

MEMORANDUM CIRCULAR NO. 21-37

Series of 2021

SUBJECT: GUIDELINES ON AUTHORIZATION APPLICATION FOR THE EXPORT, TRANSIT, TRANSSHIPMENT, AND IMPORT OF GOODS LISTED UNDER NSGL ANNEX 3 or NATIONALLY - CONTROLLED GOODS

WHEREAS, Section 2 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA), declares as State policy the fulfillment of international commitments and obligations, including United Nations Security Council Resolution (UNSCR) 1540, to take and enforce effective measures to establish domestic controls to prevent the proliferation of Weapons of Mass Destruction (WMD) and their means of delivery, to maintain international peace and security, and promote economic growth by facilitating trade and investment through the responsible management of strategic goods and the provision of related services;

WHEREAS, as provided under Section 3 of the STMA, the following activities shall be subject to an authorization issued by the Strategic Trade Management Office (STMO): export, import, transit, transshipment, re-export, reassignment of strategic goods, and the provision of related services;

WHEREAS, Section 4 of the STMA mandates establishing a National Strategic Goods List (NSGL) that will describe with specificity the strategic goods subject to authorization. The NSGL is composed of three (3) annexes: Military Goods (Annex 1), Dual-Use Goods (Annex 2), and Nationally Controlled Goods (Annex 3);

WHEREAS, Section 5(o) of the STMA defines Nationally Controlled Goods (Annex 3) as strategic goods placed under unilateral controls for reasons of national security, foreign policy, anti-terrorism, crime control, and public safety;

WHEREAS, Section 8 of the STMA designates the STMO as the executive and technical arm of the national government for the establishment of the management systems for the trade in strategic goods;

WHEREAS, Section 9 of the STMA grants the STMO the power and function to implement strategies, policies, and guidelines formulated by the National Security Council–Strategic Trade Management Committee (NSC–STMCom), including the issuance or denial of authorizations for the trade of strategic goods and the provision of related services;

WHEREAS, Section 6(b), Rule IV of the STMA Implementing Rules and Regulations (STMA IRR) states that the STMO shall refuse to issue an authorization or governmental end-use assurance if the strategic goods are to be exported, imported, transited, transshipped, re-exported, reassigned, or related services provided are in breach of UN Security Council sanctions or embargoes;

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WHEREAS, NSC-STMCom issued Resolution No. 4 s. 2021 or the Approval and Publication of the National Strategic Goods List Annex 3 (Nationally Controlled Goods) of the STMA to cover strategic goods subject to unilateral controls for reasons of national security, foreign policy, anti-terrorism, crime control, and public safety;

WHEREAS, the STMO, with its mandate to inform the public regarding their obligations under the STMA, deemed it necessary to provide guidelines in connection with the covered activities, goods, and prohibited and exempted acts under Annex 3 of the NSGL.

NOW, THEREFORE, this Circular is hereby issued for the information, guidance, and compliance of all covered persons.

1. Definition of Terms

1.1. **Export** refers to the following activities:

1.1.1. An actual shipment of strategic goods out of the Philippines; or

1.1.2. Transmission of software and technology via:

1.1.2.1. Electronic media, including by fax, telephone, electronic mail, or any other electronic means to an ultimate destination outside the Philippines

1.1.2.2. Non-electronic reassignments through face-to-face communication, personal demonstration, or handing over material or information to a foreign person, wherever located

1.2. **Import** refers to the shipment of strategic goods or transmission of software or technology by any means from a foreign country into the Philippines.

1.3. **Transit** refers to the shipment of strategic goods within the Philippines and those entering and passing through the territory of the Philippines with an ultimate destination outside the Philippines in such a manner that the strategic goods remain at all times in or on the same carrier.

1.4. **Transshipment** refers to a mode of shipping a good on a carrier, which enters the territory of the Philippines, wherein the good is unloaded from the carrier and reloaded in the same or on another carrier that is bound for an ultimate destination outside the Philippines.

2. **Coverage.** Any natural or juridical person engaged or who intends to engage in the export, transit, transshipment, and import of items listed in the NSGL Annex 3:

- 2.1. **Annex 3.1** – Export, Transit, and Transshipment of Goods and Technology to Democratic People’s Republic of Korea (DPRK)
 - 2.2. **Annex 3.2** – Import, Transit, and Transshipment of Goods and Technology from DPRK
 - 2.3. **Annex 3.3** – Export, Transit, and Transshipment of Goods and Technology to Iran
 - 2.4. **Annex 3.4** – Export, Transit, and Transshipment of Goods and Technology from Iran
3. **Registration Application.** Exporter and importer of items listed in the NSGL Annex 3.1 – 3.4¹ shall register with the STMO prior to applying for an export and import authorization. [See *Guidelines on STMO Registration.*]
4. **Authorization Application Process.** Covered persons shall apply for an individual authorization prior to undertaking the covered transactions referred to in Section 2 of this Circular.
- 4.1. The applicant shall submit a standard-format application form signed by the authorized representative. The following relevant documents shall be appended to the application form and shall be submitted in English:
- 4.1.1. Export application:**
- i. Technical specifications of the item/ commodity, allowing the STMO to verify the classification of the commodity against the control list;
 - ii. Commodity classification form (Form A2-1);
 - iii. Documents certifying the origin and acquisition of the strategic goods, when appropriate;
 - iv. Copies of relevant commercial documents, in particular, any sales contract, order confirmation, invoice, or dispatch note, if available;
 - v. Original End-Use Statement/ End-User Certificate for individual authorization (Form A2-2);
 - vi. Copies of relevant license/s or business permits, if applicable;
 - vii. Copies of additional authorization such as transit, transshipment, or import authorization, if applicable:
 - a. Technology Control Plan, in case of technology transfer
 - b. Network Security Plan, in case of intangible software transmission
 - viii. Proof of payment of the processing fee; and,

¹ <https://www.officialgazette.gov.ph/downloads/2021/01jan/20120824-RA-IRR-10697-RRD-Annex-3-List-of-Nationally-Controlled-Goods.pdf>

- ix. Other documents that may be required by the STMO, which may be relevant to the review and assessment of the application for authorization.

4.1.2. Transit or transshipment application:

- i. Technical specifications, allowing the STMO to classify the commodity against the control list;
- ii. Copy/ies of relevant commercial documents, in particular, any sales contract, order confirmation, invoice, or dispatch note, if available;
- iii. Copy/ies of the End-Use documents;
- iv. Copy/ies of authorizations from exporting country and importing country, if applicable;
- v. Copy/ies of transit authorization from the next country in the shipment route, if applicable;
- vi. Copy/ies of authorization to transport dangerous or hazardous items, if applicable; and,
- vii. Proof of payment of the processing fee.

4.1.3. Import authorization application:

- i. Technical specifications, allowing the STMO to classify the commodity against the control list;
- ii. Copy/ies of relevant commercial documents, in particular, any sales contract, order confirmation, invoice, or dispatch note, if available;
- iii. Copy/ies of export control license if the goods come from a country with export control laws;
- iv. Copy/ies of relevant license/s or business permits, if applicable; and,
- v. Proof of payment of the processing fee.

4.2. The standard forms are available on the STMO webpage at <https://www.dti.gov.ph/trabaho/strategic-trade-management/>.

4.3. The applicant shall submit the application form (both in Excel and scanned signed PDF) and other documentary requirements to stmo_rad@dti.gov.ph. The subject of the email shall follow this format: Annex 3 Authorization Application_(Company Name).

5. **Prohibition on Annex 3 Transactions.** Any natural or juridical person operating within the Philippines is prohibited from engaging in export, import, transit, and transshipment of goods listed in the NSGL Annex 3 if the parties involved in the transaction/s is any of the following:

- 5.1 a designated person under UNSCR 1718 and its subsequent resolutions;
- 5.2 a designated person under UNSCR 2231 and its subsequent resolutions;
- 5.3 any entity owned or controlled by a designated person;

- 5.4 any individual or entity who acts on behalf of or under the direction of a designated person; or
 - 5.5 any person in, or who is a national of, the Democratic People's Republic of Korea.
6. **Exemptions.** The STMO may permit shipment if the transaction falls under the exemptions outlined in the relevant UNSC Resolutions. The applicant shall submit supporting documents, such as a letter of authorization issued by a United Nations program, in addition to the authorization requirements of the STMO.
- 6.1 Humanitarian Exemption Requests:
<https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>
 - 6.2 Arms Embargo:
<https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/arms-embargo>
 - 6.3 Refined Petroleum Products:
<https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/arms-embargo/refined-petroleum-products>
7. **Penalties.** Any violation of the foregoing provisions shall be considered an unlawful act under Section 19 of the STMA and shall be penalized accordingly.

This Circular shall take effect immediately.

26 October 2021, Makati City.

Recommending Approval:

ATTY. JANICE S. DIMAYACYAC
Director III

Approved by:

ATTY. LUIS MANUEL M. CATIBAYAN
Director IV