

# Implementation and Enforcement of Strategic Trade Controls in Malaysia

MOHAMED SHAHABAR ABDUL KAREEM<sup>1</sup>

## Abstract

*The Strategic Trade Act 2010, intended to implement strategic trade controls in Malaysia, received royal assent on July 2, 2010 and was published in the official gazette on July 10, 2010, effectively making it national law. This article is a narrative on Malaysia's journey to implement and enforce strategic trade controls. It lays out the history of Malaysia's decision to adopt and implement strategic trade controls and how it was done; analyzes the current system, its main components, including the organizational structure; and draws general conclusions about its effectiveness and limitations.*

## Keywords

Export control, strategic trade control, Malaysia, Strategic Trade Act, Southeast Asia

## Introduction

On April 5, 2010, just prior to the Nuclear Security Summit (NSS) of April 12-13, 2010 hosted by US President Barack Obama in Washington DC, Malaysian Prime Minister Datuk Seri Najib Tun Razak officially announced the Malaysian government's adoption of the Strategic Trade Act. The Act was intended to fulfill Malaysia's obligations under United Nations Security Council Resolution 1540 (UNSCR 1540).<sup>2</sup> The Act, which was adopted in a sitting of the House of Representatives on that very date, was aimed at establishing controls to curb the proliferation and trafficking of weapons of mass destruction (WMD)-related materials and associated delivery systems from and through Malaysia.

The journey to the adoption of the Act, however, goes back at least five years. A working version to introduce the Act was drafted in 2005 and had been floating about in the government, without any domestic champion or political will to push it to fruition.<sup>3</sup> The delay in tabling the Bill was also the result of a turf war among

<sup>1</sup> Mr. Mohamed Shahabar was the first head of the export control organisation in Malaysia, the Strategic Trade Secretariat. Had the responsibility to establish from scratch the Secretariat and implement a comprehensive system of strategic export controls in the country. Currently retired but is pursuing his interest in strategic export controls as an independent specialist, in particular sharing Malaysia's experience in establishing an innovative and effective system and infrastructure for the management of strategic controls.

<sup>2</sup> "Malaysia to strictly enforce nuclear trafficking law," *AFP*, April 15, 2010, <[www.channelnewsasia.com](http://www.channelnewsasia.com)>; and "Parliament: Strategic Trade Bill is Passed," *Bernama*, April 5, 2010, <[www.bernama.com](http://www.bernama.com)>.

<sup>3</sup> Stephanie Lieggi and Richard Sabatini, "Malaysia's Export Control Laws: A Step Forward, But How Big?," NTI Analysis, May

government agencies that were eager to become the custodian of the Act, preventing any single agency from taking the lead.

An unlikely but influential champion for strategic trade controls emerged in 2009. It was none other than the Malaysian Prime Minister himself. With Prime Minister's support and using the existing working draft, the Attorney General's Chambers (AG Chambers), in the later half 2009, started consultations with relevant ministries and agencies to finalize the Bill. As soon as the Bill was ready to be tabled in Parliament, swift actions were taken culminating in the publication of the law in the Official Gazette of the Federation of Malaysia on June 10, 2010. The impressive timeline for the adoption of the Strategic Trade Act 2010 is as follows:

March 27, 2010 - Discussed and approved by the Cabinet  
 April 5, 2010 - Approved by the Lower House of Parliament  
 May 6, 2010 - Approved by the Senate  
 June 2, 2010 - Received Royal assent  
 June 10, 2010 - Published in the Gazette

The first NSS provided an important impetus to the process. According to a report by the Institute for Science and International Security dated April 9, 2010,

*The Malaysian Prime Minister, scheduled to attend the Nuclear Security Summit on April 12-13, likely did not want to show up in Washington empty-handed at a conference that aims in part to end nuclear smuggling and reduce the likelihood of nuclear proliferation.<sup>4</sup>*

The United States had been urging Malaysia to enact laws for strategic export controls for years. Bearing the gift of 'STA 2010' at the Summit, Mr. Najib assured an important economic partner and political ally that was aligned on security issues, particularly on the security of trade. Showing Washington's pleasure with the gift, President Obama at a bilateral meeting held on the sidelines of the NSS on April 12, 2010 with Prime Minister Najib, congratulated Malaysia for adopting the Strategic Trade Act.

The publication of the law in the national Gazette officially signaled to the world and domestic stakeholders that Malaysia had the legal provisions in place and was ready to tackle the problem of proliferation and trafficking of WMD-related goods and technology. The time necessary for Malaysia to adopt the STA 2010 was unprecedented. Typically it takes up to three or more years from the drafting stage of a Bill to its final adoption as a law. Including the time necessary for drafting, the STA 2010 was done in less than a year, demonstrating the urgency and commitment the government had placed on enacting this comprehensive and all-encompassing Act.

## Drivers

Many countries, particularly in Southeast Asia, face difficulties in enacting laws on strategic trade controls. The primary focus in these countries is trade facilitation, and therefore controlling trade is often not on the radar of the legislators and the government. In Malaysia, for example, there were always more pressing domestic issues requiring urgent attention, and championing such causes provided more visibility for law makers. 'Strategic trade controls' is also not something that attracts votes or generates an increase in the popularity of the ruling government or the opposition. Furthermore, the poor understanding of both the

---

2010, <[www.nti.org](http://www.nti.org)>.

<sup>4</sup> David Albright, Paul Brannam, and Christina Walrond, "Malaysia Finally Adopts National Export Controls," Institute for Science and International Security, April 2010, <[www.isis-online.org](http://www.isis-online.org)>.

executive and legislative branches on the meaning of strategic export controls remained a hindrance.<sup>5</sup>

There are five primary drivers that led to Malaysia to adopt STA 2010.

### 1. *Malaysia's Obligations under UNSCR 1540*

UNSCR 1540 requires member states to:

*...take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall ...establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export...*

As a UN Member State, Malaysia is bound by Articles 25 and 48 of the Charter of the United Nations to comply with and implement these obligations. While UNSCR 1540 was adopted in 2004, the requirements it contained took some time to gain support and traction within the country. A hindrance was the view held by many government agencies that exports were already adequately controlled in Malaysia and, therefore, that there was no need for an additional legal instrument to control strategic goods and technologies.<sup>6</sup> This is partly true as there was other legislation in place to control the exports of explosives, military related goods, radioactive, hazardous, chemical and biological materials and products; and nuclear-related items either due to concerns on public health and safety. Therefore, it took a while to raise awareness and convince skeptics of the specific requirements under UNSCR 1540.

To explain the need for strategic trade controls to hostile stakeholders in developing countries like Malaysia, both in the public and private sector, nothing was stronger than the authority and mandate provided by UNSCR 1540, a resolution that was aimed at preventing rogue states and non-state parties from illicitly obtaining WMD-related materials. Using the resolution as the justification was important as many critics within the country were not receptive to the adoption of the law. It was viewed with suspicion and was seen as interference by foreign countries with vested interest and a challenge to the country's sovereignty and interests.

### 2. *The Economic Driver*

The Malaysian Government in the mid-1960s started diversifying its economy by attracting foreign investments in manufacturing to provide employment to its citizens and to establish an additional base for its economic growth and exports. This was a success as foreign investments propelled a relatively backward agricultural country into an industrialized upper middle-income economy in less than twenty years. The Asian financial crisis of 1997-98, unfortunately, stopped this growth short and Malaysia has since struggled to break out of the so-called middle-income trap.

Upon taking over the post of Prime Minister in 2009, Mr. Najib introduced an ambitious economic plan commonly known as *The New Economic Model*, a plan to accelerate and sustain economic growth, provide high-quality employment and increase wage levels, with the chief objective of attaining developed country status by 2020.<sup>7</sup> Key to this success was to move up the international high-tech value and supply chain by

<sup>5</sup> Stephanie Lieggi and Richard Sabatini, "Malaysia's Export Control Laws: A Step Forward, But How Big?," NTI Analysis, May 2010, <[www.nti.org](http://www.nti.org)>.

<sup>6</sup> George Tan, "Export Controls in the Asean Region," *1540 Compass*, <[www.cits.uga.edu/index.php?/1540compass/issue\\_2](http://www.cits.uga.edu/index.php?/1540compass/issue_2)>.

<sup>7</sup> Economic Planning Unit, Prime Minister Department, Malaysia, <[www.epu.gov.my/epu-theme/pdf/nem.pdf](http://www.epu.gov.my/epu-theme/pdf/nem.pdf)>.

attracting high value added, technology and knowledge intensive investments that could translate into high value exports.<sup>8</sup>

While the key policies to attain developed-country status by 2020 were already in place in 2010, it soon became apparent that the targets under the *New Economic Policy* could not be realized if foreign investors and exporters were not provided adequate legal protection against proliferation threats from Malaysia.

Strategic trade controls had become an important consideration for investors particularly after the September 11 attacks in the United States. Sensitive high value added products, technology, and knowledge intensive investment source countries, such as the United States, the European Union, and Japan also required their multinational companies to invest in recipient countries with strong strategic trade controls.

Meanwhile, several domestic organizations representing foreign business and investors' interest in Malaysia spearheaded the drive for the country to adopt strategic trade controls. The Malaysian International Chamber of Commerce and Industry, the American Malaysian Chamber of Commerce, the EU-Malaysia Chamber of Commerce and Industry, and the Japanese Chamber of Trade and Industry led these efforts. Malaysian authorities could no longer ignore the call for strategic trade controls by investors. The country, otherwise, may have stood to lose out to other countries that were more compliant to international standards on strategic trade controls. Having in place strategic trade controls was seen as adding a competitive advantage to the nation's already impressive portfolio as an attractive investment destination.

In this regard, and according to a diplomatic source, the US President himself had projected substantial increase in bilateral trade with the United States and more investments by US companies in sensitive high-technology and knowledge intensive industries, if strategic trade control laws are implemented. This assurance stood as an enticing offer for Malaysia, giving it sufficient incentive to hasten the adoption of its Act.

### 3. *The External Push*

Proponents of strategic trade controls started being active after the September 11 attacks. Their primary motive was to universalize controls on items, products, and technology that can contribute to nuclear terrorism. The goal was the universalization of strategic trade controls, in particular in international proliferation hot spots and major international transport routes, including Malaysia.<sup>9</sup>

Of the ten Member States that comprise ASEAN, only Singapore had enacted and implemented laws on strategic items prior to 2010.<sup>10</sup> Including Malaysia into this list was an achievement as it is an important international trading and transport hub. Substantial efforts and resources were spent to peddle the merits of such controls in Malaysia. Chief among these proponents were the United States and the European Union. The sustained push for controls by these countries, despite the snail paced progress in many of the target countries, was significant, as otherwise countries like Malaysia may not have adopted laws so quickly. Significantly, the United States, European Union, Japan, Australia, and several other countries were already involved in outreach and capacity-building programs with the Malaysian Government and business community before the Strategic Trade Act was adopted.<sup>11</sup> These outreach initiatives paved the way for better understanding of the objectives and philosophy behind strategic trade controls.

<sup>8</sup> George Tan, "Export Controls in the Asean Region," *1540 Compass*, <[www.cits.uga.edu/index.php?/1540compass/issue\\_2](http://www.cits.uga.edu/index.php?/1540compass/issue_2)>.

<sup>9</sup> Stephanie Lieggi and Richard Sabatini, "Malaysia's Export Control Laws: A Step Forward, But How Big?," NTI Analysis, May 2010, <[www.nti.org](http://www.nti.org)>.

<sup>10</sup> Singapore Customs, <<http://www.customs.gov.sg/strategicgoodscontrols>>.

<sup>11</sup> Stephanie Lieggi and Richard Sabatini, "Malaysia's Export Control Laws: A Step Forward, But How Big?," NTI Analysis, May 2010, <[www.nti.org](http://www.nti.org)>.

#### 4. Political Will

Malaysia also adopted strategic trade controls quickly because there was strong political will within the Malaysian Government. Prime Minister Najib was its number one champion. This stood as a significant advantage, so much so that the bill was passed without debate in the lower and upper houses of Parliament.

The role played by the Malaysian Ambassador to the United States, Tan Sri Jamaludin Jarjis, a sitting Member of Parliament and a close confidant of the Prime Minister, also should not be understated. Jamaludin was a diplomat who had established close ties with the Obama administration and had access to many key policymakers in Washington. Jamaludin saw strategic export controls as a low hanging fruit that could be quickly plucked to strengthen US-Malaysia bilateral relations. The fact that the law was adopted a few days before a scheduled US-Malaysian bilateral meeting on April 12, 2010 in Washington is also significant.

##### The SCOMI Precision Engineering (SCOPE) Case

Prior to STA 2010, Malaysia and Malaysians had been identified as a source of proliferation of WMD related materials. Several Malaysians had also been charged in US Courts for offenses under US export control legislation, in particular for their participation in transshipment of sensitive US-made products to countries under US sanctions.<sup>12</sup> Yet these cases did not receive much publicity in Malaysia.

One particular incident involving a Malaysian company in the oil and gas industry did receive wide attention and interest and is often cited as an important driver of Malaysia's decision to implement STA 2010.<sup>13</sup> SCOMI Precision Engineering (SCOPE) was implicated in 2003 for supplying the now infamous A.Q. Khan illicit network with aluminum pipes, which are also used in the oil and gas industry. The pipes manufactured by Malaysia's SCOPE were found on a ship bound for Libya, a restricted country.

SCOPE denied being a knowing party to this transaction, as to its knowledge the pipes were meant for use in the oil and gas industry in the United Arab Emirates. Nevertheless, this did not absolve it from any wrongdoing as it ran afoul of US laws that have extra-territorial provisions and result in objective liability. In the Malaysian context, the company had not done anything wrong either. There were no laws in place yet requiring exporters to be vigilant on the end-use and end-user of their products. This incident received wide attention within the Malaysian official establishment especially after the company was blacklisted by the United States for working with the illegal network. It was also a red flag, indicating that Malaysia had the capability to produce WMD-related products.

Arising from the SCOPE incident, it also became necessary to protect the Malaysian business community from potential exploitation by proliferators.<sup>14</sup> The fact that a draft bill on strategic trade controls was already available in Malaysia in 2005, soon after the SCOPE incident and long before its actual adoption, indicates that the SCOPE incident did have an impact on Malaysia. In outreach programs held after the passage of the STA 2010, the mere mention of SCOPE elicited more interest in the STA 2010 and assisted in converting critics to the view that STA 2010 could be an effective tool to protect their own interest and the commercial interest of the nation.

<sup>12</sup> Stephanie Lieggi and Richard Sabatini, "Malaysia's Export Control Laws: A Step Forward, But How Big?," NTI Analysis, May 2010, <[www.nti.org](http://www.nti.org)>.

<sup>13</sup> Mohamed Shahabar Abdul Kareem and Muthafa Yusof, "Issues and Challenges Implementing the Strategic Trade Act in Malaysia," *1540 Compass*, <[http://cits.uga.edu/1540compass/issue\\_5](http://cits.uga.edu/1540compass/issue_5)>.

<sup>14</sup> Ibid.

## The Strategic Trade Act 2010 and Related Regulations and Orders

Act 708, Strategic Trade Act 2010,<sup>15</sup> is a comprehensive law that had adopted almost all the requirements of UNSCR 1540. The short title of the Act states:

*An Act to provide for control over the export, transshipment, transit and brokering of strategic items, including arms and related material, and other activities that will or may facilitate the design, development and production of weapons of mass destruction and their delivery systems and to provide for other matters connected therewith, consistent with Malaysia's national security and international obligations.*

The Act, which closely mirrors the Singapore Strategic Goods (Control) Act (STGC), has an extra-territorial application, a catch-all provision, and sections covering the appointment and powers of the implementing Secretariat, what constitutes control of strategic items, unlisted items and restricted activities; the application of the Act to permits and registration for the exports of strategic items and technology; application of the Act for enforcement; and other general provisions for the smooth implementation of the Act.

On July 10, 2010 the legal instruments and authority to implement strategic trade controls in Malaysia were already in place. However, the physical infrastructure to implement the Act had yet to be determined. What had already been predetermined was the date of implementation and enforcement of the Act, on January 1, 2011.

At the recommendation of the AG Chambers, implementation of STA 2010 was placed under the direct purview of the Minister of International Trade and Industry of Malaysia. This closed a sticky point as many other Government agencies had an interest in becoming the implementation body. With this decision, the Ministry quickly took steps to establish the Strategic Trade Secretariat (STS), a requirement under the law to implement and enforce strategic export controls. On August 15, 2010 the Ministry received the official consent from the Public Services Department to establish the Secretariat. The STA 2010 entrusts the implementation of the Strategic Trade controls to the Strategic Trade Controller who reports directly to the Minister.

It is of interest to note that the Act has provided vast powers to the “implementer” and “enforcer,” including the ability to request international and domestic assistance to carry out the task, an avenue for inter-agency co-operation by specifying the agencies deemed as authorized officers for enforcement of the STA and the related laws covered under this Act; a division of power between the implementing Secretariat, enforcement agencies and prosecution for offenses. In addition, the Act gives sufficient protection to Government officials from being sued while carrying out their duty, which includes powers of investigation, interdiction, search and seizure without warrant, access to places or premises and computerized data, power to search conveyances, use of force, power to arrest and interception of communications; and the penalties involved in exporting strategic items without a permit or falsified documents.

To get the STA 2010 enacted was a major achievement itself. While STA 2010 had provided the general legal framework for the implementation of strategic trade controls in Malaysia, it did not, however, specify the implementation mechanism that had to be put into place to enforce the law. Detail on how the law would be implemented is of critical importance to the business community as they are the target group which needs to adjust and put sufficient resources in place to effectively comply with the legal requirements of the Act.

<sup>15</sup> Available (upon subscription) at the <<http://www.lawnet.com.my/lawnetPublic/>> or it can be purchased from the Government Printers - Percetakan Nasional Berhad. It can also be viewed in the Parliament website: <<http://www.parlimen.gov.my/billindex/pdf/DR042010.pdf>>.

Over the course of four months from August 2010, the Secretariat started intensive consultations with relevant Government Department and Agencies to develop the implementing mechanisms and procedures. The core members of the team included representatives from the AG Chambers, Ministry of Foreign Affairs, Customs and the Atomic Energy Licensing Board. Private sector consultations were also undertaken separately by the Secretariat. This included consultations with trade and industry organizations, Chambers of Commerce and Industry, large companies and in particular those which have an important stake in exports of strategic items, but also individuals with experience in strategic trade controls and who were willing to share their experience and views with the Secretariat. These consultations were made easier as there were already working drafts available to focus discussions and comments. These efforts finally culminated in the development of the following Regulations and Orders that were published in the Gazette on December 31, 2010, and which became effective on January 1, 2011:

*Strategic Trade Regulation 2010*, that prescribes the forms, procedures, payable fees and other matters including how the Act would be implemented and enforced.<sup>16</sup>

*Strategic Trade (Strategic Items) Order 2010*, the Malaysian control list. It reproduces the EU control lists and contains items controlled under all the five international control regimes.<sup>17,16</sup>

*Strategic Trade (Restricted End-users and Prohibited End-users) Order 2010*, lists the restricted and prohibited parties with which the Malaysian trading community should restrain from pursuing commercial deals.<sup>18,17</sup> The prohibited end-user list is based on relevant UN resolutions e.g.: Iran (UNSCR 1696, 1737, 1747, 1803, 1929); North Korea (UNSCR 1718, 1874); Libya (UNSCR 1970) that list the individuals and associated companies that are under sanctions. The Restricted end-user list names the countries restricted by the United Nations from obtaining arms and military equipment, namely North Korea, Iran, Congo, Ivory Coast, Lebanon, Sudan, Afghanistan, Iraq, Liberia, Rwanda, Somalia, Eritrea, and Libya.

## **Implementing the Act**

Steps to implement the Act began following the establishment of the Secretariat. Yet the Act gained greater traction only when the Regulations and Orders were in place. Some of the more important actions taken to put into place the necessary infrastructure for the implementation and enforcement of the Act are as follows:

### *Organizational Set-up of the Implementing Body*

The implementing Secretariat was first established on August 15, 2010 with a skeleton manpower of seconded officers and staff from other business units within the Ministry of International Trade and Industry. It took another two months for the powers-to-be to approve the permanent staffing for the Secretariat. Fortunately, the skeleton staff who were initially seconded to the Secretariat had some knowledge of strategic trade controls as they had participated in outreach programs organized by the United States and the European Union held even before the law was adopted in Malaysia. A number of these officers had also been incorporated into the team under the AG Chambers during the drafting phase of the STA. Their participation in the outreach programs and the drafting committee had also exposed them to personalities in other agencies whose cooperation would be essential for the successful implementation of the STA 2010, as well as contacts in friendly foreign countries and international organizations that could be harnessed for capacity-building programs and other forms of assistance.

<sup>16</sup> Available (upon subscription) at the <<http://www.lawnet.com.my/lawnetPublic/>> or it can be purchased from the Government Printers - Percetakan Nasional Berhad.

<sup>17</sup> Mohamed Shahabar Abdul Kareem, "Facilitating Trade in a Secure Trading Environment," *1540 Compass*, <[http://cits.uga.edu/1540compass/issue\\_2](http://cits.uga.edu/1540compass/issue_2)>.

The permanent manpower of the Secretariat was small and lean, consisting of twelve officers (excluding five support staffs), which includes the Controller and a Deputy. These twelve officers were placed under three working Units, each doing a multitude of job functions: permit issuance, outreach, audit, advisory, policy formation, and information technology. Of note, the core function of licensing or permit issuance is shared by all three Units.

One of the innovations to the organizational structure was the creation of a unit to house seconded officers from three Government Agencies, namely from the AG Chambers (to provide legal advisory services for the Secretariat), the Royal Malaysia Customs Department (to act as the liaison between the said Department and the Secretariat) and an officer from the Science and Technology Research Institute for Defense (STRIDE) (to provide technical advisory services on strategic items for the Secretariat and other stakeholders). These seconded officials are an asset to the organization as they are available to provide first-hand advice immediately on request by either the Secretariat or the business community. In addition, they are used as resource persons in their area of expertise in outreach programs conducted with the business community.

### *Helping Hand from External Partners*

Two foreign countries, Australia and Singapore receive credit for helping frame the thinking behind the final organizational structure adopted to implement the 2010 STA. In the case of Australia, an invitation was received from the Australian Embassy in Malaysia to visit Canberra to learn from the Australian experience in dealing with strategic trade controls. The briefing that took place at the Department of Foreign Affairs and Trade (DFAT) was attended by most of the Australian Agencies involved in strategic trade controls in Australia, including representatives from the Prime Minister's office, the Customs Department, Nuclear Agencies, the Australia Group (international control regime), and many others. The full day briefing covered issues such as organizational structure, inter-agency cooperation, how decisions are made to allow or deny exports, who is involved in the inter-agency process, who provides the technical inputs to determine whether an item is strategic or not, what are the procedures adhered to in order to resolve issues when Agencies cannot find solutions to a policy issue, and how controls are enforced.

Singapore also shared its experience in implementing strategic trade controls in a briefing on implementation of its Strategic Goods (Control) Act. The briefing, attended by representatives from the Ministry, the Customs Department and the liaison officer on strategic goods from the Singapore Ministry of Defense, was held at the Ministry of Trade in Singapore.

These two working visits were eye openers and provided an excellent foundation for implementation of the STA 2010 in Malaysia. While the eventual model adopted by Malaysia was adapted to suit the Malaysian environment and national interests, it provided a quick and effective lesson on strategic trade controls that allowed Malaysia to get onto the task of implementing the law within four and a half months.

### *Outreach to Stakeholders*

Nobody had gauged the response of the business community on the enactment of the STA 2010 until the laws were passed. To rectify this, the Secretariat started outreach programs to its core stakeholders, the business community, as soon as the Secretariat was established. The initial reception was hostile. The business community had many questions. The Secretariat had no ready answers. Answers were not available as the Regulation and Orders had not even been adopted. The Secretariat also had to answer a barrage of accusations and criticisms, including claims that the private sector had not been consulted on the bill, that the STA 2010 was a product of an "arm-twisting strategy" by foreign countries with vested interest, and that by adopting the law the Malaysian government had compromised its national interests and sovereignty.

To obtain stakeholder buy-in, one of the first actions of the Secretariat was to coin a catchy caption to

promote the STA 2010. The Secretariat sought to convince the business community that the STA would facilitate trade without compromising the security of exports and wider national interests. The caption that was finally adopted to push this message was “*STA 2010: Facilitating Trade in a Secure Trading Environment*” and it was used by the Secretariat when it embarked on its first outreach program itself.<sup>19,18</sup>

In the first three years of the Secretariat’s existence more than 200 outreach programs were held all over Malaysia.<sup>20,19</sup> Some were conducted with the assistance of foreign partners such as the United States, the European Union, Japan, and Australia, but most were done by the Secretariat itself. The outreach took place in many forms. In most cases, the Secretariat arranged for large briefings to the business community, sometimes on its own or in collaboration with foreign partners or with the Malaysian trade and industry associations. These events were attended by 50 to 200 participants each session. The briefings were mostly general in nature and were also used by the Secretariat to also get feedback from the business community on the plans to implement the Act.

Harnessing private sector support was critical for the successful implementation of the STA. The Secretariat soon found a way of dealing with the initial hostility toward the STA. While there were people who were not happy with the implementation of the law, there were also others, primarily individuals working in large multinational companies, who acknowledged that the law was necessary. These individuals realized early that it was in their own interests to collaborate with the Secretariat and ensure that the rules were consistent with their company’s economic interest. A few of these individuals did in fact offer to be used as resource persons in the outreach programs. Using private sector resources to talk to their peers was an effective strategy to garner private sector support. Listening to and acknowledging the private sector’s concerns on the implementation of the STA 2010 had the effect of calming most skeptics and also providing them the assurance that the Secretariat was willing to listen to their concerns and suggestions.

Outreach to the business community is by itself insufficient for the effective implementation of the STA. Other important stakeholders are the government agencies that should work in tandem with the Secretariat and provide support for the implementation and enforcement of the Act, such as the Customs Department, and the three other Agencies that are authorized to assist the Secretariat in the issuance of permits, namely, the Atomic Energy Licensing Board (AELB), the Malaysian Communications and Multimedia Commission (MCMC), and the Pharmaceutical Services Division of the Ministry of Health,.

Other targets for outreach in the Government included the agencies involved in the enforcement of the law and those involved in the prosecution of offenders, namely the Attorney General Chambers, the Customs Department, the Department of Police, the Malaysian Maritime Enforcement Agency, and the Malaysian Communications and Multimedia Commission. Outreach sessions in many of these Agencies such as the Customs and Police Departments have to be undertaken repetitively and frequently as there is a high turn-over rate and staff rotation. This is compounded further by the sheer number of personnel in these Departments who are front-liners involved in handling strategic items almost on a daily basis, necessitating them to have at least an elementary knowledge of strategic trade controls.

Among other outreach tools used were specific briefings to large and small exporters exporting strategic items, web-page information including the creation of a Frequently Asked Question and answers to these crucial questions, weekly “meet your client day” with the Secretariat, newspaper articles on the need for export controls, including strategic export controls in speeches given by the Minister, and site visits to brief leading companies involved in exporting strategic items.

<sup>19</sup> Mohamed Shahabar Abdul Kareem, “Facilitating Trade in a Secure Trading Environment,” *1540 Compass*, <[http://cits.uga.edu/1540compass/issue\\_2](http://cits.uga.edu/1540compass/issue_2)>.

<sup>20</sup> Information on the Strategic Trade Secretariat and scheduled outreach programs are available in <[www.miti.gov.my/sta](http://www.miti.gov.my/sta)>.

## *Harnessing the Benefits of Information Technology*

The Secretariat, at the very outset, sought to employ the benefits of information technology to its fullest to implement the STA. The objective was to create a comprehensive electronics system to manage not only the trade control licensing process, but to directly link the three other partner licensing agencies and the enforcement agencies together for effective implementation and enforcement. Using information technology also facilitates trade by cutting down the time required for applying, processing, and approval of permits, and is costs effective due to the minimal payments for services rendered by the systems provider. It has the future potential to link the system to strengthen strategic trade controls at the regional or global level.

In April 2011, *the STA e-permit system* was launched officially by the Minister of International Trade and Industry.<sup>21</sup> At this launch, twelve selected multinational companies that are exporters of strategic items were handed *electronic keys* (USB tokens with encrypted electronics passwords and signatures embedded) that would provide them access to the STA e-permit system. At this launch, these companies were requested to use the system and report back on its weakness and make recommendations for further improvements. The idea was to open the system for wider use only when the system is deemed robust, reliable and effective.

The STA e-permit system requires the permit applicant to first open an account with the services provider. Once the account is opened, the company can move to the next phase, which is, fill in the electronics registration form in the e-permit system. The registration captures information such as company details, strategic items exported and details on end-users that the company currently deals with. It is mandated that the registration be undertaken by the person authorized by the management in the company as the export control manager.

Each company is also allowed to apply for a maximum of five electronic keys to facilitate application for permits through the system and these are assigned to individuals who the company has authorized to apply for permits. The idea to ensure that management bears full responsibility for any misuse of the e-permit system and also to contain the number of personals within a company that have access to the e-permit system.

When the Secretariat has evaluated and is satisfied with the information provided, the company is informed of the type of permit that is approved (single-use, multiple-use, bulk-use or special permit) and thereafter, for the next two years, the company can continue applying for permits and receive approvals using the system. The company will undergo an audit within these two years to determine whether the company is compliant with the STA 2010 and whether the e-permit facility can be extended for another two years.

The approval for the company to apply for permit through the e-permit system only applies to existing strategic items and known end-users that had been pre-approved by the Secretariat. Any change to product specifications or the addition of new strategic items or adding in new end-users would require the Secretariat's approval first. The system will block permit applications for unregistered strategic items and unknown/unrecognized end-users and would also reject any application for export permit for restricted or prohibited end-users who are listed in the Restricted and Prohibited End-Users Order of STA 2010.

The e-permit system is directly linked to the three partner licensing agencies and the system itself routes the permit application to the relevant licensing agency, in this case to the Atomic Energy Licensing Board for nuclear related items, multimedia items including software and intangible technology to the Malaysian Communication and Multimedia Commission and bacteria, viruses and pathogens to the Pharmaceutical Services Division under the Ministry of Health.

---

<sup>21</sup> Dagang Net, <[www.dagangnet.com/index.php/products/epermit\\_sta](http://www.dagangnet.com/index.php/products/epermit_sta)>.

## *Linking the E-permit System with the Customs Department for Enforcement*

When a permit is approved or rejected by any of the licensing agency, the company receives this information directly through the e-permit system. If approved, a permit is issued. The permit lists the name of the company to which the permit is granted, the items and quantities approved for exports and the end-user/users concerned. The system also generates a unique license number for the permit. This information is then directly lodged electronically in the Customs Information System for enforcement purposes.

Since 2011, all exporters in Malaysia exporting any item, strategic or not, have had to make a declaration in a field created in the customs export form (amended to take care of requirements under the STA 2010) regarding whether the item exported is a strategic item under the STA. If the exporter acknowledges it is a strategic item, the system will prompt for a STA permit license number. Failure to provide the right permit number, exceeding the quantity of items approved for export or entering an unapproved end-user as the consignee leads to the Customs Information System to block the export declaration to be processed.

Linking the e-permit system with the Customs Information System is an effective enforcement tool as other than the risk management system of random checks conducted by the Customs Department, the exporter's own declaration at the point of export places extra trade controls on every export transaction from Malaysia. It doubles the layer of enforcement controls at the border. With the declaration made through the Customs export forms, the exporter takes full responsibility for whatever is exported. In the event of the exporter running afoul of export control laws, the authorities have several options to charge them - under the Customs Act for mild offences such as miss-declaration, or under the STA 2010 for more severe offenses where higher penalties can act as a more effective deterrent or punishment.

### **Effectiveness and Limitations of STA 2010**

The implementation of the Strategic Trade Act in Malaysia can be used as a case study on how and what should be done or avoided by other countries in the process of adopting similar laws and regulations on strategic trade controls. Countries interested in developing strategic trade controls may want to avoid some of the pitfalls but look positively at some of the good practices that worked in Malaysia when it comes to enactment, implementation, and enforcement.

The elements that enabled Malaysia to implement and enforce the Act in record time are described below.

#### Comprehensive Legislation

##### *The Strategic Trade Act*

The drafters of the Strategic Trade Act produced comprehensive legislation that fulfills the requirements of UNSCR 1540. The law provides all-important controls over export, transit, transshipment, brokering and other restricted activities, including the provision of technical knowledge. It also ensures that all other relevant laws that traditionally control exports continue to remain relevant but with a proviso that if any of them are in conflict with the STA, the Strategic Trade Act shall prevail. This provides a hassle-free law to the implementer and prevents turf wars from derailing efforts to enforce the Act. This created tensions in the initial period of the implementation and enforcement of the law but active engagement with relevant agencies by the Secretariat in inter-agency consultations soothed the situation. The law also allowed three technical agencies that were already issuing export permits to continue issuing permits under their own legislation but also allowed them to issue permits for similar items that are deemed to be covered under the STA. They do this on behalf of the STA Secretariat and on terms and conditions established by the Secretariat.

## *Separating Legal Instruments into Laws and Regulations*

One of the strength of the Strategic Trade legislation is that it separates the legal instruments that require the approval of the legislative assemblies and those that can routinely be amended by issuing a notice in the official gazette. In this regard, any amendment to the STA 2010 has to be tabled in Parliament but the Regulations and the Orders need not go through this process. Based on feedback from the business community, the Secretariat used the flexibility under the Customs Act to issue improved end-user and delivery verification statements only few months after the Secretariat was established. The Strategic Trade (Strategic Items) Order was also amended in 2013; a year after the European Union adopted a new list. Such flexibility afforded by the law is important, as the implementers need not wait many years to make changes that may be immediately required to more effectively implement and enforce the law.

## *Adequate Powers Given to Implementers and Enforcement Agencies*

The STA 2010 provides a very strong mandate to the Secretariat and the Controller. The law has vested vast powers to act quickly to stop proliferation from occurring, seek assistance from any party - domestic or foreign - to implement and enforce the Act, make the final decision on whether the item is strategic, and in general provide adequate legal support and protection for those involved in the implementation and enforcement of strategic trade controls. Giving adequate powers to implementers and enforcement agencies under the strategic trade laws is important as quick actions may be required to stop proliferation threats. Similarly the powers provided should be used to facilitate legitimate trade.

## The E-permit Infrastructure

### *On-line Registration of Exporters and Permit Issuance*

The decision by the Secretariat from the outset to harness the Internet for the registration of exports and brokers of strategic items and the issuance of permits under the STA helped in the effective implementation of strategic export controls. A robust and versatile STA e-permit system was in fact operational within eight months of the Secretariat's establishment. In the interim, permits were issued manually.

Before using the e-permit system to apply for permits, all exporters were required to register their company particulars, the personnel in charge of exports, the strategic items exported and all their known end-users of the products into the system. The registration is approved by a committee which decides on the type of permit to be given to the company. Bulk and multiple use permits are only given to companies that have Internal Compliance Programs. The company is also required to have all end-user statements for verification by the Secretariat within six months after the company is first issued with a permit. Using information technology was of immense help in buying in stakeholders' support for the implementation of STA 2010.

### *Lean Staffing Requirements with the Use of IT*

Using the Internet placed less pressure on the staffing of the Secretariat. With only fourteen people in the Secretariat, the fledgling organization could not afford delays in decision making on exports as it would affect the business community. The e-permit system was the savior. It allows registered end-users to be crossed checked against on-line restricted end-users lists from various sources, get technical advice from experts, allow security checks on authorized personnel in the company who are allowed to apply for permits, provides access to information on strategic exports by partner agencies and Customs, and allows companies to continuously include new end-users (the Secretariat has to approve the new end-user before a permit is issued).

## *Costs of Doing Business Did not Increase Substantially*

While the Secretariat itself does not impose any charges for its services, the e-permit service provider charges a minimal fee of less than USD 1.50 per approved permit only. Those approved with bulk or multiple use permits however only pay once as the permit allows multiple time usage to approved end-users until its expiry in two years. The business community's initial fear that the implementation of the STA would increase their costs of doing business turned out to be unfounded. The business community quickly adapted to the requirements of STA 2010, including the upgrading of their computer systems and software to apply for STA permits for their strategic exports.

### **The Limitations**

Implementation and enforcement of STA 2010, while smooth in most instances, had its limitations as well. Some of the limitations that were experienced in the initial stage of the implementation of the STA 2010 are:

#### Timeline Given for Implementation

It took Singapore four years from the enactment to the implementation/enforcement of the law. This provided the Singapore authorities time to educate the business community and buy in their commitment and support and put in place the required supporting infrastructure for the application and issuance of permits. In the case of Malaysia, the time taken to implement the law was only about four months, which was further complicated by publication on the Gazette of the Regulation and Orders at almost the eleventh hour. Malaysia could have avoided some of the initial headaches it experienced if some additional time had been left for the business community to take adequate preparations to meet the requirements of the law. It would have also given the Secretariat time to reach out to the business community, prepare the implementing infrastructure and improve the expertise and knowledge of implementing agencies.

A time period of at least one to two years between the passage of the law and its implementation would have been ideal. Several important foreign investors and exporters of strategic items in Malaysia, as a precautionary measure and wanting to ensure that their operations would not be affected by the uncertainty posed by the sudden implementation of the STA, did in fact move their distribution center for certain fast moving items to third countries as they were clueless about how the STA would be implemented on the implementation date. Such anxiety could have been avoided if a proper timeline for implementation and enforcement would have been communicated early to all stakeholders and carried out systematically according to schedule.

#### Inadequate Consultations with Private Sector

One of the main grievances expressed by the private sector as soon as the law was passed is that they had not been consulted. The private sector, especially the multinationals, had decades of dealing with export control and could have given valuable advice and direction on the law itself and how it could be implemented to suit local conditions. The Secretariat, once established, harnessed the vast knowledge available locally to implement the law in a business friendly manner. Consultations with the private sector led to several amendments, including to the end-user and the delivery verification statements within six months after the implementation of the Act. The private sector was of immense help in the initial period of the STA 2010 implementation as the vast majority wanted to comply with the law.

#### Heavy Penalties under the Law

Although it is not the Secretariat's or civil servant's job to question the law, as front liners they cannot avoid facing questions and justify the thinking behind each and every provision in the law. STA 2010 is

the only strategic trade control law in the world that includes the death penalty as a potential sanction. A chargeable offense under the Act can also be registered for knowingly or unknowingly exporting strategic items without a permit. In addition, it imposes high fines (as high as RM 30 million) for offenses under the Act. These are no doubt effective deterrents but whether these are suitable for application in a trade related instrument is questionable. At least in one case, a marketing manager of a multinational company operating a distribution center in Malaysia wanted to tender his resignation as he was disturbed by the thought that he would be held liable under the law even if a mistake is committed by someone else as he bears overall responsibility in the company when a product is exported. In his view the penalties are too heavy for him to take personal responsibility.

## **Conclusions**

Malaysia's decision to adopt strategic trade controls was an important one. It allowed the country to receive instant recognition as one of the countries that has joined the global non-proliferation fight. An additional advantage that strategic trade controls had vested on the country is the view that it is a safe place to conduct trade and locate investments in sensitive products and technology. The journey to implement strategic trade controls in Malaysia was no doubt difficult and challenging but the eventual result is satisfying. Malaysia has shown the world that given the right push and conditions, strategic trade controls can be implemented and enforced very quickly. If Southeast Asian nations have doubts about endorsing strategic trade controls, they need not look further than Singapore or Malaysia to be convinced. While the road to implementation will not be smooth, there are assistance programs available to help cross some of the hurdles when they arise. While a challenge, adoption and implementation of strategic trade controls is worth the journey.

## **Other References**

Kelley Sayler, 'Malaysia, Export Controls, and the Nuclear Black Market,' CSIS, March 24, 2011 <<http://csis.org>>.

Export Controls, Special Sessions, "EU Non-Proliferation and Disarmament Conference 2014 Special Session 7," September 4, 2014, <[www.iss.org](http://www.iss.org)>.