

**STRATEGIC TRADE ACT 2010**  
**INTANGIBLE TECHNOLOGY TRANSFER (ITT) GUIDELINE**

**Table of Content**

<b>No.</b>	<b>Items</b>	<b>Page</b>
1.	Objective	2
2.	Target	2
3.	Determination of what constitutes an ITT export	2
4.	Relevant section in STA	3
5.	Exemptions for Technology Transfer in the Control Lists	3-5
6.	ITT Control Mechanisms A- Application of Permits for Exports of Strategic Technology under STA ▪ Flowchart on Application of Permit for Exports of Strategic Technology under STA  B- Internal Compliance Program (ICP) for ITT ▪ Management Commitment ▪ ITT Application Form ▪ Screening ▪ Training ▪ Audit	5-7
7.	Frequently Asked Questions (FAQ) on ITT	8-10

## **Objective**

Ensuring that control is exercised over ITT of both dual-use and conventional weapons technology and promoting Internal Compliance Programme (ICP) to be adopted by institutions/entities as guidance.

## **Target**

Any person dealings with ITT including academic & research institutions, universities, business entities etc.

## **Determination of what constitutes an ITT export**

- “export” means:
  - to take or cause to be taken out of Malaysia any items by land, sea or air, or to place any items in a conveyance for the purpose of such items being taken out of Malaysia by land, sea or air; or
  - 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.
- “items” includes goods and technology
- “software” means a collection of one or more programmes or microprogrammes recorded, stored or embodied in any device
- “strategic items” means any items prescribed as strategic items under Section 7
- “strategic technology” means technology prescribed as a strategic item under section 7
- “technical assistance” includes instructions, skills, training, the provision of working knowledge and consulting services and may involve the transfer of technical data
- “technical data” includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions in print or electronic format
- “technology” means information and data in any form for the design, development, production or use of another item and includes technical data, technical assistance and software

## Relevant section in STA

Section 7  
Strategic items

7. (1) The Minister may, by order published in the Gazette, prescribe any items as strategic items for the purposes of this Act.

(2) If any question arises as to whether any items is or is not included in a class of items appearing in an order made under subsection (1), such question shall be decided by the Controller.

\*Controller means the Strategic Trade Controller of the Ministry of International Trade and Industry, (MITI)

## Exemptions for Technology Transfer in the Control Lists

The Strategic Trade (Strategic Items) Order 2010 that contains **Military Items List and Dual-Use Items List** provides exemption from ITT controls based on technology or software that is in the public domain or to basic scientific research as stated in the following:

- Interpretation Notes to the Military Items List on the definition of the words "in the public domain" and "basic scientific research" under category code ML22;

### ML22                    **"Basic scientific research"**

Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

### ML22                    **"In the public domain"**

This means "technology" or "software" which has been made available without restrictions upon its further dissemination.

Note: Copyright restrictions do not remove "technology" or "software" from being "in the public domain".

- Category Code ML22 which exempts the control of technology which is in the public domain or to basic scientific research;

ML22	"Technology" as follows:		"Technology" "required" for the "development", "production" or "use" of items specified by the Military Items List in this Schedule remains under control even when applicable to any item not specified by the Military Items List in this Schedule.  1. ML22 does not apply to:
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			<p>a. "Technology" that is the minimum necessary for the installation, operation, maintenance (checking) and repair, of those items which are not controlled or whose export has been authorised;</p> <p>b. "Technology" that is "in the public domain", "basic scientific research" or the minimum necessary information for patent applications;</p> <p>c. "Technology" for magnetic induction for continuous propulsion of civil transport devices.</p>
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- General Notes to the **Dual-Use Items** under the subheading General Technology Notes (GTN) and General Software Notes (GSN) which provide for the same exemption from the controls of technology transfer under Section E of Categories 1 to 9, and control of software under Category 0 to 9;

**NUCLEAR TECHNOLOGY NOTE (NTN)**

(To be read in conjunction with section E of Category 0.)

Controls on "technology" transfer do not apply to information "in the public domain" or to "basic scientific research".

**GENERAL TECHNOLOGY NOTE (GTN)**

(To be read in conjunction with section E of Categories 1 to 9.)

Controls on "technology" transfer do not apply to information "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.

**GENERAL SOFTWARE NOTE (GSN)**

(This note overrides any control within section D of Categories 0 to 9.)

Categories 0 to 9 of this list do not control "software" which is either:

- a. *Generally available to the public by being:*
  - 1. *Sold from stock at retail selling points, without restriction, by means of:*
    - a. *Over-the-counter transactions;*
    - b. *Mail order transactions;*
    - c. *Electronic transactions; or*
    - d. *Telephone order transactions; and*
  - 2. *Designed for installation by the user without further substantial support by the supplier; or*

N.B.: Entry a. of the General Software Note does not release "software" specified in Category 5 — Part 2 ("Information Security").

b. "In the public domain".

- The words "basic scientific research" and "in the public domain" which are defined under the General Notes to the Dual Use Items;

"Basic scientific research" (GTN NTN) means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

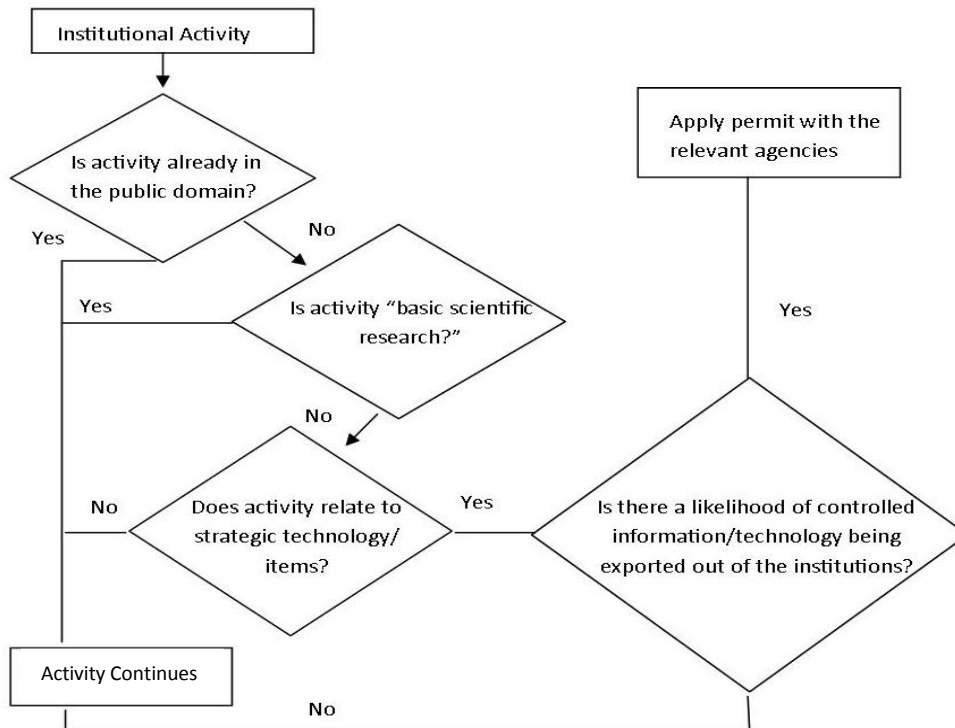
"In the public domain" (GTN NTN GSN), as it applies herein, means "technology" or "software" which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove "technology" or "software" from being "in the public domain").

## **ITT Control Mechanisms**

### **A. Application of Permits for Exports of Strategic Technology under STA**

1. The application will be done on a manual basis using Form 1 as in Appendix 1.
2. The application process flow is as per flowchart.
3. The strategic technology is as prescribed in the Strategic Items List which can be accessed from MITI's website via [www.miti.gov.my](http://www.miti.gov.my) -> Our Services -> Strategic Trade Act 2010 -> Resources -> Strategic Items Under the STA 2010.
4. The pre-registration and permit application flowchart with the timeline can be accessed from MITI's website via [www.miti.gov.my](http://www.miti.gov.my) -> Our Services -> Strategic Trade Act 2010 -> My First STA Application -> Registration Process Flow.

- **Flowchart on Application of Permit for Exports of Strategic Technology under STA**



\*Institutional activity as defined under STA for exports including transmitting strategic technology via attending conference abroad, email, telephone etc

## B. Internal Compliance Program (ICP) for ITT

The implementation of ITT in the institutions/entities will be based on the 5 elements of ICP.

### 1. Management Commitment

- Research Management Centres (RMC) for universities or any equivalent divisions in other institutions/entities may be appointed as the focal point for matters under STA.
- Institutions/entities are expected to establish a policy statement which states its commitment to the obligations under STA.

### 2. ITT Application Form

- Institutions/entities are expected to embed the requirement of STA clause in:
  - a. Letter of Award
  - b. Non-Disclosure agreement
  - c. Contract
  - d. Ethics Research Form
  - e. Research collaboration and consultation agreement

### **3. Screening**

- Institutions/entities are expected to utilise the existing compliance committee/peer review committee to identify research activities related to strategic technology.
- RMC/focal point should be able to identify courses/materials which are considered as strategic under STA.

### **4. Training**

- The Strategic Trade Secretariat (STS) may provide the outreach or training on STA to institutions/entities based on RMC's/focal point's coordination. RMC/focal point may conduct own training programmes utilising other local or international experts in ITT based on STA's requirements.

### **5. Audit**

- STS and its partner agencies may conduct an evaluation exercise to the permit holders in the institutions/entities to check their obligations under STA including record keeping of relevant documents.
- STS and its partner agencies may conduct an evaluation exercise to institutions/entities to assess the overall commitments under STA based on their ICP.
- Elements of the audit include system, process and documentation audit.
- The statutory requirements for record keeping for the documentation audit is 6 years include end use statement, export permit, letter of invitation, list of participants and presentation slides.

## **Frequently Asked Questions (FAQ) on ITT**

- 1. Does STA cover the transfer of technology to any person outside Malaysia?**

*Yes, the transfer of technology to any person abroad is considered as an export even if the email transaction uses local server.*

- 2. Does STA provide control over publication of research containing strategic technology?**

*No, STA does not provide control over publication of research containing strategic technology including open access journal (public domain), restricted access journal (local server), restricted access journal (foreign server) and access journal (local server) from abroad. Research publication which is in the public domain is not controlled as they are exempted under STA.*

- 3. Does STA provide control over any person going abroad for sharing of strategic technology via seminars or face-to-face discussion?**

*Yes, according to Section 2 of STA, transmitting technology by any means to a destination outside Malaysia which includes any oral or visual transmission of technology by a communication devices 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 is considered as an export.*

- 4. In a situation where a person carrying along any device containing strategic technology even for the personal use and has no intention to share it with anyone, is it controlled under STA?**

*Yes, it is controlled under STA as the activity of bringing the device outside Malaysia is considered as an export; even if the person has no intention to transmit the technology to any other party.*

- 5. A person is providing technical assistance to a prohibited end user but with no intention related to WMD/restricted activity. Providing technical assistance to the prohibited end user listed under STA is not allowed.**

- 6. Does STA provide control over foreign students coming into Malaysia?**

*No, STA does not provide control over the movement of foreign including student vetting prior to coming into Malaysia.*



**7. What are exemptions for ITT under STA?**

*Section 9 stated that the 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 the installation, operation, maintenance or repair of any items which have been exported, an application for a patent and a research in such strategic technology, the results of which have no practical application.*

*The exemptions under STA include the following scenarios:*

- *The installation, operation, maintenance or repair of any items which have been exported;*
- *An application for a patent;*
- *A research in such strategic technology, the results of which have no practical application;*
- *Information in the public domain; and*
- *Basic scientific research*

**8. Does the unlisted technology which may be used in a restricted activity being transferred to any destination outside of Malaysia controlled under STA?**

*Yes, similar to unlisted tangible items, STA also covers the unlisted technology (intangible items).*

**9. Who should determine whether the transfer of technology falls under the exemptions of STA?**

*RMC in the institutions or the focal point in the entities to be the focal point of the implementation of ITT control under STA including the establishment of ICP, may appoint a Committee or a person to determine whether the transfer of technology falls under the exemptions of STA, in which, it is a self-regulation mechanism.*

**10. Does STS/Authority issue a letter to exempt? Or is it an automatic exemption?**

*No letter to be issued as it is based on self- declaration by institutions/entities.*

**11. Do we need to establish a Committee to vet transactions/publications by the academics/researchers?**

*Institutions/entities may utilise the existing compliance committee/peer review committee to identify research that relates to strategic technology and may conduct internal vetting based on STA Strategic Items List and Restricted and Prohibited End User List. Institutions need to refer to the relevant authority if necessary.*

**12. Is broker registration required for ITT?**

*No.*

**Strategic Trade Secretariat (STS)**

**Ministry of International Trade and Industry (MITI)**

19 December 2016