



Survey of Export Controls across the Asia Pacific : System by System

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Discussion Topics



1. Overview of APAC Export Control (EC) Landscape
2. APAC Export Controls, System by System
3. Compliance Considerations
4. Concluding Points and Q+A



APAC Export Control Landscape (1)



- **Almost every economy in Asia Pacific requires government authorization (permit, license) to trade in certain items**
- **Most “trade controls” in APAC are instituted for environment/health/safety (EHS) or economic reasons**
- **Several APAC economies institute trade controls on certain items (or persons, activities, or countries) for security and anti-weapons proliferation reasons in line with specific international treaties and multilateral arrangements, to which special rules and procedures apply**

APAC Export Control Landscape (2)



- Items subject to control: “strategic” munitions and “dual-use” goods, technology and software incl. certain composite materials, machine tools, avionics, electronics, high-speed computers, encryption software, chemicals, biological agents, and military equipment, among others
- Controlled end-uses: military- and weapons of mass destruction (WMD)-related
- Controlled end-users: Sanctioned countries, companies, and individuals as well as those that present risk of weapons proliferation, terrorist activity, and other security threats

APAC Export Control Landscape (3)



“COMPREHENSIVE” SYSTEM IN-PLACE	PENDING EC-RELATED LEGISLATION	“STILL EXPLORING” COMP ECs ^
<p>Australia</p> <p>China</p> <p>Hong Kong</p> <p>India</p> <p>Japan</p> <p>Korea</p> <p>Malaysia</p> <p>New Zealand</p> <p>Singapore</p> <p>Taiwan</p>	<p>Indonesia</p> <p>Mongolia</p> <p>Philippines *</p> <p>Thailand *</p> <p><i>* recently took key legislative action towards establishing “comprehensive” system</i></p>	<p>Bangladesh</p> <p>Brunei</p> <p>Cambodia</p> <p>Laos</p> <p>Myanmar</p> <p>Sri Lanka</p> <p>Vietnam</p> <p><i>^ Though almost all have some form of trade controls on strategic and non-strategic items</i></p>

APAC Export Control Landscape (4)



- **Things to look at and compare among APAC export control systems:**
 - The government created lists used to identify controlled items
 - The scope of transactions and trade activities controlled
 - The regulatory and administering agencies
 - Licensing requirements and processes
 - Enforcement

APAC Export Control Landscape (5)



- **Item Control Lists**

- 10 economies in APAC currently have lists that identify trade controlled strategic items
- Those lists differ from U.S. export control lists in several ways
- 6 APAC economies base their control lists on the European Union (EU) List of Dual-Use Items and EU Common Military List
- The 10 APAC economies update their export control lists at different times and with different frequency
- Some economies have special lists of otherwise non-regulated items that are controlled for export to certain destinations or end-users

APAC Export Control Landscape (6)



COUNTRY / AREA	DUAL-USE_CONTROL LIST COMPOSITION	LAST UPDATE
AUSTRALIA	2014 EU List of Dual-Use Items	Apr 2015
CHINA	Unique approach to control list(s)	Jul 2015
HONG KONG	2014 EU List of Dual-Use Items	Apr 2015
INDIA	Unique control list	Mar 2015
JAPAN	“Ahead” of 2014 EU List of Dual-Use Items	Jul 2015
KOREA	“Ahead” of 2014 EU List of Dual-Use Items	Jul 2015
MALAYSIA	<u>2012</u> EU List of Dual-Use Items	Feb 2014
NEW ZEALAND	<u>2012</u> EU List of Dual-Use Items	Mar 2013
SINGAPORE	2014 EU List of Dual-Use Items	Aug 2015
TAIWAN	2014 EU List of Dual-Use Items	May 2015

APAC Export Control Landscape (7)



- **Dual-use control list comparison example: “signal analyzers” (equivalent of U.S. ECCN 3A002.c.3)**

“Exceeding 90 GHz”	“Exceeding 75 GHz”	“Exceeding 70 GHz”	Not Listed
Japan	Australia	Malaysia	China
Korea	EU	New Zealand	India
USA	Hong Kong		
	Singapore		
	Taiwan		

APAC Export Control Landscape (8)



- **Scope of trade controlled transactions / activities in APAC:**
 - All APAC economies control transits and/or transshipments of strategic items under certain conditions
 - All economies in APAC with comprehensive EC systems have some form of end-use-based controls (“catch-all”)
 - 7 of the 10 APAC economies with comprehensive EC systems require licenses for certain “brokering” activities
 - Most APAC economies require licenses for intangible transfers of strategic technology (ITT), few have “deemed” export controls
 - Other (special cases): imports; encryption; pre-registration

APAC Export Control Landscape (9)



EXPORT LICENCE APPLICATION FORM (Strategic Commodities) [See Note (1)]						
THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION Import and Export Ordinance, Cap. 605 Import and Export (Strategic Commodities) Regulation				Receipt No.:		
(A) Exporter (Name and address)			(B) Consignee			
Name and Full Address:			Name and Full Address:			
Business Registration No. (if applicable) / SICED No./Passport No.:	Pat No.:	Tel. No.:	Fax No.:			
Contact Person Name:	Contact Person's Tel. No. (if different from Tel No above)	(C) End use of Commodities at (A):				
(C) End User of Commodities at (A) [See Note (2)]:			Name and Full Address:			
Tel. No.:	Pat No.:	(D) Export Authorization of Foreign Exporting or Product's Originating Country(ies)/ Import Authorization of Product's Final Destination / Hong Kong Import Licence Number [See Note (3)]:				
(E) Shipment Details						
Authorization Type and its Reference No.:						
Destination [See Note (2)]:		HS Country/Territory Code:				
Name:						
Departure Date [See Note (4)]:	Vessel/Flight/Vehicle No. [See Note (4)]:	Issuing Country (Please):	Issue Date:			
(F) Commodities [See Note (5)]:						
Brand/Make Name	Model/Part No.	Full Product Description (include serial no. if applicable)	Country (Place) of Origin	Pre-classification Ref. No. (if applicable) [See Note (5)]:	No. of Units	F.O.B. Value (in HK \$) [See Note (6)]:
Hong Kong Manufacturer/Processor (Name and Address) [See Note (6)]:			Total:			
(H) Conditions of Licence						
(1) Export licence, if granted by the Director General of Trade and Industry, will be granted in reliance on the information declared on this application. Provision of false information or making false declaration shall render the licence null and void. Heavy penalties are provided for false declaration and information, unauthorised alteration of the licence and use of forged or altered licence.						
(2) A breach of any of the Conditions of Licence imposed by the Director General of Trade and Industry may render the licence to be cancelled, revoked or suspended in addition to other appropriate legal and/or administrative actions to be taken against the violator concerned.						
(3) The goods covered by the licence are not to be used in relation to nuclear, biological or chemical weapons or missile capable of delivering these weapons.						
(4) Exporter is required to inform the recipient(s) of the goods of all the conditions pertaining to the licence.						
(5) Exporter should take appropriate precautionary measures to ensure that the goods covered by the licence will only be used by or transferred to civil end users. Prior approval from the Director General of Trade and Industry is required if the goods exported under the licence are not for civil end use.						
(6) For in-transit items, the goods must remain on board at all times while in Hong Kong unless directed by the Commissioner of Customs and Excise or his authorized officers.						
(7) If the terms and documentation covered by the licence also fall under the control of the Firearms and Ammunition Ordinance (Cap. 238), the validity of the licence is subject to the issue of a valid licence for possession or dealer's licence by the Hong Kong Police Force.						

- **APAC export control licensing systems**
 - More “one-stop shopping” i.e. single license issuing agencies
 - Much less use of license exceptions/exemptions, but fairly widespread availability of general licenses
 - Several systems have different license application forms and documentation for different types of transactions
 - Most systems now employ some form of electronic licensing
 - License application requirements fairly standard: need application form, technical info re item, end-use certificate

APAC Export Control Landscape (10)



- **Export control enforcement in APAC:**
 - Most APAC economies with comprehensive export control systems have specified export control violations and penalties (incl. criminal)
 - Export control penalties generally lower/less than what are found in the U.S. and EU with some exceptions
 - Implementation of export control enforcement still limited or just beginning in many APAC systems
 - Voluntary self-disclosure (VSD) not codified or widely practiced in most APAC export control systems

APAC ECs: System by System



China

Japan

Korea

Malaysia

Singapore

Hong Kong

Taiwan

Australia

Philippines *

China: Overview



Legal Framework	Series of item category-specific government regulations and ministerial “measures”
Primary Licensing Agency	Ministry of Commerce (MOFCOM), Bureau of Industry Security, Import and Export Control
Control List(s)	6 distinct lists combined into one “Dual-Use Catalog” with attempt to correlate HS codes, recently updated
Scope of Control	Exports, some transits/transshipments, intangible technology transfers (ITT), no brokering controls
Licensing	Pre-registration required; electronic licensing system; application starts at local MOFCOM office; general licenses
Enforcement	Both administrative and criminal penalties; enforcement still limited
Special Controls	Special encryption control regime (incl. for imports); special “restricted” technology controls (import and export)

China: Update



- **Update to the Nuclear Dual-Use Items and Related Technologies Export Control List (May 2015)**
- **MOFCOM announces licensing of intangible transfers of controlled dual-use technology (June 2015)**
- **Update to the Dual-Use Items and Technologies Import and Export Licensing Administration Catalog (June 2015)**
- **MOFCOM/GAC Notice No. 31 “On the Strengthening of Export Controls on Dual-Use Items” (July 2015) re certain high-performance computers and UAV-related items**

Japan: Overview



Legal Framework	Foreign Exchange and Foreign Trade Control Law; Export Control Order (goods); Foreign Exchange Order (technology)
Primary Licensing Agency	Ministry of Economy, Trade, and Industry (METI), Security Trade Licensing Division
Control List(s)	Separate lists of goods and technologies, both recently updated; use unique organization and coding system; special “Commodity Watch List”
Scope of Control	Exports; knowledge/information of WMD or military end-use; “catch-all”-based transit/transshipment and brokering activities; “Foreign End-User List”/”Commodity Watch-List” combo; intangible tech transfers (incl. “deemed” exports)
Licensing	Electronic licensing system; initial application to prefecture-level METI office; “CP” companies eligible for bulk licenses; some license exceptions available, esp. of “white countries”
Enforcement	Comprehensive criminal and administrative penalties, recently increased; no “official” VSD program but VSDs “encouraged”

Japan: Update



- **Update to Japan's Export Control Lists (July 2015)**
 - To incorporate multilateral regime list changes from 2014, including Wassenaar Arrangement 2014 List(s)
 - The new list took effect on October 1, 2015
- **Update to the Foreign End-User List (April 2015)**
 - 27 new entries added for end-users in China, Iran, Pakistan and Syria in addition to several amendments to existing entries

Korea: Overview



Legal Framework	Foreign Trade Act; Foreign Trade Enforcement Act; Public Notice on Import and Export of Strategic Items (recently updated)
Primary Licensing Agency	Ministry of Trade, Industry, and Energy (MOTIE), with support from Korea Strategic Trade Institute (KOSTI)
Control List(s)	Dual-use list updated in July 2015 to include all 2014 multilateral regime list updates; also special “Catch-All” List of 21 items controlled for specific countries
Scope of Control	Exports; WMD end-uses; “catch-all” based transits and transshipments; brokering activities; intangible technology transfers (incl. “deemed”)
Licensing	Electronic licensing via “Yestrade” system; “advance rulings” on items and transactions available; series of license exceptions available, most for Voluntary Compliant Traders (VCTs)
Enforcement	Comprehensive administrative and criminal penalty scheme; have offered VSD relief for temporary periods

Korea: Update



- **Revision of the Strategic Items Import and Export Notice (July 2015)**
 - As many as nine substantive changes to various provisions of the Notice, including new regulations relating to export permit applicant eligibility, designating entities as “traders of concern”, and Article 26 permit exceptions
 - Also includes updated versions of Korea’s Dual-Use Items List and Munitions List to incorporate all multilateral regime list updates through 2014 (including WA List from December 2014)
 - Accompanied by revised versions of several Article 20 individual export permit application materials

Malaysia: Overview



Legal Framework	Strategic Trade Act (STA) 2010; Strategic Trade Regulations; Restricted and Prohibited End-User Regulation
Primary Licensing Agency	Ministry of International Trade and Industry (MITI), Strategic Trade Secretariat (STS); however 3 other approving agencies for certain categories of items
Control List(s)	Dual-use list last updated in April 2014, comparable to the 2012 EU List of Dual-Use Items; list indicates controlling agency
Scope of Control	Exports; WMD end-uses; transits and transshipments; “catch-all” brokering activities; intangible transfers of technology; restricted and prohibited end-users
Licensing	Electronic licensing via Dagang Net system; limited license exceptions, but general licenses available; End-User Certificate (EUC) required for all controlled transactions
Enforcement	Currently criminal penalties only (including some very severe), and no VSD program

Malaysia: Update



- **Special MITI Customs Clearance Guidelines for Trade in Aircraft Components (April 2015)**
 - Issued to Airfreight Forwarders Association of Malaysia (AFAM), but “all relevant companies and industries are to refer to the guidelines issued”
 - Traders must self-classify their items; if ML10, or ECNs 7A003, 9A001, and 9A003, no STA permit required if item is certified as commercial use by civil aviation authority in country of import and if declared as such on Customs forms
 - Malaysia Customs reserves right to conduct random inspection of these items in accordance with their risk management system

Singapore: Overview



Legal Framework	Strategic Goods Control Act (SGCA); Strategic Goods Control Regulations (SGCR); Brokering (Control) Order
Primary Licensing Agency	Singapore Customs
Control List(s)	Strategic Goods Control List (SGCL) updated August 2015 , comparable to the 2014 EU List of Dual-Use Items and 2014 Wassenaar Arrangement Munitions List
Scope of Control	Exports; WMD end-uses; certain transits and transshipments; arms-related and “catch-all”-based brokering activities; intangible transfers of technology
Licensing	Electronic licensing via TradeNet system; special bulk licensing scheme for those that qualify and apply (ICP required); special license applications for brokering and for technology transfers
Enforcement	Criminal and administrative violations and penalties; established VSD program for export control violations

Singapore: Update



- **Modification to Transit/Transshipment Exemption (Jan. 2015)**
 - **“Fourth Schedule”** of strategic items ineligible for transshipment permit exemption was expanded, includes all items from ML Categories 1-10 and select items from DUL Categories 1, 2, 3 and 6 (though Category 5A2 and 5B2 items removed)
 - A **“Fifth Schedule”** of items ineligible for the transit permit exemption was added, includes all same items as Fourth Schedule but for Category ML9 and ML10 items, and DUL 1C350 items
- **Update to the Strategic Goods Control List (Aug. 2015)**
 - Entered into force as of November 2, 2015; results in slight changes to the transit/transshipment controls and brokering controls

Hong Kong: Overview



Legal Framework	Import and Export Ordinance; Import and Export (Strategic Commodities) Regulations
Primary Licensing Agency	Hong Kong Trade and Industry Department (TID), Strategic Trade Control (STC) Branch
Control List(s)	Strategic Commodities List, last updated April 2015, comparable to the 2014 EU List of Dual-Use Items
Scope of Control	Exports; certain WMD-related end-uses; <u>imports</u> ; <u>no</u> brokering controls; <u>no</u> intangible transfer of technology controls, controls on transfers of technology in “document” form
Licensing	Pre-classification service available; electronic licensing system; limited license exceptions but bulk licenses offered; special air transshipment cargo exemption scheme for those eligible
Enforcement	Criminal and administrative violations and penalties; no clear VSD program

Hong Kong: Export Control Enforcement



<u>Prosecution Statistics</u> (January – June 2015)		
Offence	Products (Category)	Fine (HK\$)
<p>Import without licence</p> <p><i>(Exporting place:</i> Germany, Mainland China, New Zealand, Philippines, Singapore, Taiwan, United Kingdom, United States)</p>	<ul style="list-style-type: none"> - Electronic components (3A001) - Encryption hardware (5A002) - Imaging camera (6A003) - Optical sensor materials (6C002) 	343,500
<p>Export without licence</p> <p><i>(Destination:</i> Japan, Mainland China, Mexico, Poland, Taiwan, United States)</p>	<ul style="list-style-type: none"> - Components for nuclear reactors (0A001) - Electronic components (3A001) - Telecommunications equipment (5A001) - Encryption hardware (5A002) 	2,662,000
<p>Import and subsequent re-export without licence</p> <p><i>(Exporting place:</i> Japan, Mainland China, Singapore, Taiwan, United States</p> <p><i>Destination:</i> Mainland China, Singapore)</p>	<ul style="list-style-type: none"> - Encryption hardware (5A002) - Imaging camera (6A003) - Gyros sensors (7A002) 	143,100

Taiwan: Overview



Legal Framework	Foreign Trade Act; Strategic High-Tech Commodities (SHTC) Regulations
Primary Licensing Agency	Ministry of Economic Affairs (MOEA), Bureau of Foreign Trade (BOFT), Trade and Security Task Force
Control List(s)	Adopted 2014 EU List of Dual-Use List and Common Military List wholesale in May 2015; also special “Sensitive Commodities List” of items controlled for trade with Iran and North Korea
Scope of Control	Exports; WMD-related end-uses (including select “red flag” triggers); <u>no</u> brokering controls; <u>no</u> intangible transfer of technology controls; controls on transits/transshipments to selected “restricted” destinations
Licensing	Electronic licensing system; limited license exceptions; ICP certification for companies allowing for bulk transfers
Enforcement	Criminal and administrative violations and penalties (hundreds of cases brought, few prosecuted); no clear VSD program

Taiwan: Update



- **Update to lists of Strategic High-Tech Commodities (SHTC) (May 2015)**
 - The Taiwan Bureau of Foreign Trade (BOFT) adopted the 2014 versions of the EU List of Dual-Use Items and Common Military List
- **Update to the “Sensitive Commodities List” (SCL) of items controlled for export to North Korea and Iran (May 2015)**
 - Select entries modified on the list of items that require a license for export to both North Korea and Iran in all cases, even if that item is not also on the EU List of Dual-Use Items or Common Military List

Australia: Update



- **New controls on “supplying” or “publishing” technology, and “brokering” military items or dual-use items under “catch-all”, introduced by Defense Trade Control Amendment Act (2015), to be enforced by Defence Export Control Office (DECO) starting May 2016 but parties can start applying for these new permissions now**
- **Update to the Defence and Strategic Goods List (DSGL) in May 2015; comparable to the EU List of Dual-Use Items and EU Common Military List of 2014**
- **Introduction of 5 Australia General Export Licenses (AUSGELs) for less-sensitive items to certain destinations, repair/replacement, etc. with special application process and compliance requirements**
- **Voluntary self-disclosures of violations encouraged**

Philippines: Update



- **Strategic Trade Management Act (STMA) bill passed**
 - Enters into force once signed by President and 15 days after publication in Official Gazette
 - Creates a Strategic Trade Management Office (STMO) under the Department of Trade and Industry (DTI) as primary administrative agency
 - Creates a National Strategic Goods List (NSGL) based on the EU lists, but with an additional categories of “nationally-controlled” items
 - Individual, global, or general license required to export, import, re-export and re-transfer (incl. extra-territorially), transit, transship, finance, broker, transport, and intangibly transfer (incl. “deemed”) items on the NSGL
 - Establishes full range of both criminal and administrative penalties, with potential criminal liability for company officers and partners

APAC EC Compliance Considerations (1)



- **The rate and extent of export control regulatory changes in APAC are increasing**
- **Considerable intra-regional variance when it comes to controls on brokering activities, transits/transshipments, and technology transfers and in terms of control lists**
- **More straightforward license determination for the most part (as compared to U.S.): item on the list = need license to export**
- **Do not automatically assume controlled/not-controlled in the U.S. or EU = controlled/not-controlled in APAC countries/areas**
- **Gradual trend of greater export control enforcement across the region**

APAC EC Compliance Considerations (2)



- **Consider tracking/scoping APAC export controls if you haven't already → keep eye on ASEAN countries**
- **Consider classifying/mapping products and technologies in accordance with APAC control lists in advance**
- **Consider developing tailored country (or at least regional) processes and/or complete ICPs/TCPs as needed**
- **Consider having dedicated and well-trained export control compliance personnel in-country (or at least in-region) → language, and government interface**
- **Consider making use of available government resources, from published laws and regs, to advance classification offerings and pre-license consultations to electronic licensing systems**

Conclusion, Contact Info, Q+A



Thank you for your time and attention!

Happy to answer any questions now or later:

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