INTANGIBLE TRANSFER OF TECHNOLOGY (ITT):
Regulatory Perspective

Presented by Hjh Nuraffiza Ahmad
Strategic Trade Division
SKMM

8 January 2014
Definition

• Section 2, Strategic Trade Act 2010 - Interpretation

i. “Export” – to transmit technology by any means to a destination outside Malaysia, and includes any oral or visual transmission of technology by a communications device where the technology is contained in a document the relevant part of which is read out, described or otherwise displayed over the communications device in such a way as to achieve a similar result;

ii. “items” – includes goods and technology;

iii. “Software” – means a collection of one programmes or microprogrammes recorded, stored or embodied in any device;

iv. “Transmit” – in relation to strategic technology, means –
   a) To transmit the technology in Malaysia by electronic means; or
   b) To make the technology available in Malaysia on a device,

v. “Strategic technology” – means technology prescribe as a strategic items under section 7 (Strategic Items);

vi. “Technology” : means information and data in any form for design, development, production or use of another item and includes technical data, technical assistance and software;
**Dual-use items** – means items capable of being used for a non-military and military purpose or in relation to the proliferation of weapons of mass destruction and includes the technology necessary for the development, production or use of any dual-use items;

**Military Items** – means items solely or designed or modified for a military purpose, including any part or component thereof and includes the technology necessary for the development, production or use of any military items

**Strategic items** – means the goods, software and technology specified in the schedule
Intangible Transfer of Technology (ITT) & Proliferation Risks

• ITT is the transmission or release of technology through intangible means

• ITT poses significant challenges to export controls – usually boundary based

• Two(2) variations of ITT risks relating to WMD proliferation:

  i. Intangible transfer of knowledge (in the form of technical assistance, consultancy, scientific meetings, discussions, exchanges, presentations, demonstrations, visual inspections, lectures and seminars, teaching, training, working knowledge, education of foreign nationals)

  i. Transfer of controlled technology or technical data by intangible means (electronic means, e-mail, fax, telephone, Internet, publications)
Scope of technology

**Technical Data**

- Blueprints
- Plans
- Diagrams
- Models
- Formulae
- Tables
- Engineering designs and specifications
- Manuals and instructions in print or electronic format
- Any other media or devices e.g. disk, tape, read only memories

**Technical Assistance**

- Instructions
- Skills
- Training
- Working knowledge and consulting services
- Including the transfer of technical data
STA 2010 : Section 7: Strategic Items (ECCN)

CATEGORIES
0 – Nuclear Materials, Facilities & Equipment
1 – Special Materials and Related Equipment
2 – Materials Processing
3 – Electronics
4 – Computers
5 – Telecommunications & Information Security
6 – Sensors & Lasers
7 – Navigation & Avionics
8 – Marine
9 – Aerospace & Propulsion

SUB-CATEGORIES
A – Systems, Equipment & Components
B – Test, Inspection & Production Equipment
C – Materials
D – Software
E – Technology

REGIME ORIGIN
0 – Wassenaar Arrangement
1 – Missile Technology Control Regime
2 – Nuclear Suppliers Group
3 – Australia Group
4 – Chemical Weapons Convention

5E001

“Technology” according to the General Technology Note for the “development”, “production” or “use” of equipment specified in 5A002, 5B002 or “software” specified in 5D002.a. or 5D002.c.
As an exporter, it is your obligations to comply with the following provision(s);

**i. Section 9 Strategic Trade Act 2010**: Export, transhipment and transit of strategic items and unlisted items.

**ii. Section 10 Strategic Trade Act 2010**: Provision of technical assistance

   (1) *No person shall provide any technical assistant within or outside Malaysia if such technical assistance is intended for use in connection with a restricted activity.*

**iii. Regulation 10 & 13, Strategic Trade Regulation 2010 – Export Permit & Special Permit**

**iv. Part V: Regulation 30, Strategic Trade Regulation 2010**

REGISTER AND RECORD KEEPING

a. 30. (2) – The persons subject to this regulation are -
   (a) all permit holders;
   
   (c) all persons who have provided technical assistance subject to these Regulations;

b. Sub section 30. (3),(4),(5),(6) and (11)

c. Sub section 30 (9), record retention = 6 years!
However...

- There is an exemption to technology transfer stated under Section 9. (7) –
  - This section shall not apply to the export of any document in which any strategic technology is recorded, stored or embodied, or to the transmission of such strategic technology, to the extent that the export or transmission is necessary to facilitate:
    
    (a) the installation, operation, maintenance or repair of any items which have been exported;

    (b) An application for a patent; or

    (c) A research in such strategic technology, the results of which have practical application
Potential situation of ITT

- Technologies and software (know-how & know-why)
- Participation of foreign delegations in the company’s internal technical conferences
- Collaborative work with foreign students
- Visual inspection by foreign nationals (company’s blueprints, plans, technical specifications, etc.)
- Foreign students studying sensitive technology
- Technical assistance (including verbal exchanges)

**DEEMED EXPORT - RELEASE OF TECHNOLOGY TO A FOREIGN NATIONAL**
Who should be aware?

- **Scientists/Consultants** – data, results or experiment - foreign scientists directly (collaboration) or during conferences (presentations, discussions)
- **Industry** – via consultancy, manuals and training to the buyer, after-sales service, troubleshooting and adapting the product for related uses
- **Academia** – via courses and projects
- **Brokers** – facilitate such transfers by sharing information regarding suppliers of controlled technologies or by setting up a controlled transaction
How they control the ITT...

SINGAPORE

- **Authority**: Singapore Customs
- **Legislation**: Enlisted under ‘catch-all’ provision in Singapore’s Strategic Goods Control Act 2003 (SGCA)
- **Control mechanism**: ‘Exporter’ shall obtain a permit if they are wishes to transmit any ITT related materials prior to carrying out any electronic transmission.
- The average processing time for ITT permit application is 7 working days

AUSTRALIA

- **Authority**: Defense Export Control Office (DECO)
- **Legislation**: DECO regulates transfers of technology and services in the same manner as the existing control over physical transfers listed under Customs Act 1901
- **Control mechanism**: Assessment will be conducted by DECO to determines whether or not the activity relates to items in Defense and Strategic Goods List (DSGL). The permit validity is depends to the risks of transfers.
  For institutional activity, the researcher and institutional committee shall undertakes the technology assessment prior refer to DECO.
- Standard applications will be consider within 15 working days and more sensitive applications is within 35 working days
UNITED KINGDOM

- **Authority**: Export Control Organization (ECO), BIS UK
- **Legislation**: Provision on Section 2 & 3, Export Control Act 2002 encompass the control over technology transfer and technical assistance.
- **Control mechanism**: There are several different licenses available to technology exporters. The type of license depends on:
  - the nature of the technology
  - the destination of exports
  Applications are made via SPIRE system.
- ECO encourage exporters to keep logs and records of technology that is electronically transmitted for audit purposes.

JAPAN

- **Authority**: Ministry of Economics, Trade and Industry (METI), Japan
- **Legislation**: Article 25, Foreign Exchange And Foreign Trade Act (Service Transaction)
  - i. Resident needs to obtain export license when he provide specific kinds of technology to non-resident in the specific region.
  - ii. Anyone needs to obtain export license when he bring out specific kinds of technology over Japan border to the specific region.

**Control mechanism**: To obtain license when transferring listed technology from Japan to a foreign country
UNITED STATES OF AMERICA (USA)

• **Authority**: Bureau of Industry and Security, US Department of Commerce

• **Legislations**:
  a. **The Arms Export Control Act (AECA)**: cover the technology relating to defense
  b. **The Export Administration Act & Regulations**: cover the technology relating to dual-use goods.
  c. **The Atomic Energy Act & Nuclear Nonproliferation Act**: cover technology related to nuclear development

• **Control mechanism**: Under U.S. law, providing controlled technology to a foreign person, whether within the U.S. or not, is deemed to be equivalent to physically exporting that technology to the country of the person's nationality.
Procedure for ‘Export’

i. Pursuant to Regulation 10 (4.b) & 13 (3.c), Strategic Trade Regulation 2010, an application for a permit (Single-Use & Special) shall be made before the transmission of the strategic technology in respect of which the application is made is to be carried out.

ii. An application shall be accompanied by all the documents enlisted under;
   a) Regulation 10 (7)
   b) Regulation 13 (4)

iii. In the event of Technical Assistance is provided, the application shall be made in accordance to the Reg 10 & 13.

iv. Application is made by using Form 1, subject to the conditions as stipulate in Section J (47.)
Our approach..

- Record keeping of exports under licence
- Apply for appropriate licence cover (often to include physical and electronic transfers)
- Assess and register controlled technology
- Identify how technology is being exported and by who

WHAT NEEDS TO BE DONE?
Best Practices..

Promoting awareness of ITT controls by such means as publication of regulatory handbooks and other guidance material

Promoting self-regulation by industry and academic institutions that possess controlled technology

Regular internal compliance checks
Thank you

Strategic Trade Division
Malaysian Communications and Multimedia Malaysia
stad@cmc.gov.my
03-8688 8000