant measures and regulations on protection, stockpiling and safety of nuclear, radioactive devices, and bacteria cultures that have not received publicity in the past. Of particular relevance to WMD nonproliferation and physical protection were the following regulatory measures that the report mentioned:

- Regulations on the Control of Nuclear Materials
- Regulations on the Prevention of and Protection Against Radiation from Radio-Isotopes and Radioactive Devices
- Law of the People’s Republic of China on the Prevention of Radiation Pollution
- Regulations of the People’s Republic of China on the Stockpiling and Management of Bacteria Cultures and the Measures of the People’s Republic of China on the Stockpiling and Management of Medical Bacteria Cultures
- Regulations of the People’s Republic of China on the Administration of the Controlled Chemicals

The report also highlighted the increased attention the Chinese government has paid to training, outreach, border controls, and other implementation activities. Beijing has made it a top priority to publicize the relevant export control regulations in both the national media and on official websites. In addition, government-sponsored lectures, workshops and seminars both keep trading companies informed about updates of new regulations and requirements, and raise their awareness of compliance issues. Enterprises engaged in export trade are required to not only follow the government regulations but also report suspicious proliferation activities and assist government investigations into violations.

Regarding border controls, the report noted that the Chinese government is delegating clearly defined authority to China's General Administration of Customs (GAC), based on the country's Customs Law, making the GAC the key agency in enforcing controls on exports and imports of sensitive items and technologies in coordination with other relevant government agencies. In addition, Chinese Customs authority has also established cooperative relationships with their counterparts in other countries.

Beijing's report emphasized ongoing cooperation between China and international agencies (e.g., International Atomic Energy Agency (IAEA)) and multilateral regimes, including China's recent accession to the Nuclear Suppliers Group (NSG) in May 2004. China has also been in consultation with the Missile Technology Control Regime (MTCR), the Australia Group (AG), and the Wassenaar Arrangement (WA).

Finally, while China's report recognizes the importance of WMD nonproliferation and the necessary measures that must be adopted and implemented, it also pointed to the need to balance nonproliferation and international cooperation for peaceful uses of the relevant technologies.

Japan

Submitted on October 28, 2004, the Japanese government report stated that it had enacted domestic legislation to "ensure compliance with obligations under major multilateral treaties." Comprehensive legislation was already in place to provide effective physical protection of nuclear facilities and to prevent the proliferation of nuclear, chemical, and biological weapons and their means of delivery. Under Japan's Foreign Exchange and Foreign Trade Law and Executive Orders No. 378 (1949) and No. 260 (1980), permission is required to export goods and technologies that could be used to develop WMD. Japan adopted "catch-all" controls in April 2002 to require licensing from the Minister for Economy, Trade and Industry (METI) "for the export of virtually all goods and technologies (including those not listed), as long as the end-uses of the goods and technologies are related to weapons of mass destruction."

Noting Japan's participation in all international suppliers regimes and the Hague Code of Conduct against Ballistic Missile Proliferation, the report stated that Tokyo is active in promoting multilateral cooperation to prevent WMD proliferation. The report also noted Japan's significant monetary contributions to the IAEA (18 percent of the agency's total budget), Organization for the Prohibition of Chemical Weapons (OPCW), meeting of state parties to the Biological Weapons Convention (BWC), Comprehensive Test Ban Treaty Organization (CTBTO) Preparatory Committee (20 percent of their respective budget), and Nuclear Nonproliferation Treaty (NPT) Review Conference (14 percent of the total budget). Japan also recently agreed to fund a project to dismantle Russian nuclear submarines under the G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.

Tokyo's report also discussed Japanese activities in promoting nonproliferation and export controls in Asian countries, stating that "Japan is willing to provide assistance as appropriate in response to specific requests to states lacking the legal and regulatory infrastructures, implementation experience and/or resources for fulfilling the provisions." Japan hosted the Asian Senior-level Talks on Non-Proliferation (ASTOP) in November 2003 and February 2005 (*see related story on page 7 of the current issue*), and supported the strengthening of export controls through the first Asian Export Control Dialogue in October 2003, followed by the second Asian Export Control Policy Dialogue and the 12th annual Asia Export Control Seminar in October 2004.

Japan has been an active participant in the U.S.-led Proliferation Security Initiative (PSI), hosting a maritime interdiction exercise in October 2004. Japan has also been working "to enhance support towards PSI among Asian countries."

South Korea

South Korea's national report, submitted on October 27, 2004, emphasized that Seoul is party to all relevant nonproliferation regimes and multilateral export control arrangements, and that the country has the legal and administrative systems to comply with and implement the operational paragraphs of the resolution. National statutes, including the Financial Transactions Reports Act and the Proceeds of Crime Act, criminalize the efforts of any non-state actors to acquire WMD-related materials. The Atomic Energy Act and the Act for Physical Protection and Radiological Emergency provide a maximum penalty of life in prison for the acquisition, manufacture, transfer or transport of nuclear weapons. The Act on the Control of the Production, Export and Import of Specific Chemical for the Prohibition of Chemical Weapons prohibits the development, production, possession or transfer of chemical weapons, and the Act on Special Measures for the Defense Industry restricts any missile-related activities to those approved by the government.

South Korea is a member of the Zangger Committee, the NSG, the Wassenaar Arrangement, the Australia Group, the MTCR, and the G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction. South Korea introduced "catch-all" controls to its export control system in January 2003, and the government established the Strategic Items Control Division within the Ministry of Commerce, Industry and Energy (MOCIE) in February 2004. South Korea also established the Strategic Trade Information Center in August 2004 to assist private sector compliance with export control regulations. The Korean Customs Service under the Customs Act has the authority to inspect and restrict the import and export of dangerous items.

South Korea's National Assembly ratified the IAEA's Additional Protocol in April 2004, and the government established the National Nuclear Management and Control Agency in October 2004. In September 2004, the South Korean government issued a declaration on the "Four Principles for the Peaceful Use of Nuclear Energy" whereby Seoul pledged it had no intention of developing or possessing nuclear weapons; firmly maintained the principle of nuclear transparency; would abide by international nonproliferation agreements; and would expand the peaceful use of nuclear energy while reassuring the confidence of the international community.

Southeast Asia

Indonesia

In its national report submitted on October 28, 2004, Indonesia declared its commitment to full implementation of and compliance with Resolution 1540, often citing itself as a victim of terrorism. *[Editor's note: Indonesia has been the site of numerous terrorist bombings over the past three years, including the bombing of two nightclubs on the island of Bali that killed over 200 people, including many foreign tourists, in 2003, and most recently a bombing in September 2004 outside the Australian Embassy in Jakarta. Jemaah Islamiyah, a regional terrorist network that is closely linked to al-Qa`ida, was reportedly responsible for all of these major attacks.]* Reiterating that it does not and will not produce, develop or use WMD, the report identified the specific steps taken by Indonesia to both counter terrorism and strengthen its export control system.

Regarding terrorism, the report cites as one of Jakarta's main initiatives the establishment of the Counter-Terrorism Coordinating Desk in the Office of the Coordinating Minister of Political and Security Affairs in 2002, as well as the creation by the Department of Health of a rapid response team to deal with emergency situations, "such as a bio-terrorism attack." The report also noted Indonesia's development of an Early Warning Outbreak Reporting System (EWORS), which shares communicable disease outbreak information with national health authorities.

Indonesia's report detailed efforts to bolster the nation's export control system and port security, mentioning "Law No. 10/1995 regarding Export Control" and "Law No. 15/2003 regarding the Eradication of Criminal Acts of Terrorism" as the primary legislative actions in this regard.

The report identified the three stages of Indonesia's export control process:

1. "Pre-service control," relying on a "risk management system" that involves the selection of items to

- be controlled through the analysis of the supplier, country of origin, and means of transportation;
2. "Control during service process," in which selective, random examinations or those based on intelligence gathered using customs documents are conducted; and
 3. "Post-service control," which encompasses the control of imported or exported goods that were not covered by either of the two processes described above, but might be violating regulations. This last step is carried out through a post-audit of the importer and the exporter.

With respect to port security, the report noted that radiation detection and monitoring equipment have been installed in major seaports, while detection and monitoring devices such as x-ray scanners are in place at all major airports. The Indonesian government has also established a joint task-force with Singapore for carrying out maritime patrols.

Malaysia

Despite recent revelations of the involvement of Malaysian-based entities in the A.Q. Khan nuclear smuggling network, Malaysia's national report to the 1540 Committee did not allude to any significant weaknesses in its export control system. According to the report, submitted on October 26, 2004, "Malaysia does not require assistance in implementing" UNSCR 1540, but "is willing to consider requests from other States for assistance." The report did admit, however, that Malaysia lacks a comprehensive WMD export control system and that current "export control laws and regulations are mainly based on economic reasons."

In response to the provision of the resolution addressing the establishment of effective nonproliferation controls (paragraph 3), the report detailed the various legislation that encompasses the basis for enforcement of nonproliferation principles. For instance, the report pointed to the Penal Code, which criminalizes the use of noxious substances and "causing grievous hurt by dangerous weapons or means." The report also cited the Arms Act of 1960 and the Customs Act of 1967 as key pieces of legislation in combating the transfer, development, and possession of WMD. However, according to the report, the provision that criminalizes terrorist acts involving the use of WMD has not yet entered into force. The CWC Bill of 2004, which brings Malaysia's export control laws in line with its obligations under the Chemical Weapons Convention (CWC), is expected to come into force once the bill has been endorsed by Malaysia's parliament. *[Editor's note: The bill is expected to be passed in the spring 2005 parliamentary session. The new law will establish penalties of up to 30 years imprisonment and fines of up to US\$264,000 for individuals convicted of illegally possessing, using, or assisting in the production of a chemical weapon.]* Under the same section, the report mentioned that "scanning machines" were in place at major ports in Malaysia, and also highlighted Malaysia's involvement in the U.S. Container Security Initiative (CSI). *[Editor's note: Malaysia's Port Kelang and Tanjung Pelapas have been "CSI Ports" since 2004.]*

The Philippines

Submitted on October 28, 2004, the Philippine national report focused primarily on counter-terrorism laws and initiatives, particularly the "16-Point Counter-Terrorism Program," which stemmed from a National Plan outlined by President Gloria Macapagal-Arroyo in October 2001. With regards to Manila's efforts to prevent WMD proliferation, the report cited Republic Act 5207 (atomic energy), Presidential Decree No. 930 (export procedures), Republic Act 2067 (radioactive materials), and Executive Order No. 522 (chemicals) as the legislation that constitutes its export control system.

On nuclear issues, the report noted that the Philippine Nuclear Research Institute (PNRI) developed an action plan for securing radioactive materials and was revising the National Radiological Emergency Preparedness and Response Plan. The report also indicated that Manila was preparing to ratify the IAEA's Additional Protocol, although no specific date for entry into force was given. *[Editor's note: The Philippines signed an Additional Protocol with the IAEA in September 1997, but the agreement has not been ratified by the Philippine parliament.]*

Although the Philippine government showed no indication of planning to join international supplier regimes such as the MTCR or Australia Group, it did recognize "a need for the Philippines to develop a more responsive export control [system]." In that respect, the report noted that Manila's "inter-agency National Authority for WMD Inspection and Control (NAWIC), is presently coordinating with relevant government agencies for the establishment of a comprehensive Philippine WMD Export Control Regime," with

legislation in place by “early 2006.” Agencies identified as currently involved in that effort were the Department of Foreign Affairs, Bureau of Customs, and the Philippine National Police.

Singapore

Submitted on October 21, 2004, Singapore’s national report affirmed its strong commitment to WMD nonproliferation and elaborated on its national export controls and relevant regulatory measures in accordance with its international obligations. The report identified the five key legislative measures Singapore has put in place to combat the spread of WMD, with the 2003 Strategic Goods (Control) Act serving as the linchpin of these efforts. The Act covers exports and imports, re-export, transshipments, and intangible transfers of goods and technology that could be used for WMD development, and includes “catch-all” provisions. The report identified Singapore Customs as the National Authority for the implementation and enforcement of the Act, and as the agency responsible for conducting regular public and industry outreach sessions.

The report also detailed the provisions of four other acts—the Regulation of Imports and Exports Act, the Chemical Weapons (Prohibition) Act, the Arms Offences Act, and the Arms and Explosives Act.

While Singapore is not a member of multilateral export control regimes, it does maintain a control list that is drawn from these regimes. Singapore is also a participating state in both the Container Security Initiative (CSI) and the Proliferation Security Initiative (PSI). As part of its involvement with CSI, the report noted that two of Singapore’s port terminals now have in place new equipment such as radiographic scanners, while dialogue with major shippers, U.S. Customs Service, logistics companies, and shipping lines is ongoing. (*See related story in the Round-up section on page 9 of the current issue.*)

Thailand

Submitted on November 5, 2004, Thailand’s national report on its efforts to fully implement Resolution 1540 provided a rare and comprehensive look into the Kingdom’s export control system and port security plans, as well as its current nonproliferation policy. Beginning first with its international nonproliferation agreements, the Thai government announced its intention to become a State Party to the Comprehensive Test Ban Treaty (CTBT) by the end of 2005 and expressed its intent to sign the IAEA’s Additional Protocol “in the near future once domestic procedures have been completed.”

The Thai government also articulated the export control responsibilities of its various ministries. The Ministry of Defense, for example, was described as “the national authority” to control and regulate missiles, conventional weapons and related materials, while the Ministry of Commerce performs the same functions for dual-use items.

With respect to maritime security, the report highlighted Thailand’s participation in the U.S. Container Security Initiative (CSI), stating that since March 2004 it has used x-ray container equipment to screen and detect high-risk cargo at Laem Chabang Port, south of Bangkok. The report also noted that relevant Thai agencies have engaged in outreach meetings and seminars with the private sector to increase awareness regarding WMD nonproliferation and CSI.

In detailing further measures planned for full implementation of Resolution 1540, the report highlighted nine key future initiatives to be undertaken. These include:

- Establishing an end-user certificate system;
- Reviewing existing WMD and dual-use control lists, with “a view to establishing a comprehensive and updated national control lists [sic];”
- Implementing the Megaport Initiative, sponsored by the U.S. Department of Energy, by using radioactive detectors at Laem Chabang Port for the scanning of vehicles and containers; and
- Controlling nuclear-related materials under the Additional Protocol.

Finally, the report noted Thailand’s continued need for training courses and workshops on effective means to deter, detect, combat and prevent WMD and dual-use transport and trafficking.

Asian Export Control Observer (<http://cns.miiis.edu/pubs/observer/asian>) is devoted to the analysis of WMD export control issues in the East Asian region. It is published bi-monthly for the international export control community by the Center for Nonproliferation Studies (CNS), Monterey Institute of International Studies (MIIS), with financial support from the U.S. Department of Energy. Although every reasonable effort has been made to check sources and verify facts, CNS cannot guarantee that accounts reported in the open literature are complete and accurate. Therefore, CNS shall not be held liable for any loss or damage caused by errors or omissions. Statements of fact and opinion expressed in the *Asian Export Control Observer* are the responsibility of the authors alone and do not imply the endorsement of the editors, the Center for Nonproliferation Studies, the Monterey Institute of International Studies, or the U.S. Government. Copyright 2005 by MIIS. May be freely reproduced and distributed with proper citation.

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