Abstract

This paper will lay out the history of the Philippines’ decision to adopt and implement strategic trade management, analyze the various initiatives taken towards the enactment of strategic trade legislation, and examine the key provisions of the Strategic Trade Management Act (STMA). It will also discuss the capacity-building and industry outreach programs conducted by the Philippines in partnership with various partner-states and international agencies.

Keywords

Export control, strategic trade control, Philippines, Strategic Trade Management Act

Introduction

On November 13, 2015, Philippine President Benigno S. Aquino III signed and enacted into law Republic Act No. 10697 or the Strategic Trade Management Act (STMA). The STMA enforces measures that will prevent the proliferation of weapons of mass destruction (WMD) from or within the Philippines. The STMA was passed in time for the 2016 Comprehensive Review of the implementation status of United Nations Security Council Resolution (UNSCR) 1540.

The journey towards the establishment of a strategic trade management regime in the Philippines has been long and arduous. It is marked by difficulties in reaching consensus on the development of an appropriate legal structure or institutional mechanisms to effectively implement a strategic trade management regime. The regime features the totality of legal, institutional and technical policies and procedures for controlling import, export, and transit of strategic and dual-use items. These include “the capacity to interdict and prevent illicit shipments (enforcement), installing of standardized licensing procedures and practices (national licensing system), and good industry coordination.”

1 Karla Mae G. Pabeliña is a Foreign Affairs Research Specialist with the Center for International Relations and Strategic Studies of the Foreign Service Institute (FSI). She is a graduate of BA Political Science from the University of the Philippines, Diliman. She is currently pursuing her Master in International Studies. She has background in security, development and international relations.

This paper will lay out the history of the Philippines’ decision to adopt and implement strategic trade management, analyze the various initiatives taken towards the enactment of strategic trade legislation, and examine the key provisions of the STMA. It will also discuss capacity-building and industry outreach programs conducted by the Philippines in partnership with various partner-states and international agencies.

**The Philippines and the Nonproliferation Regime**

The Philippines’ commitment to establishing a strategic trade management regime stems from its support and commitment to the principles of international law for the promotion of global peace and security.\(^3\) The Philippines subscribes to and is party to all major nonproliferation and disarmament conventions including the Treaty on Non-Proliferation of Nuclear Weapons (NPT), Chemical Weapons Convention (CWC), Biological and Toxic Weapons Convention (BTWC), Convention on the Physical Protection of Nuclear Materials (CPPNM), Convention for the Suppression of the Financing of Terrorism (TFC), Hague Code of Conduct on Ballistic Missiles (HCOC), Program of Action on Small Arms and Light Weapons (PoASALM), Convention on Certain Conventional Weapons, and the Arms Trade Treaty (ATT).\(^4\)

Recognizing that proliferation of WMD as well as their means of delivery to non-state actors constitute a threat to international peace and security, the Philippines together with France, Romania, the Russian Federation, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America co-sponsored UNSCR 1540, which was unanimously adopted by UN Member States in 2004. Resolution 1540 is a direct and binding commitment for all states to “refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use” WMD and their means of delivery; to “adopt and enforce appropriate effective laws which prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer, or use” WMD and their means of delivery; and to “establish controls to prevent the proliferation” of WMD and their means of delivery.\(^5\)

In the statement of Philippine Permanent Mission to the UN Ambassador Rafael Baja following the voting on the resolution, he argued that the Philippines’ co-sponsorship is “recognition of the clear and present danger of WMD that could be used for terrorist activities falling into the hands of non-state actors.”\(^6\) He emphasized that “there is a serious gap in existing regimes in the terms of addressing this threat to the international peace and security” and adherence to resolution 1540 “reflects the Philippine Government’s serious policy of countering terrorism.”\(^7\)

**The Philippines’ Vulnerability Factors**

The commitment of the Philippines to resolution 1540 is in line with its stance against terrorism particularly in the Southern Philippines. Violent armed groups in the country have killed or injured more than 1,700 people in bombings and other attacks from 2000 to 2007.\(^8\) One of the worst terrorist attacks in the

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\(^4\) The Philippines is also a party to the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management (JC), Convention on Nuclear Safety (CNS), and International Convention for the Suppression of Acts of Nuclear Terrorism (ICSAN). It is a participant of the Proliferation Security Initiative (2005) and an active member of the Global Initiative to Combat Nuclear Terrorism (GICNT) and the G8 Global Partnership against the Spread of Materials and Weapons of Mass Destruction.


\(^7\) Ibid.

Philippines happened in February 2004 when a bomb planted by the Abu Sayyaf Group sunk SuperFerry 14, killing approximately 130 passengers. The Philippines was also tagged as a “terrorist safe haven” and home to a number of militant groups including the Abu Sayyaf Group, Jemaah Islamiyah, the Communist Party of the Philippines/ New People’s Army, the Moro National Liberation Front (MNLF), and the Moro Islamic Liberation Front (MILF). The Philippines’ concern over the proliferation of WMD to non-state actors is further amplified by two ‘vulnerability factors’ affecting the country – geographic and economic vulnerability.

Geographic Vulnerability

The 2011 US State Department Country Report on Terrorism brought to fore the risk of the country’s porous southern borders being used by non-state actors to transport WMD. There is a high risk of WMD trafficking, proliferation, and the spread of WMD-applicable expertise “given the high volume of global trade that ships through the region as well as the existence of proliferation networks looking to exploit vulnerabilities in states' export controls.”

The risk of the Philippines being used as transfer, diversion, importation, exportation, re-exportation, transit, and transshipment port is not remote. On May 26, 2012, Parviz Khani, an Iranian citizen, was arrested by the Philippine National Bureau of Investigation (NBI) agents at the Ninoy Aquino International Airport (NAIA) on request of the US Department of Justice after he was indicted in the District of Columbia for being part of a conspiracy to smuggle to Iran about 20 tons of specialized steel with “nuclear applications.” Khani had been attempting since 2008 to procure strategic items that may increase Iran’s ability to enrich uranium and/or construct a heavy water moderated research reactor prohibited by UN Security Council resolutions.

In November 2012, Daniel Frosch, an Austrian citizen, owner of a small spare parts export company reportedly involved in delivering Iran dual-use items such as accelerators, condensers and capacitors, was extradited from the Philippines to Austria. Frosch is allegedly also connected with Industrial Equipment Service Group (IESG) Trading & General, a Philippine company providing electronic components and machine tools suspected to have dual use capacity.

Economic Vulnerabilities

Globalization has impacted the Philippines in significant ways. Interactions and transactions are happening...
at unprecedented speed, growing magnitude, thickening density and increasing complexity. Globalization has provided new economic opportunities and security challenges for the Philippines. Economic integration is transforming the region into “a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy.”\(^\text{17}\) The ASEAN Economic Community (AEC) is the seventh largest in world, and third in Asia, with a gross domestic product of $2.6 trillion in 2014.\(^\text{18}\) Following the formal establishment of AEC in 2015, ASEAN is forging towards deepening its economic integration, ascending the global value chains into more sustainable production activities, higher technology intensive manufacturing industries and knowledge intensive industries.\(^\text{19}\)

The risk that with freer trade of goods, the region may be used as a hub for the illicit trade, transfers or diversion of sensitive items and commodities that have WMD significance, raises security concerns. Governments of Southeast Asian countries are examining the feasibility of linking strategic trade management and trade facilitation endeavors, including the ASEAN single window initiative to expedite the free flow of goods while at the same time strengthening supply chain security.

**Domestic Translation of International Commitments**

Even if the Philippines recognizes its proliferation risks and is strongly committed to various international covenants, it has been constrained to fully comply with all the attendant requirements of its international obligations. The Philippines has been challenged to make substantial progress in effectively adopting domestic laws on countering the proliferation of WMD.\(^\text{20}\) One such obligation involves the effective implementation of a strategic trade management regime.

In the sponsorship speech of Senator Antonio Trillanes before the Philippine Senate, he argued that while the other countries in Asia-Pacific were able to adopt appropriate pieces of legislation, the Philippines has been left behind in its commitment to the UNSCR 1540. The Philippines have control, regulation, and licensing activities that deal with prohibited and regulated items, but these activities are implemented by various government agencies. There is no comprehensive system that covers the entire list of controlled items under multilateral export control regimes.\(^\text{21}\)

**Towards Strategic Trade Management Legislation**

*House Bill No. 6268 and Senate Bill No. 3268*

The first proposed bill on Strategic Trade Management was filed at the Fourteenth Congress in 2009. The draft legislative proposal was derived from the output of an inter-agency technical working group on Export Control headed by the Office of the Special Envoy on Transnational Crime (OSETC), with the Department of Trade and Industry (DTI), and the Bureau of Customs (BOC). House Bill No. 6268 and Senate Bill No. 3268 were concurrently examined by the Committee on Public and Safety at the House of Representatives, and the Joint Committees on National Defense and Security, Finance, and Public Order and Dangerous

\(^{17}\) Association of Southeast Asian Nations (ASEAN), ASEAN Economic Community Blueprint, (Jakarta: ASEAN Secretariat, 2008).

\(^{18}\) A Blueprint for Growth, ASEAN Economic Community 2015: Progress and Key Achievements (Jakarta: ASEAN Secretariat, November 2015).

\(^{19}\) Ibid.

\(^{20}\) The Philippines, as state party to the Chemical Weapons Convention, is also in the process of finalizing the Chemical Weapons Prohibition Act, which is still pending review at the Congress.

\(^{21}\) Sponsorship Speech of Senator Antonio F. Trillanes IV, Sixteenth Congress Second Regular Session, May 12, 2015
Drugs, at the Senate. Unfortunately the proposed legislation did not pass beyond the Technical Working Group (TWG) deliberations conducted by the Committees.

The main issues of contention include the rationale for the legislation, conceptual terms, and composition of the authorizing agency. There were differences on whether to include conventional or unconventional weapons, limit the legislation’s scope to Chemical, Biological, Radiological and Nuclear (CBRN) materials, or focus only on strategic and dual-use items. There were disagreements regarding whether to adopt internationally-recognized definitions of concepts such as dual-use, strategic items, and weapons of mass destruction. There were unresolved questions on which should be the authorizing agency in Strategic Trade Management. In establishing an organizational structure, the TWG tried to synchronize all government efforts and ensure that no functions were duplicated or existing authorities undermined. The proposed bills were shelved, and are currently pending in the Committees.

**House Bill No. 4030 and Senate Bill No. 115**

As the previous attempt was unsuccessful, efforts started anew in enacting a law on Strategic Trade Management during the First Regular Session of the Fifteenth Congress in 2010. House Bill No. 4030 and Senate Bill No. 115 were filed and subsequently referred to the Committee on Public Order and Safety at the House of Representatives, and Joint Committees of Public Order and Dangerous Drugs, National Defense and Security, and Finance, at the Senate.

A TWG was again convened in both houses to examine the technical and substantive issues or constitutional infirmities of the proposed bills. The TWG conducted public hearings and invited representatives from concerned agencies (OSETC, Philippine National Police (PNP), Department of National Defense (DND), Department of Environment and Natural Resources (DENR), Department of Health (DOH), Department of Foreign Affairs (DFA), Department of Trade and Industry (DTI), Department of the Interior and Local Government (DILG), Department of Budget and Management (DBM), among others) to provide technical guidance on the nature of the measures proposed.

Discussions during the TWG meetings on House Bill No. 4030 centered on: (1) organizational development aspect of the implementing office, as well as some protocols that define and strengthen the capacity of the licensing office and law enforcement, its implementation, monitoring and progressive responses to new developments and challenges in its implementation once enacted; (2) the institutional arrangements of the proposed Strategic and Dual-Use Goods and Items Control Council (SDGICC) and the Strategic Goods and

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22 House Bill No. 6268: “An act preventing the proliferation of weapons of mass destruction by regulating the transfer of strategic goods and items providing penalties for their violations thereof and other purposes,” was filed by Representative Rodolfo W. Antonino.

23 Senate Bill No. 3238: “An Act to Prevent the Proliferation of Weapons of Mass Destruction by Regulating the Transfer of Strategic Items/ Goods which are Being Used to Carry out Acts of Terrorism, and for other Purposes,” was filed by Senator Manny B. Villar.


25 The Fourteenth Congress was until June 2010. The bills were unfortunately overtaken by events particularly the National Elections of May 2010.

26 House Bill No. 4030: “An Act Preventing the Proliferation of Weapons of Mass Destruction by Regulating the Provision of Technical Assistance, Brokering, Financing, and Transporting Services in Relation to the Management of Trade in Strategic Goods,” was filed by Representative Rodolfo W. Antonino.

27 Senate Bill No. 115: “An Act to Prevent the Proliferation of Chemical, Biological, Radiological and Nuclear Weapons, as well as Conventional Weapons by Regulating the Transfer of Strategic Goods and Dual-use Goods, and for Other Purposes,” was filed by Senator Gregorio P. Honasan.

28 Position Paper of the OSETC transmitted to the Committee on Public Order and Safety, House of Representatives, March 1, 2011.
Services Management Council (SGSMC); (3) the proposed accrual of the administrative fines to a special fund administered by the Council; (4) the basis of the funding requirement indicated in the proposed bill; (5) the inclusion of specific agencies in the SGSMC such as the Government Arsenal under the DND, the Office of Transport Security, the Philippine Coast Guard, the Philippine Ports Authority under the Department of Transportation and Communication (DOTC), Bureau of Export Trade Promotion (BETP) under the DTI, Center for Device Regulation, Radiation, Health and Research of the Food and Drug Administration (FDA) of the DOH, Union of Local Authorities of the Philippines of the DILG, and (6) the need for wide-ranging consultations by concerned agencies and other stakeholders in the development of a National Control List so that the proposed strategic trade management legislation does not impede trade activities and the conduct of legitimate research in the fields of biotechnology, agriculture and medicine.

The outcome of the TWGs on House Bill No. 4030 was a substitute bill drafted by the House Committee on Public Order and Safety which was ready for filling at the plenary.

Meanwhile, TWGs were also concurrently conducted on Senate Bill No. 115. The Senate TWGs convened and attempted to thresh out differing opinions on the functions and composition of an interagency council, extraterritoriality application, and the inclusion or non-inclusion of conventional weapons in the coverage of the bill. Another important issue examined was whether the creation of the council would make reference to establishing an “organizational structure,” or whether an Office of an Executive Director would be charged with manning the day-to-day operations of strategic trade management. Under this office are the different units involved in licensing, monitoring, investigation, audit, internal compliance, and international relations. As the council is the governing and policy-making body, the TWG notes that translating the functions into formulation, implementation, coordination and monitoring would require such organizational structure.

Nonetheless, the Office of the Executive Secretary, upon review of the pending bills filed in Congress, decided to draft an Administration version of the bill. Executive TWGs consisting of major departments/agencies were created to address the issues and concerns that were otherwise not incorporated in the bills filed in Congress. The Presidential Legislative Liaison Office (PLLO) then made representations in Congress to stop consideration of pending measures until an administration draft was finalized. Thus, the substitute bill for House Bill No. 4030 and the Senate Bill No. 115 did not progress beyond the Committee deliberations.

House Bill No. 3206 and Senate Bill No. 1688

During the First Regular Session of the Sixteenth Congress in 2013, the House of Representatives and

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29 Comments of the DBM on House Bill No. 4030, transmitted to the Committee on Public Order and Safety, House of Representatives, June 10, 2011.
30 Ibid.
31 Ibid.
32 Position Paper of the DND transmitted to the Committee on Public Order and Safety, House of Representatives, April 5, 2011.
33 Comments of the PNP transmitted to the Committee on Public Order and Safety, House of Representatives, April 7, 2011.
34 Position Paper of the DTI transmitted to the Committee on Public Order and Safety, House of Representatives, May 2, 2011.
35 Position Paper of the DOH transmitted to the Committee on Public Order and Safety, House of Representatives, March 7, 2011.
36 Position Paper of the DILG transmitted to the Committee on Public Order and Safety, House of Representations, June 8, 2011.
37 Comments of the DFA transmitted to the Committee on Public Order and Safety, House of Representatives, March 2, 2011.
38 Senate of the Philippines, Transcript of Technical Working Group Meeting, Committee on Public Order and Illegal Drugs, Joint with Committees on National Defense and Security and Finance, Fifteenth Congress Second Regular Session, April 17, 2012.
39 Report of the Presidential Legislative Liaison Office on the Philippine Strategic Trade Management Act (STMA), February 24, 2016.
40 Incidentally, the Philippine Senate convened as an impeachment court and tried Former Chief Justice Renato Corona. The hearing started on January 16, 2012 until May 29, 2012. Such impeachment proceedings may have affected the momentum of the Senate TWG deliberations.
Senate deliberated on House Bill No. 3206 and Senate Bill No. 1866, respectively.\(^{41,42}\) House Bill No. 3206 and Senate Bill No. 1866 were subsequently referred to the Committee on Public Order and Safety at the House of Representatives, and the Joint Committees of Public Order and Dangerous Drugs, National Defense and Security, and Finance, at the Senate.

Concurrent with the deliberations of the Committees in the House of Representatives and Senate were the series of inter-agency consultations led by PLLO to come up with a consensus draft legislation on strategic trade management. This new draft legislation featured the consolidated comments and positions of various concerned agencies. Some of the major sticking points in the formulation of the consensus draft were the following:

- Justice Secretary Leila de Lima was opposed to the creation of a regulatory body for strategic goods for the reason that it would pose budgetary issues and require extensive capacity building for its officials. Secretary de Lima proposed that an inter-agency committee composed of the stakeholders be convened and that the Department of Trade and Industry be the agency to regulate trade.\(^{43}\)

- The DBM proposed that the bill should clearly specify the role of the National Security Council (NSC), an existing government institution mandated to provide technical support and policy advice on all aspects of national security. The NSC, under the Administrative Code of 1987, is mandated to coordinate the formulation of policies relating to, or with implications on, national security. DBM also recommended that the functional relationship of STMA with the other government departments, including the National Intelligence Coordinating Agency (NICA), be clearly defined to avoid duplication of activities.\(^{44}\)

After several inter-agency meetings, the consensus draft was finalized on January 28, 2015. Immediately, the PLLO submitted the new draft legislation to both the Committee on Public Order and Safety and the Senate Committee on National Defense as a substitute bill pending measures in both Committees.

Upon the recommendation of the Committee on Public Order and Safety, House Bill No. 3206 was substituted with House Bill No. 5822 or “An Act Preventing the Proliferation of Weapons of Mass Destruction by Regulating the Provision of Technical Assistance, Brokering, Financing, and transporting Services in Relation to the Management of Trade in Strategic Goods”.\(^{45}\) Meanwhile, Senate Bill No. 1866 was substituted with Senate Bill No. 2762 or “An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for Other Purposes.” Committee Report No. 140 dated May 12, 2015 recommended the substitution of Senate Bill No. 1866 to Senate Bill No. 2762 for approval. This was followed by a period of debate, sponsorship speeches, and interpellations.

Senator Vicente Sotto III provided editorial amendments to Senate Bill No. 2762 or the draft Strategic Trade Management Act, particularly on Section V on the definition of Strategic Goods, Nationally Controlled Goods, and Section X on the Responsibilities of Persons. The bill with amendments was subsequently

\(^{41}\) House Bill No. 3206: “An Act Regulating the Proliferation of Strategic and Dual-use Goods and Services, Providing Penalties for their Violation and for Other Purposes,” or “Strategic Trade Management Act of 2013” was filled by Representative Francisco Ashley Acedillo.

\(^{42}\) Senate Bill No. 1866: “An Act Regulating the Proliferation of Strategic and Dual-use Goods and Services, Providing Penalties for their Violation and for Other Purposes,” or “Strategic Trade Management Act of 2013” was filled by Senator Antonio V. Trillanes.


\(^{44}\) Report of the Presidential Legislative Liaison Office on the Philippine Strategic Trade Management Act (STMA).

\(^{45}\) Minutes of the Meeting of the Committee on Public Order and Safety held on March 18, 2015, Sixteenth Congress, Second Regular Session.
approved for a Third Reading and unanimously adopted by the Senate. It was then transmitted to the House of Representatives for their consideration.

Since the two approved versions of the draft strategic trade management legislations were not identical, a bicameral conference committee was intended to be convened to harmonize the approved versions. However, upon intervention of the PLLO, the House of Representatives was convinced to adopt the Senate approved version as amendments.

On 13 November 2015, the consolidated bill was signed by President Benigno S. Aquino III which became Republic Act No. 10697 or “An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for other Purposes.” R.A. No. 10697 is also known as the “Strategic Trade Management Act (STMA).”

The initiative to enact the STMA came from the Executive branch of the government. Since 2005, the OSETC convened a series of inter-agency consultations to lay the groundwork for the proposed strategic trade management legislation. Upon the initiative of the OSETC, draft legislations were filed in both the House of Representatives and the Senate in the 14th, 15th and 16th Congresses. Unfortunately, the proposed bills were not representative of the concerns raised by various stakeholders (DOJ, DBM, DFA, DTI, DOH, DOST, and DOTC, among others). Upon the instruction of the President, through the Executive Secretary, the PLLO was tasked to officially orchestrate the formulation and shepherding of the STMA. The PLLO raised the urgency of enacting the STMA through the inclusion of the measure in the legislative agenda priorities of the Cabinet Cluster on Security, Justice and Peace (SJP). The consensus STMA draft, which became the approved version of the bill, was a result of the initiative of the PLLO with other executive offices such as ATC-PMC, DTI, DOJ, DFA, DA, DILG, AFP, PNP, DBM and CSC. The PLLO also made significant interventions to break the impasse of the various agencies involved in the regulation of strategic and dual-use items.46

Key Provisions of the Strategic Trade Management Act

The STMA enforces measures to counter the proliferation of weapons of mass destruction (WMD) in the Philippines by regulating the movement or flow of dual-items, strategic goods and related services “consistent with its foreign policy, and national security interests, in support of efforts to counter terrorism, control crime and safeguard public safety.”47

Implementing Structures and Mechanism

The central authority in all matters relating to strategic trade follows the rubric of the National Security Council (NSC), thus ensuring strong authority coming directly from the Office of the President through the Executive Secretary. The organizational setup of the NSC-Strategic Trade Management Committee (NSC-STMCom) is necessary for effective decision-making particularly in the exercise of its powers and functions.48

The NSC-STMCom is composed of the Executive Secretary as Chairperson, and the Head of Offices (as ex-officio members) of all the important government agencies necessary for the effective implementation of strategic trade management. These are the Secretary of Trade and Industry as Vice-Chairperson, the Secretary of Foreign Affairs, the Secretary of Justice, the Secretary of National Defense, the Secretary of the Interior and Local Government, the Secretary of Finance, the Secretary of Transportation and Communications, the

46 Interview with the Presidential Legislative Liaison Office, February 24, 2016.
47 “Section 2. Declaration of Policy,” Republic Act No. 10697.
48 “Section 7. Powers and Functions of the NSC-STMCom”
Secretary of Environment and Natural Resources, the Secretary of Science and Technology, the Secretary of Agriculture, and the Secretary of Health. The Anti-Terrorism Council (ATC) - Program Management Center (PMC) serves as the Secretariat.  

In the exercise of its functions, the following support agencies and bureaus also complement the NSC-STMCom:

- Bureau of Customs (DOF-BOC);
- Bureau of Animal Industry (DA-BAI);
- Food and Drug Administration (DOH-FDA);
- Bureau of Quarantine (DOH-BOQ);
- Philippine Nuclear Research Institute (DOST-PNRI);
- Information and Communication Technology Office (DOST-ICTO);
- Armed Forces of the Philippines (AFP);
- Philippines National Police (PNP);
- Philippine Coast Guard (PCG)
- Office of Transport Security (DOTC-OTS);
- National Bureau of Investigation (DOJ-NBI);
- Presidential Legislative Liaison Office (OP-PLLO);
- Office of the Special Envoy on Transnational Crime (OSETC); and
- Such other offices, agencies or units as necessary.

The Strategic Trade Management Office (STMO), the executive and technical agency for the establishment of strategic trade management, is lodged under the Department of Trade and Industry. The STMO will be the clearinghouse of all the licenses and authorizations for the trade of dual-use and strategic goods and related services. The STMO will develop and maintain the register and carry out registration activities; establish and maintain a comprehensive database information system on strategic goods and on persons engaged in the trade of strategic goods and the provision of related services. Also, in case of violations, the STMO has the power to issue warning letters, orders of corrective action and conduct investigations.

**National Strategic Goods List**

Instead of using the term “National Control List”, the Philippines opted to use the term “National Strategic Goods List (NSGL)” to refer to the descriptive lists of strategic goods subject to authorization. The NSGL will conform to international commitments and nonproliferation obligations pursuant to bilateral and multilateral treaties, international conventions and international nonproliferation regimes. Industry outreach and consultations among the various stakeholders is being conducted to determine the goods, items, and technologies that will be subject to licensing.

**End-Use Controls**

The STMA imposes end-use controls on strategic goods that are not in the NSGL and related services. It also identifies the different circumstances where individual licenses or end-user certificates are required.

**Responsibilities of Persons in Strategic Trade Transactions**

The STMA puts the responsibility of obtaining an authorization from the STMO on any person who

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49 “Section 6. Central Authority”
50 “Section 9. Powers and Functions of the STMO”
51 “Section 4. National Strategic Goods Lists”
52 “Section 11. End-use Controls”
intends to engage in the export, import, transit, and transshipment of strategic goods. The STMA implicitly encourages the development and implementation by exporters of their own Internal Compliance Program (ICP) in the conduct of their strategic goods and services transactions. The STMA also requires that all records of the transaction and/or books of accounts, business and computer system, and all commercial and technical data be kept within a period of ten years from date of transaction.53

The STMA has extra-territorial application. It is applicable to any natural or juridical person operating within the Philippines as well as all Filipino persons providing import, transit, or transshipment of strategic goods wherever they may be located. It also identifies possible avenues for international legal cooperation in case an alien/foreign national, or a Filipino residing in another country committed the violation.54

**Exemptions from the Authorization Requirement**

The STMA indicates the circumstances when the authorization requirement may be waived: the importing of strategic goods which will be used by the Philippine military or police forces; temporary exporting strategic goods to be used by Philippine military or police forces outside of Philippine jurisdiction, mainly in connection with military, peacekeeping or government humanitarian mission, and law enforcement activities.55

**Liabilities, Violations, Penalties and Sanctions**

The STMA imposes penalties and sanctions to officers of partnerships, corporations, and other juridical entities, government officials and employees as well as foreign nationals for the commission of criminal and administration violations. Should the persons or entity willfully and intentionally violate the provisions of the Act, they may be imprisoned for a period from six (6) years and one (1) day to twelve (12) years imprisonment, and fined from one million pesos (P1,000,000.00) to five million pesos (P5,000,000.00). Violations include failure to register, acts without an authorization; or acts in breach of the conditions and terms of an authorization or governmental end-use assurances; making false or misleading representations; conspiracy; forging or altering any documents issued by the STMO; among others.56

The STMO may seek the assistance of the following agencies if there is prima facie evidence of criminal violations: (1) BOC on matters involving violations of import and export provisions of this Act as well as the Tariff and Customs Code; (2) PCG on matters involving violations that pertain to physical or outright smuggling on border security; or (3) PNP/NBI on acts involving violations outside the jurisdiction of the BOC and PCG.

The STMA grants the Regional Trial Court jurisdiction over criminal prosecutions for violation of any of its provisions, as well as over applications for the issuance and grant of applicable provisional remedies under the Rules of Court.57

**International Legal Cooperation**

The STMA also establishes the terms and conditions on international legal cooperation. The DOJ may request for assistance from a foreign state to: (1) take evidence or obtain voluntary statements from persons; (2) make arrangements for persons to give evidence or to assist in criminal matters; (3) effect service of

53 “Section 10. Responsibilities of Persons”
54 “Section 3. Scope and Coverage”
55 “Section 15. Exemption from Authorization Requirement”
56 “Section 19. Unlawful Acts”
57 “Section 28. Jurisdiction”
implementing rules and regulations

Finally, the STMA indicated that an Implementing Rules and Regulations Committee shall be convened within six months from the effectivity of the STMA. The IRR Committee is composed of the member-agencies of the NSC-STMCom. Deliberations are conducted to examine (1) what would be included on the NSGL, taking into consideration the different control lists regimes, as well as particular goods and services that are prohibited in the Philippines; (2) the standard for the end-user certificates; (3) specific guidelines on the issuance, modification, suspension of authorizations and end-use assurances; (4) specific protocols to ensure seamless coordination of the various member-agencies of the NSC-STMCom.

Enacting strategic trade legislation is just the first step towards the establishment of an effective strategic trade regime. The Philippines needs to carry out the provision of the law. Currently, the country is in the process of defining the implementing rules and regulations on the application for authorization, issuance of certificates, appeals for licensing decisions, and many other guidelines to enhance coordination of the various concerned agencies in strategic trade management. Whether it can put forth harmonized rules that would give substance to the law, at a timely manner, is something to look into as the dedication and active participation of all concerned agencies are extremely necessary in this primordial stage of the STMA implementation.

capacity building and outreach programs

To complement the legislative initiatives to enact a Strategic Trade Management Act in the Philippines, capacity building activities and outreach programs have been conducted with the assistance of the US Department of State Export Control and related Border Security (EXBS) Program, US Department of Energy, National Nuclear Security Administration under its International Nonproliferation Export Control Program, Center for Information for Security and Trade Control, European Commission-Center for Excellence, Federal Office of Economics and Export Control, Pacific Forum CSIS, Malaysian Ministry of International Trade and Industry, Singapore Customs, and the International Atomic Energy Agency. The assistance provided were in the form of reporting, adapting the legal and regulatory framework, considering the adoption of control lists, coordinating efforts, developing new working methods, training relevant stakeholders, developing mechanisms to involve the industry and the private sector, and determining the deployment and use of detection and analysis equipment, physical protection measures, and enhancement of enforcement capabilities.

There have been preliminary consultations made during the deliberations of strategic trade legislations. The Philippine Exporters Confederation, Inc.(PHILEXPORT), in its position paper submitted to the Committee on Public Order and Safety, indicated the perceived “need to put in place an effective national export, import, transit and re-export control law to ensure that the traded chemical, biological, and nuclear commodities are not used to weapons that can cause large-scale destruction”. Nonetheless, they noted that the measure “must be designed and implemented in a manner that minimizes the resulting increase in trade costs.”

58 “Section 29. International Legal Cooperation”
59 Position paper of the Philippine Exporters Confederation, Inc. submitted to the Committee on Public Order and Safety, House
An Enterprise Outreach National Capacity Building (EO NCB) program was also created in partnership with the US DOE, INECP. The EO NCB aims to engage all enterprises involved in the transfer of strategic goods and its related services. The program sought to raise awareness, promote self-compliance, and institute internal controls within enterprises. The EO NCB was launched during a two-day workshop on Enterprise National Capacity Building held in February 2015. The workshop also introduced the key elements of the Strategic Trade Management, and how various Philippine Semiconductor and Electronics Manufacturing Industries can contribute to its effective implementation.

To ensure the effective implementation of a Strategic Trade Management regime, Philippine government agencies need to step up its enterprise outreach activities. Further industry outreach activities need to be undertaken to assuage industries’ concerns on the perceived difficulty of complying with the requirements of the STMA.

**Conclusion**

For a time, the Philippines had some difficulty enacting a law that would form the basis for the establishment of an effective trade management regime in the country. Such difficulty can be attributed to the challenge of synergizing domestic politics and foreign policy obligations. The Philippine government engaged in what Putnam regarded as “two level games”, wherein they had to simultaneously cope with the pressures and constraints of their domestic political system and with the international environment.  

Given the domestic political arrangement in the Philippines, it was difficult to pass a legislation without public consultation and support. Thus, even if the STMA was regarded as a priority bill, it took three congresses (14th, 15th, and 16th) to finally pass it into a law. Nevertheless, the Philippines has been steadfast in its commitment to the UNSCR 1540. It knows that the nonproliferation regimes is only as effective as the state’s commitment to comply with their attendant obligations. Furthermore, non-participation of states increasingly viewed as prominent links to the WMD proliferation chain either as emerging dual-use innovators or manufacturers, critical transshipment ports and financial centers, or even breeding ground for terrorist sympathizers contribute to the erosion of any initiative aimed at stopping the proliferation of WMD.

Recognizing too that it lacks significant technical expertise and resources to implement UNSCR 1540, and STM in particular, the Philippines has been very receptive of any capacity-building assistance and support provided by partner states. The challenge for the Philippines, nonetheless, is to have a clear assessment and comprehensive plan of what its existing capabilities are, what measures it is planning to undertake to effectively implement the STMA, and what further support are necessary to make these happen. As the country moves towards the effective implementation of its Strategic Trade Management regime, political will is needed to ensure momentum and garner support for the Act.

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