

UNITED NATIONS SECURITY COUNCIL RESOLUTION 1540: THE CASE FOR SINGAPORE



Singapore is Southeast Asia's busiest transit and trans-shipment centre.

ABSTRACT

Singapore is a small island country that serves its obligations to United Nations Security Council resolution 1540 (2004) (UNSCR 1540). This article examines Singapore's efforts in managing the export of strategic goods via its Strategic Goods Control Act, regulations, and the integrated, "whole-of-government" approach to counter the proliferation of weapons of mass destruction. The article highlights some of the challenges faced and gives recommendations for further improvements. This article highlights the benefits of implementing export control legislation to support trade and development, protecting intellectual property rights, stopping the proliferation of advanced technologies that could be used for weapons of mass destruction, and allowing the sharing of advanced technology among countries.



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INTRODUCTION

UNSCR 1540, adopted in 2004, requires Member States to prevent the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, to non-State actors, given that this constitutes a threat to international peace and security. Among the different obligations, operative paragraph 3 (d) of the resolution requires “appropriate effective national

export and trans-shipment controls” over nuclear, chemical or biological weapons and their means of delivery, including related material. While existing literature has been written in this area, it is the intention of this article to provide the reader with an understanding of the Singaporean framework for export and trans-shipment control, as well as recommendations for its further enhancement.

BACKGROUND

Singapore is Southeast Asia’s busiest transit and trans-shipment centre and it supports disarmament and the non-proliferation of weapons of mass destruction. In 2003, it was the first country in Southeast Asia to put in place a stringent export controls system to regulate the transfer of strategic goods and safeguard against the illicit movement of goods and technology that



relate to the development, production and use of nuclear, chemical and biological weapons, missiles capable of delivering such weapons, as well as conventional arms and military equipment.

Exporters will need to know whether their products and technology are subjected to the Singapore Customs' Strategic Goods Control Act (SGCA), as well as the licensing re-

quirements of other export control jurisdictions, such as the US International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR), particularly if they contain US-origin content and if their products are exporting from, trans-shipping or transiting through Singapore. The penalties for exporting without the correct permit under the SGCA can be severe, resulting in fines of 100,000

SGD (approximately 74,000 USD) or three times the value of goods and/or imprisonment of up to two years, on the first offence alone. Additional administrative measures include de-registration and revocation, suspension of permits, as well as seizure and forfeiture of goods.

Singapore is a party to the following international non-proliferation treaties and conventions: the Treaty on the Non-Proliferation of Nuclear Weapons; the Chemical Weapons Convention; and the Biological and Toxin Weapons Convention. It is, however, not a member of any of the four major multilateral export control regimes, in other words, the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group or the Missile Technology Control Regime. Singapore is a signatory to, but has yet to ratify, the Arms Trade Treaty.¹ Singapore has also adopted an integrated, "whole-of-government" approach, with agencies, such as the ports, Customs, immigration, trade, and legal authorities, cooperating to tackle the proliferation of weapons of mass destruction.²

1 United Nations, *Treaty Series*, vol. 3013, No. 52373.

2 Ambassador Karen Tan, Permanent Representative of Singapore to the United Nations in New York, Statement to the United Nations at the Open Consultations on the Review of UN Security Council Resolution 1540 (2004), New York, 22 June 2016.

VIOLATIONS OCCURRING IN SINGAPORE

Singapore companies are required to respect national export control laws and, as previously mentioned, penalties for violations can be severe. For example, in September 2023, two Singaporeans were fined 80,000 SGD (approx. 59,000 USD) and their company, Hydronav Services Pte Ltd, fined 1.1 million SGD (approx. 810,000 USD) for selling a multi-beam echosounder system for seabed mapping (a dual-use item) to Myanmar's navy. They submitted a false end-user statement to Kongsberg Maritime, declaring the end user as an Indonesian Company.³ Singapore Customs had issued a notification to industry not to sell any strategic goods to Myanmar earlier in the year and hence this was a violation of the Strategic Goods Control Act.

Singapore is equally committed to upholding international law, including resolutions adopted to counter proliferation. A businessman, who was on the United States Federal Bureau of Investigation's (FBI)

most-wanted list for allegedly laundering millions of dollars for North Korea, was fined 210,000 SGD (approx. 151,000 USD) in a Singapore district court on 20 October 2021 over offences linked to that country. He had falsified invoices to hide his dealings with North Korea, as Singapore abides by United Nations Security Council resolutions and forbids anyone from using the Singapore financial system to do business with North Korea, an embargoed country.⁴

Although not directly related to UNSCR 1540, these cases illustrate Singapore's rigorous enforcement of export control laws and its dedication to upholding international regulations.

CHALLENGES IN SINGAPORE EXPORT CONTROL

Export compliance is an area that is often confusing to the layperson and the ever-changing regulations are also a challenge for practitioners to keep track of. Amendments in any part of the regulations will often involve changes in

the supply chain structure. Companies must comply with these requirements to prevent penalties (i.e., a hefty fine, imprisonment, loss of exporting privileges and reputational damage).

Export control legislation remains unpopular among most developing or less developed countries and is often viewed as something that only developed countries would implement. This is partly because less developed countries place economic development and advancement as their top priority and perceive export control as a restrictive regulatory barrier that is an impediment to trade. This, however, should be considered a misconception: export control can help a company to brand itself as a responsible global firm, and it improves international cooperation and confidence between firms in different countries through the creation of a secure trading environment. Furthermore, it protects the intellectual properties of the companies, stops the proliferation of advanced technologies that could be used for

³ Shaffiq Alkhatib, "\$80k fine for pair linked to illegal sale of sonar that ended up with Myanmar Navy", The Straits Times, 19 September 2023.

⁴ Shaffiq Alkhatib, "S'pore businessman wanted by FBI fined \$210k over falsified invoices to hide dealings with North Korea", The Straits Times, 20 October 2021.

Export control can help a company to brand itself as a responsible global firm.

weapons of mass destruction and allows the sharing of advanced technology from countries such as Japan, Korea, Taiwan, and Singapore with less developed countries.

EFFORTS BY SINGAPORE CUSTOMS

The Singapore Customs Authority promulgate knowledge through training and the yearly Joint Industry Outreach Programme.⁵ In February 2012, the Singapore Customs Academy was officially launched. This training institute is Singapore's first facility providing specialist customs training.

Singapore Customs has introduced a voluntary disclosure programme, which encourag-

es individuals or companies to step forward in good faith to disclose errors on past transactions in exchange for a reduced (or even no) penalty. Singapore Customs will also consider granting instalment schemes for penalties on a case-by-case basis. Singapore Customs has demonstrated its desire to improve and address concerns with its voluntary disclosure programme through public consultations.⁶

In January 2007, Singapore Customs introduced an enhanced control scheme known as the Strategic Trade Scheme. The scheme assists traders in their declaration procedures for transactions of strategic goods for legitimate end use. Companies with a good internal export control compliance

programme can enjoy improved facilitative declaration procedures for transactions of strategic goods for non-WMD-related end use. For instance, such companies would be able to make use of a one-time permit approval for multiple shipments of products. Singapore Customs also ensures that industries have free access to all available information through websites and trade notices. This helps to build up the compliance levels of the business community which, in turn, encourages greater self-compliance.

One of the reasons why Singapore companies are slow in implementing an internal compliance programme is the required commitment and re-

⁵ Singapore, Customs, *Joint Industry Outreach on Strategic Trade Management* (Singapore, 2023).

⁶ George Tan, "Strategic trade management – the Singapore experience", *World ECR*, 28 May 2013.

sources, which, sometimes, companies are not willing to invest. Some companies are not seriously considering sustainability, business continuation and corporate governance because, to them, these are luxuries. These kinds of companies tend to be more concerned by their profit margins. Compliance is often viewed as a cost by these companies, not an investment. This is reflected at the regional level, where export control is still a new regulatory notion for many Asian countries and is often regarded as a restrictive regulatory trade barrier.⁷

Companies' trade departments are also constantly challenged to deliver efficiently on their organization's strategy, but their ability to do so is hindered by several concerns that remain unaddressed. One of the concerns relates to the link between strategy and performance, along with the necessary language and tools. Companies' trade departments can consider using

an operating model, such as McKinsey's 7-S Model or Deloitte's Legal Operating Model to deliver efficiently on the company's strategy.⁸

CONCLUSION

Singapore has been successful in serving its obligations and has been proactively supporting UNSCR 1540 implementation.

Twenty-first century trade goes beyond the import and export of tangible goods, now also involving the complex movement of intangible goods such as software and services. Keeping international trade safe and secure is of paramount importance, as disruption, caused by acts of crime or terrorism by non-State actors, to any link in the supply chain can have devastating effects on a country's economy. To achieve total supply chain security, authorities need to work with all stakeholders to ensure that they do their part in exporting to the correct end use, the legitimate end user and end-use destination.

The negative effects of export control on a firm's innovation, market competitiveness, investment and trade flows can be mitigated by having the Singapore government and industry working together to maintain a balance. Business strategies, such as being pre-emptive in accommodating regulatory changes, embracing regulatory reform and compensation for loss of market share, can be evaluated by top management and resources allocated as part of business cost.⁹ Removing impediments to entrepreneurship is a key challenge for the government and the business sector if the island republic is to maintain its international competitiveness. The various initiatives taken by the Singapore government to stimulate risk-taking can also be used as a catalyst to help Singapore companies.¹⁰ Companies are ready to take on a firmer export control implementation if there is sufficient government support.

7 George Tan, "Asian export controls: a snapshot", *World ECR*, 28 February 2014.

8 Isabel Hanot, *Trade Departments of Multinational Companies an Operating Model*, Customs and Supply Chain Compliance (Rotterdam, Rotterdam School of Management, 2020).

9 Belay Seyoum, "Export Controls and International Business: A Study with Special Emphasis on Dual-Use Export Controls and Their Impact on Firms in the US", *Journal of Economic Issues*, vol. 51, No. 1 (March 2017).

10 Balbir Bhasin, "Fostering Entrepreneurship: Developing a Risk-taking Culture in Singapore", *New England Journal of Entrepreneurship*, vol. 10, No. 2 (2017).