



Asia-Pacific
Economic Cooperation

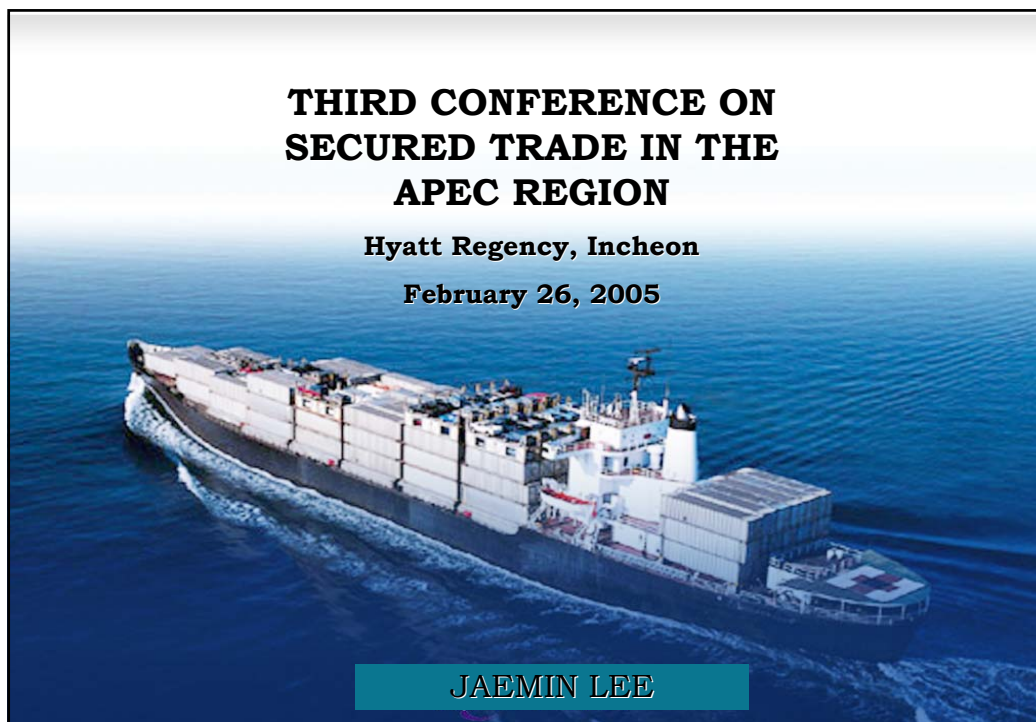
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Maritime Security Panel 3

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

Submitted by: Hanyang University



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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

A photograph of a port scene. In the foreground, a large green crane is lifting a heavy metal container. In the background, a large white ship is docked at a pier. The sky is blue and the water is calm.

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

Examples *Container Security Initiative*

- 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

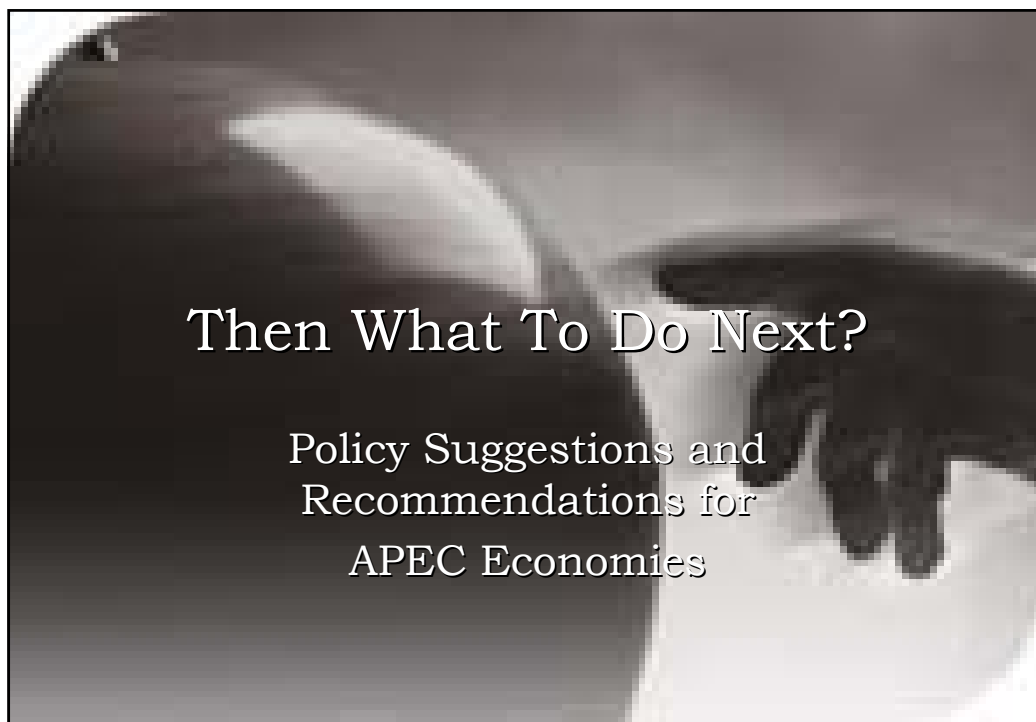
- Uninhibited flow of trade through the Strait of Malacca is important
 - Everyday a quarter of world trade passes through the strait



- 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



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?

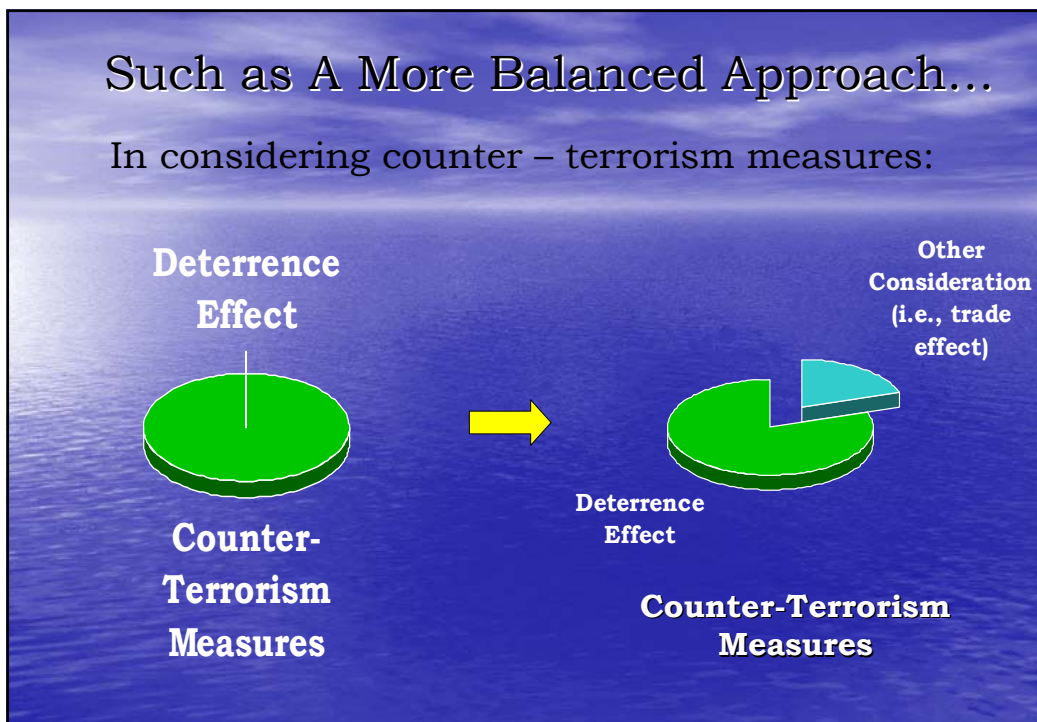
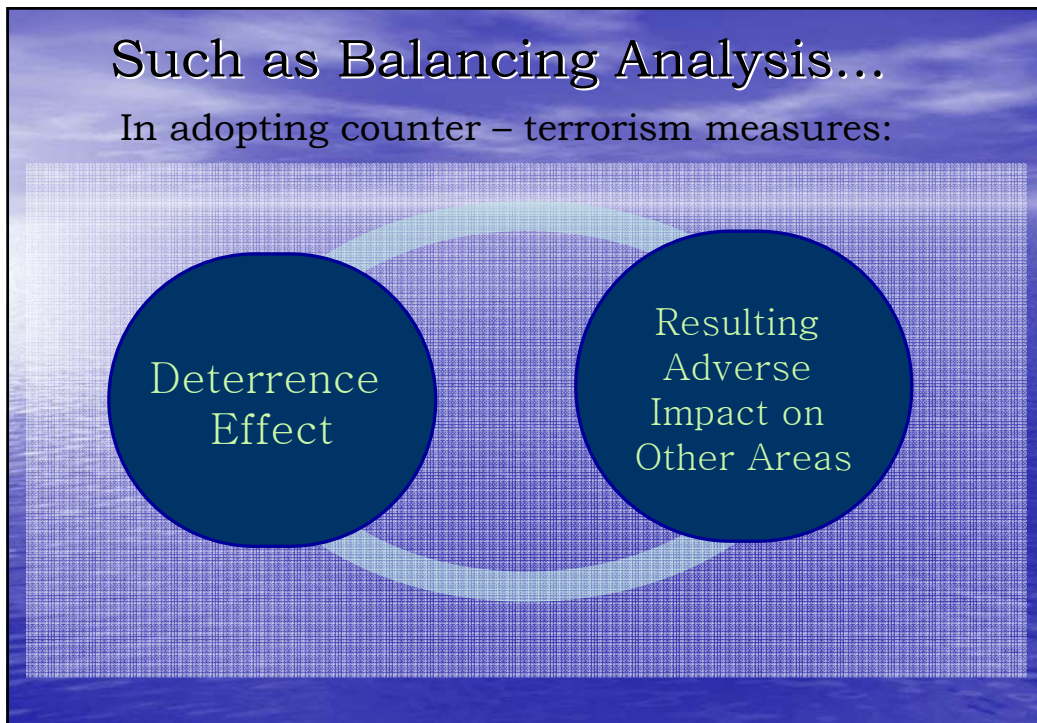
Framework

- “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



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

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 int'l 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

Policy Suggestions:

Assisting Countries with Less Resource

- 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

Policy Suggestions:

Assisting Countries with Less Resource

➤ 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

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

