Share What You Know / Working with the government to implement a new regulatory framework in Malaysia

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Executive Summary

In 2010, the head of a Fortune 100 company’s largest offshore facility faced an unanticipated challenge: The government of Malaysia, where the facility was located, announced that it would, within a matter of months, implement a major new regulatory framework designed to monitor the export of technologies that could contribute to the proliferation of weapons of mass destruction (WMD). The company (hereinafter referred to as “HighTech”) made thousands of shipments each week from its Malaysia facility and, due to the technology involved, almost all of these were likely to come under the new Strategic Trade Act (STA).

Based in Malaysia since 2005, the head of HighTech (hereinafter referred to as “Frank Smith”) knew that the infrastructure to support an efficient STA did not yet exist in the country: There was no information regarding how to apply for a license, how and by whom it would be approved, or how long the approval process might take. HighTech estimated that it would take as long as a year for a smooth implementation, which unfortunately put the ideal timeline beyond the Malaysian government’s publicly-announced timeframe.

The potential impact of a poorly-implemented STA on HighTech’s business was significant: It could result in major shipment delays and, in the extreme, could mean that HighTech would need to move its Malaysia operations to a country with a more efficient STA framework at great cost. How could Smith prepare HighTech to comply with a major new – and politically sensitive – regulatory regime about which so little was known?

By drawing on experienced internal resources at HighTech; identifying key stakeholders, both internal and external; and sharing lessons learned in other countries with the Malaysian government, HighTech was able to contribute to a new regulatory framework that achieved the goals of the government and was also realistic, enforceable, and efficient for MNCs operating in Malaysia.

Any country manager facing a major new regulatory regime will find valuable lessons in HighTech’s experience in Malaysia.

Background

HighTech is a US-headquartered, Fortune 100 company that is one of the world’s largest designers and manufacturers of high-tech computing components. The company’s largest offshore facility is located in Malaysia, a culturally, linguistically, and religiously diverse country in Southeast Asia. HighTech’s Malaysia operations include manufacturing, design, development, and other services.

1 The company discussed in this paper has requested anonymity.
Malaysia’s location in the South China Sea makes it a strategically key transshipment and manufacturing location for many multinational companies in a range of industries, including oil and gas, manufacturing, and high-tech. According to the Malaysian International Chamber of Commerce & Industry, the manufacturing sector in Malaysia saw over MYR 29 billion in foreign investment in 2010 (approximately USD 9.5 billion), an increase of almost MYR 7 billion (approximately USD 2.3 billion) over 2009.  

Frank Smith was first posted to Malaysia with HighTech in the late 1990s to establish a new factory. In 2005, he was offered the opportunity to return to the country, this time with responsibility for running the entire site. He was excited by the possibilities presented by the co-location of so many of the company’s business areas, from services to design, development, and manufacturing.

But in 2010, Smith encountered an unanticipated challenge: the Malaysian government announced that in compliance with UN Security Council Resolution (UNSCR) 1540 it would, within a matter of months, implement a strategic trade act in order to monitor the export of products and technologies that could contribute to the proliferation of WMDs. Although HighTech already had systems in place to manage existing strategic trade acts in other countries, the lack of detail regarding Malaysia’s STA, how it would be implemented, and what it would mean for HighTech’s operations in Malaysia were significant concerns. How could Smith prepare HighTech to comply with a major new – and politically sensitive – regulatory regime about which so little was known?

**Threshold Event**

Although Malaysia is considered a very business-friendly environment, it has come under pressure from various governments, especially the United States, to implement export and transshipment controls to curb the proliferation of WMDs and related technologies to countries or entities deemed to pose national security or terrorism-related threats. This dynamic resulted in Malaysia’s passage of the Strategic Trade Act and the subsequent implementation of an improved regulatory framework for export and transshipment controls. According to the Malaysia External Trade Development Corporation, which is the national trade promotion agency of Malaysia, the US was Malaysia’s fourth-largest trading partner in 2010, behind China, Singapore and Japan. The US has exerted pressure on certain countries to implement export and transshipment controls through such means as the Strategic Trade Act in order to limit access to both WMD technologies and dual-use items that could be used in WMD design, manufacture, or operation.

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In April 2010, the Prime Minister of Malaysia met for the first time with President Obama in the United States; the visit coincided with the prime minister’s attendance at the Nuclear Security Summit in Washington, DC. Just prior to leaving Malaysia, the Prime Minister announced the Strategic Trade Act 2010 and committed to implementing a rigorous STA framework quickly.

The announcement that an STA would be implemented in Malaysia, and the short timeframe demanded by the Malaysian government, came as a surprise to HighTech and others operating in Malaysia, and was a cause for serious concern. In many countries, the national STA requires companies to register and receive permits for the export or transshipment of certain items. HighTech makes thousands of shipments from Malaysia every week, and most of these shipments were expected to require a license under the STA.

In addition, although the Malaysian government had indicated that it planned to implement the STA by January 2011, Smith knew that the infrastructure to support an efficient STA did not exist: There was no information regarding how to apply for a license, how and by whom it would be approved, or how long the approval process might take. Based on its experience implementing such regulations in other countries, HighTech estimated that it would take as long as nine months to a year for a smooth implementation, which unfortunately put the ideal timeline beyond the Malaysian government’s publicly-announced timeframe.

HighTech already had internal programs in place to comply with regulations such as OFAC, but it was unclear whether these existing programs would be aligned with what the Malaysian government would require. In addition, Smith knew that there was concern within the Malaysian government that the requirements of the STA would be overly onerous for local small and medium enterprises (SMEs); harming local businesses through a UN-driven policy would be politically unfeasible. The consequences for failing to adhere to the STA would be serious for companies, which could be fined, and company directors, who could even be jailed.

There were two worst-case scenarios that kept Smith up late at night: First, there was the possibility of a shipment getting trapped in customs because the necessary export licenses could not be obtained quickly enough. HighTech competes in an industry where its customers rely on receiving its product quickly, and flawless execution is the goal. Second, if the STA system implemented in Malaysia resulted in major delays in shipments or a change in major systems, HighTech and Smith might have to move the company’s warehouses to a country with a more efficient STA implementation, a possibility that could have major financial and political repercussions for HighTech.

**Response**

Smith recognized that HighTech had made a long-term commitment and major economic contributions to Malaysia, and that the company’s prior experience with STA implementation in other countries could be valuable for the Malaysian government. He welcomed representatives
of the Malaysian government to visit the company’s warehouses and observe their existing shipment management and control systems. HighTech’s existing systems and willingness to work with the government on implementation made it possible for the company to influence design of the regulatory framework itself. At one point, Smith had several employees working with the government full-time so that the government could learn and adapt because HighTech was among the companies closest to being compliant. Although discussions were sometimes tense, HighTech’s commitment to getting the STA implemented well and its willingness to share lessons learned from implementations in other countries were appreciated by most of the stakeholders.

Identifying all the stakeholders involved in the design and implementation of the STA was itself a significant challenge. Smith knew that his management back in the US was important – he was updating them on a bi-weekly basis as the situation developed – and he knew that the Malaysian government would be involved, but who else might come into play? There were occasions where he was unaware that someone was a stakeholder until he walked into a meeting and found them there; for example, he did not initially realize how involved representatives of the US government in Malaysia would be in the process.

“I couldn’t afford to have one of them feel like they lost when everyone else won,” Smith now says. He initiated weekly internal meetings during which his team discussed the needs of each stakeholder, from senior management in the US to the Malaysian government. He also benefitted from HighTech’s efforts back in the US, where the company spoke with US government stakeholders to understand how their efforts in Malaysia were being perceived.

Evaluation

Reflecting on his experience with the STA and political challenges in Malaysia, Smith acknowledges, “You can’t be prepared for this unless you’re part of the political infrastructure when you arrive.” But, he believes that there are certain steps that can be taken in similar situations:

- **Experience, even somewhere else entirely, helps:** Smith says that he benefitted from having colleagues, particularly from Tax and Treasury, with prior experience with STA implementation. They knew exactly what strategic trade acts had meant in other countries.
- **Know your stakeholders:** “You have to be really diligent to identify stakeholders and figure out what success means for each of them,” Smith said. Understanding the stakeholders, their hopes and fears, made it possible to negotiate the political and cultural nuances more effectively.
- **Share what you know:** Rather than simply pushing back against a potentially damaging new regulation, Smith invited representatives of the Malaysian government to see the systems that HighTech already had in place and to learn from HighTech’s experience in
other countries. This helped ensure that the final implementation of the STA achieved the goals of the government and was also realistic, enforceable, and efficient for MNCs operating in Malaysia.

**Conclusion**

The STA was implemented in April 2011, which meant that companies had to begin submitting applications for licenses for specific shipments at that time; however, no further action was taken. The STA began to be enforced in October 2011. The time gap between implementation and enforcement allowed the Malaysian government and companies more time to ensure that the program would work smoothly once it was fully operational, while keeping in mind the goal to ensure that the Malaysian government was moving quickly to achieve the goals of the Strategic Trade Act. HighTech’s proactive collaboration with the Malaysian government allowed the company to contribute to a smooth implementation of the Act, and most companies operating in Malaysia were able to incorporate their existing compliance programs with the STA, thus avoiding interruptions in operations that could have resulted in millions in lost revenue. “There was a lot of tension,” reflected Smith. “But [also] a lot of cooperation. The Act was the right thing to do, and everyone wanted to get it done right as a win-win solution.”

According to Smith, the process of collaborating with the Malaysian government on the STA was also a leadership moment for HighTech: “We stepped up and assisted with our knowledge and experience to help the country implement something as complex as the Trade Act. I know that the next time the Malaysian government seeks to implement something that impacts the industry players, they will look to us to provide expertise and advice. In Asia especially, building the relationship and trust is important and takes time, and this was definitely a big step in the right direction.”