To Achieve a Longer-Term Success of “Secured Trade”: How to Minimize Maritime Counter-Terrorism Measures’ Adverse Impact on Legitimate Trade

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With Particular Emphasis on the Strait of Malacca
Order of Presentation

- Analysis of Current Situation
- Counter-Terrorism Measures’ Adverse Impact on Trade
- Search for A Long Term Solution and A New Framework
- Future Policy Suggestions and Recommendations
- Conclusion

Successful Maritime Terrorism Deterrence

- Under the post-September 11 circumstances, various measures introduced to deal with “emergency” situation
- So far, collective international efforts to prevent and fight maritime terrorism have turned out to be a great success
Continuing Efforts Essential

THE OBVIOUS:
- Nobody could question the urgent necessity to adopt new int’l conventions or amend existing ones to better deal with ever-increasing threats of maritime terrorism.
- These collective efforts should continue and be reinforced for any chance of common prosperity in APEC region.

Current Situation: Terrorism Threats Increasing

- Two modes of maritime terrorism:
  - (i) “sea-borne” terrorism where a ship or a shipment container is used by terrorists to carry out terrorist attacks against a particular country or a port, and
  - (ii) “in-transit” terrorism where a ship or its crews become the target of terrorist activities at sea.
Current Situation: Threat to SLOC

- Vital sealanes of communication (i.e., international straits) in various int’l waters have become major passages of terror-related materials (for sea-borne terrorism), or targets of maritime terrorism (for in-transit terrorism).

Situation Around Strait of Malacca

- As the most important SLOC in the APEC region, the Strait of Malacca (or Strait of Singapore) is no exception.
Situation Around Strait of Malacca

➢ Commercial Usefulness
   • A lifeline to the whole Asian economy and APEC trade
     - Everyday a quarter of world trade, including half of all sea shipments of oil bound for eastern Asia passes through the strait

➢ Maritime Terrorism Threat
   • Terrorists almost publicly acknowledge that the strait is their prime target

Situation Around Strait of Malacca

➢ Furthermore, the Strait of Malacca poses particularly significant problems

   • High percentage of containerized shipping (which makes the transportation particularly vulnerable to sea-borne terrorism)

   • Frequent occurrences of criminal activities with geographical closeness to some of int’l terrorist groups (which makes the transportation particularly vulnerable to in-transit terrorism)
Small Conclusion

- The necessity for APEC Economies’ cooperation to protect and preserve the Strait of Malacca cannot be overemphasized.
- However, it is time to examine the maritime counter-terrorism measures adopted so far and contemplate on appropriate future direction.

Counter-Terrorism Measures
Unintended Adverse Impact on Legitimate Trade
**Terrorism Measures’ Trade Effect**

*An Embarrassing Situation*

- A completely legitimate anti-terrorism measure sometimes inflicts adverse impact on legitimate trade
- From time to time, strict and overarching counter-terrorism measures have choked otherwise free flow of legitimate trade
- Such effect has probably never come to the mind of the drafters

*“Inevitable” Side-Effect*

- Up until now, this “side-effect” has been widely considered to be understandable
  - In fact, it was an “emergency” situation, where sometimes blunt and direct measures are justified
- Up until now, this “side-effect” has been widely considered inevitable
  - For an effective counter-terrorism measure, a “drag-net” or “all-or-nothing” approach is inevitable
Examples
ISPS Code

➢ ISPS Code was implemented as of July 1, 2004 as a result of SOLAS amendment
➢ The amendment calls for a universal mandatory implementation of security measures for ports and ships
➢ A completely appropriate and necessary measure to deal with maritime terror

Examples
ISPS Code

➢ However, Unintended Consequences
  – Any ISPS non-compliant shippers are virtually forced out of the international trading system
  – Some countries and shippers have complained that they did not have enough lead-time and resources to meet the deadline
➢ Sometimes operates as a non-tariff trade barrier
Examples

Container Security Initiative

➢ Checking and monitoring container shipments early in advance
  ▪ Given the vast increase of containerized shipment and its threat, perfectly appropriate and necessary
➢ Exporters from the CSI participating countries get significant commercial advantage
  ▪ more expeditious and favorable treatment at the border or in customs clearance procedure

However, unintended trade effect

➢ Shipment from non-CSI Block is getting *de facto* discrimination for the import processing
➢ It puts burden not only on suspicious trade, but also legitimate trade from these countries

➢ As to non-CSI countries, this measure virtually operates as a non-tariff trade barrier
Other Examples

- Increasing application of IT technology
  - Radio Frequency Identification ("RFID")
  - Vessel Monitoring System ("VMS")
  - 24-Hour Advance Notice Rule
  - More rules are on the way

- Increasing logistical burden on countries or companies with less financial or technical resources

Strait of Malacca as a Showcase

- The problem is, unintended adverse impact on legitimate trade could cause more acute problem for transportation through the Strait of Malacca than any other passages
- The unique characteristics of the Strait of Malacca provide a showcase example of the two conflicting themes: (i) importance as a vital SLOC and (ii) vulnerability to terrorism.
Strait of Malacca as a Showcase

- Uninhibited flow of trade through the Strait of Malacca is important
  - Everyday a quarter of world trade passes through the strait

- At the same time, the Strait of Malacca is particularly vulnerable to the increasing international terrorism and piracy
  - In fact, 42 percent of world’s pirate activities took place in the Strait of Malacca in 2003

Strait of Malacca as a Testing Place for a Future Framework

- In short, Strait of Malacca is the place where a stringent counter-terrorism measure is needed while at the same time minimizing disruption to, or choking of, flow of legitimate trade

- As such, the strait offers a good litmus test place to contemplate a long-term solution to this touchy issue, not only for APEC region but also the world community at large
Then What To Do Next?

Policy Suggestions and Recommendations for APEC Economies

What to do next?

Objective

APEC Economies’ consensus on search for a long-term solution to deal with maritime terrorism

- Up until now, a series of stop-gap measures to deal with emergency situation in the immediate aftermath of September 11
- Now it is time to go back to normalcy and contemplate a long-term approach
What to do next?

Framework

“Multi-dimensional” analysis in discussing and negotiating counter-terrorism measures in the APEC

- From “one-dimensional” thinking to “multi-dimensional” thinking
- Not only effectiveness of a measure, but also accompanying side-effects of the measure need to be carefully considered and evaluated

What to do next?

Appropriate Assessment for Trade Impact

- In terms of int’l trade, the multi-dimensional approach would include:
  - Understanding the “hidden” relationship between counter-terrorism measures and int’l trade in the APEC region
  - Making “realistic” efforts to minimize or avoid unnecessary disruption to legitimate int’l trade in the APEC region
Such as Balancing Analysis...
In adopting counter-terrorism measures:

- Deterrence Effect
- Resulting Adverse Impact on Other Areas

Such as A More Balanced Approach...
In considering counter-terrorism measures:

- Deterrence Effect
- Other Consideration (i.e., trade effect)

- Counter-Terrorism Measures
- Counter-Terrorism Measures

Such as Balancing Analysis...
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**Policy Suggestions: Comprehensive Understanding on Trade Implication**

- First and foremost, it is imperative that negotiators from APEC Economies are apprised of the full spectrum of implication from a proposed anti-terrorism measure.
- In this vein, any terrorism-related measure to be adopted by APEC Economies or by other int’l organizations should be adequately evaluated in terms of trade disruption possibilities and impact.

**Policy Suggestions: Selection of the Least Trade-Distorting Measure**

- Any counter-terrorism measure should be the least trade-restrictive, if at all possible.
  - When there are two or more competing alternatives to achieve a particular counter-terrorism mandate, and
  - When those alternatives basically provide the same or similar level of protection.
- A measure that inflicts the least negative impact on trade should be adopted by APEC economies.
Policy Suggestions:

**Clearer Guideline in Domestic Implementing Legislation**

- In fact, domestic implementing legislation or regulation is more important
  - Most of the measures adopted are to be implemented through domestic legislations and/or regulations of APEC Economies
- Under domestic legislation/regulation, wide discretion is usually reserved for officials
  - To minimize abuse of discretion, whether intended or unintended, it is important that the APEC economies’ domestic implementing legislation and regulation provide clear guidance

Policy Suggestions:

**Recognition of Role of Free Trade as Key Solution to Terrorism Spread**

- More fundamentally, it is essential to recognize long term positive effect for APEC flowing from the reliable trading system
  - A reliable trading system is to be achieved not only through the one covered by water-tight anti-terrorism measures, but also the one that facilitates free flow of legitimate trade
- As to APEC Economies with less resources, free trade of legitimate shipment is virtually the only way to accumulate national wealth
Policy Suggestions: 
*The Simpler, the Better*

- Furthermore, to minimize unintended impact on legitimate trade, any counter-terrorism measure should be easy to implement by APEC Economies
  - When a particular measure is adopted, the procedure to comply and the substantive contents of the measure should be made as easy as possible unless the effectiveness of the measure is compromised
- The technical or mechanical specification of equipment should not be unnecessarily burdensome

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Policy Suggestions: 
*Assisting Countries with Less Resource*

- Consideration of progressive implementation, if at all possible
  - To alleviate the logistical burden on some countries, APEC Economies may consider “progressive implementation” of a measure, if such progressive implementation does not pose a significant problem
  - There may be instances where progressive implementation is simply not feasible, but there also may be instances where progressive implementation could be considered
Policy Suggestions:
Assisting Countries with Less Resource

➢ Dissemination of technology and equipment

- Given that the beneficiary of effective counter-terrorism measures is the international trading community in general and APEC in particular, APEC Economies may consider sharing financial burden of members with less resources in implementing particular measures.
- As such, it is important that members with less financial resources have the ability to access and obtain necessary technology and equipment.

➢ Dissemination of technology and equipment

- In this respect, APEC members with resources could consider disseminating or transferring required technology and equipment at a reduced price or no cost.
- Devising an easier access to technology and equipment is critical in introducing counter-terrorism measures as most of new measures are related to IT technology in one way or another.
**Policy Suggestions:**

*Assisting Countries with Less Resource*

➢ **Creation of an “Assistance Fund”**

- Such a fund would introduce a more systematic assistance mechanism than *ad hoc* support based on good-will of individual countries.
- For the creation of the fund, not only the governments but also private companies can participate.
- Particularly, private companies using the Strait of Malacca for their business may shoulder proportionate burden in maintaining the strait safe.

➢ **Introducing a training program for officials**

- Not only an easier access to the counter-terrorism technology and equipment but also more adequate training for customs officials, law enforcement agency officials, and private company officials from members with less resources is critical.
- These officials need opportunities to get adequate training before they are required to comply with a measure.
Policy Suggestions:

*Close Coordination with Other Int’l Organization*

- For a “multi-dimensional” approach, cooperation with other int’l organization cannot be overemphasized
  - It is highly recommended that future counter-terrorism discussions in APEC be conducted with closer cooperation and coordination with other trade-related international organization
  - Such organization may include WTO, World Customs Organization (“WCO”), Organization for Economic Cooperation and Development (“OECD”), etc.

Maintaining Viability for *Strait of Malacca*

- These suggestions & recommendation are applicable to all int’l counter-measures for maritime terrorism
- A new framework, however, would prove to be more valuable for the Strait of Malacca due to its unique characteristics and acute head-on collision of two competing objectives
Maintaining Viability for 
*Strait of Malacca*

- These suggestions & recommendation would make the Strait of Malacca:
  - Maintains the commercial usefulness as the vital lifeline, and
  - Provides required protection for the strait from the terrorist threat

- Continuing economic prosperity in APEC region will be maintained

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**Conclusion**

- It is a time for APEC Economies to think about a longer-term solution to the int’l maritime terrorism
- A more creative and three-dimensional thinking is desperately in order.
  - APEC economies also need to be creative in working together to find innovative ways, using new technologies, to both strengthen security and facilitate trade
- Any “unintended trade effect” needs to be minimized as much as practicable
The End

“Secured Trade” for Common Prosperity in APEC Economies

Thank You