



MEMORANDUM CIRCULAR NO. 24-13

Series of 2024

SUBJECT : **GUIDELINES ON THE ELECTRONIC TRANSMISSION OF SOFTWARE AND TECHNOLOGY**

WHEREAS, pursuant to Section 8 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA) of 2015, the Strategic Trade Management Office (STMO) is created as a bureau under the administrative supervision of the Department of Trade and Industry (DTI) to serve as the executive and technical agency of the national government for the establishment of the management systems for the trade in strategic goods;

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

WHEREAS, Section 4 of the STMA creates a National Strategic Goods List (NSGL), which describes 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(h) of the STMA defines export as an actual shipment of strategic goods out of the Philippines, or to a transmission of software and technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to an ultimate destination outside the Philippines. The term includes making available in electronic form such software and technology to persons outside the Philippines. It also applies to non-electronic reassignments of software or technology through face-to-face communication, personal demonstration, or handing over material or information to a foreign person wherever located;

WHEREAS, Section 9(d) of the STMA vested the STMO with the power and function to issue or deny issuance of authorizations for the trade of strategic goods and the provision of related services;

WHEREAS, Section 10 of the STMA imposes the responsibility upon any person, subject thereto, who intends to engage in the export, import, transit, and transshipment

STRATEGIC TRADE MANAGEMENT OFFICE



Tara Building
389 Sen. Gil Puyat Ave. Makati City



(+632) 8639 0182
www.dti.gov.ph/strategictrade
stmo@dti.gov.ph

of strategic goods, under the NSGL, or the provision of related services to obtain an authorization from the STMO;

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

1. Definition of Terms

- 1.1. *Development* refers to all stages before serial production, such as design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, the process of transforming design data into a product, configuration design, integration design, and layouts.¹
- 1.2. *Document* refers to any record on paper or in electronic form, kept on any magnetic, optical, chemical, or other medium; and photograph map, plan, graph, picture, drawing, or device.²
- 1.3. *Export* refers to an actual shipment of strategic goods out of the Philippines, or to a transmission of software and technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to an ultimate destination outside the Philippines. The term includes making available in electronic form such software and technology to persons outside the Philippines. It also applies to non-electronic reassignments of software or technology through face-to-face communication, personal demonstration, or handing over material or information to a foreign person wherever located.
- 1.4. *Internal Compliance Program (ICP)* refers to an effective, appropriate, and proportionate means and procedures, including the development, implementation, and adherence to standardized operational compliance policies, procedures, standards of conduct, and safeguards, developed by exporters to ensure compliance with the provisions and with the terms and conditions of authorizations set out in the STMA.³
- 1.5. *Intellectual Property (IP)* refers to the intangible assets resulting from the creative work of an individual or organization. IP also refers to creations

¹ Definitions of Terms, NSGL Annex II

² Section 5(c), STMA.

³ Section 5(m), STMA Implementing Rules and Regulations.

of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.⁴

- 1.6. *Intellectual Property Rights (IPRs)* refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the "*Intellectual Property Code of the Philippines*."⁵
- 1.7. *Network Security Plan (NSP)* is an element of the ICP for entities engaged in the transmission of software either by electronic media or non-electronic means.⁶
- 1.8. *Production* means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance.⁷
- 1.9. *Public Domain* refers to technology or software made available without intellectual property restrictions upon further dissemination (copyright restrictions do not remove technology or software from being in the public domain).⁸
- 1.10. *Applied Research* refers to a limited and practical work designed to solve specific problems and answer certain questions directed towards a specific practical aim or objective. This does not cover basic or fundamental scientific research which is an 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.⁹
- 1.11. *Research and Development (R&D)* refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications.¹⁰
- 1.12. *Software* refers to a collection of one or more programs or microprograms fixed in any tangible medium of expression.¹¹

⁴ Section 4(a), Republic Act No. 10055, otherwise known as the "*Philippine Technology Transfer Act of 2009*."

⁵ Section 4(b), Republic Act No. 10055.

⁶ Memorandum Circular 22-17.

⁷ Definitions of Terms, NSGL Annex II.

⁸ Definitions of Terms, NSGL Annex II.

⁹ OECD (2015), *Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264239012-en>.

¹⁰ Section 4(r), Republic Act No. 10055.

¹¹ Section 5(u), STMA.

- 1.13. *Storage* is the process of saving electronic or digital information, data, or documents using computing technology, such as Amazon Web Services, Google Drive, Dropbox, or OneDrive, among others.¹²
- 1.14. *Technology* refers to specific information and processes necessary for the development, production, use or storage of strategic goods, and may take such forms as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, read-only memories.¹³
- 1.15. *Technology Control Plan (TCP)* refers to one of the ICP elements for entities engaged in the transmission of technology either by electronic media or through non-electronic means.¹⁴
- 1.16. *Transmission* is the act of distributing or sending a copy of a controlled software or technology by electronic or non-electronic means, or the act of making the software and technology available from a foreign country into the Philippines or vice versa.¹⁵
- 1.17. *Use* means the operation, installation (including on-site installation), maintenance (checking), inspection, repair, overhaul, and refurbishing of the goods.¹⁶

2. Scope and Coverage

2.1. Covered Persons

All natural and juridical persons operating within the Philippines who engage or intend to engage in the electronic transmission of covered software and technology shall apply for authorization prior to undertaking the activities referred to in Section 2.2 hereof. The transmission by electronic media includes telephone, electronic mail, or other electronic means.

¹² Rouse, M. (2023). What is storage? - definition from Techopedia. What Does Storage Mean?

¹³ Section 5(t), STMA.

¹⁴ Memorandum Circular 20-45 (<https://tinyurl.com/yv1rmt4f>); Memorandum Circular 22-17

¹⁵ Section 5 (h), STMA.

¹⁶ Definitions of Terms, NSGL Annex II.

2.2. Covered Items

- 2.2.1. Software (Subcategory D) and technology (Subcategory E) in the National Strategic Goods List (NSGL) Annexes 1 (Military Goods), 2 (Dual-Use Goods) and 3 (Nationally-Controlled Goods).

For the complete list of strategic goods under the NSGL, please visit: <https://www.dti.gov.ph/negosyo/strategic-trade-management/ngsl/>

- 2.2.2. This Circular does not cover the transfer of information available in the public domain, basic/ fundamental scientific research, and minimum necessary object code¹⁷ for the installation, operation, maintenance, or repair of the goods.
- 2.2.3. Technology for developing, producing, or using goods under control remains under control even when applied to non-controlled goods. In addition, transfers involving information for applied research are also covered by this Memorandum Circular.

2.3. Covered Activities

- 2.3.1. The transmission of software and technology via electronic means, such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions, is written or recorded to an ultimate destination outside the Philippines.¹⁸
- 2.3.2. Upload or store software and technology onto a server with adequate security measures located outside the Philippines, which will be accessed by a person outside the Philippines.¹⁹

¹⁷ Object code means an equipment executable form of a convenient expression of one or more processes (source code) which has been compiled by programming system.

¹⁸ **Sample Case 1:** A Philippine-based semiconductor manufacturer developed a process that can extend the temperature performance of integrated circuits. They have developed a process that can be applied to the production of a microprocessor circuit to extend its upper operating temperature from 70°C to 150°C. They have been asked to send this information through e-mail to the manufacturer's production plant in Singapore so that they can manufacture the prototype devices.

¹⁹ **Sample Case 2:** The Philippine-based semiconductor manufacturer uploaded the controlled technology onto a server that can be accessed by its affiliate company located in Singapore. Their affiliate company can access this information and share to the production plant in Singapore.

- 2.3.3. Modification or development of technology or software on collaborative cloud software, such as OneDrive or Google Drive, and will be accessed by a person outside the Philippines.²⁰

3. Regulatory Procedure

3.1. Registration Application Procedure

Covered persons shall register with the STMO before applying for an authorization. Under DTI-STMO Announcement No. 2023-001, covered persons shall conduct commodity classification before registration to determine whether an item, software, or technology is under the NSGL.

The applicants may refer to Memorandum Circular (MC) No. 21-10 (*Guidelines on Commodity Classification*) and MC No. 21-40 (*Guidelines on STMO Registration*) and their succeeding amendments for the step-by-step process on commodity classification and registration, respectively.

3.2. Pre-Authorization Procedure

3.2.1. Upon issuance of the Certificate of Registration by the STMO, the STMO shall advise the registered person on the next steps before applying for authorization. The advice will vary depending on the type of authorization the registered person will apply for.

3.2.2. Registered persons may refer to MC No. 20-45 (*Guidelines on Internal Compliance Program (ICP) Pre-Authorization Audit*) and MC No. 22-17 (*Guidelines on Technology Control Plan*) and their succeeding amendments for the assessment process of TCP or NSP.

3.3. Authorization Application Procedure

The authorization application for the electronic transmission of software and technology shall follow the procedures outlined in Section 6 (Export Authorization Application Process) of MC No. 20-26 (*Guidelines on Export Authorization*), and its succeeding amendments, as appropriate.

²⁰ **Sample Case 3:** The Philippine-based semiconductor manufacturer requires input from an expert in Singapore to further develop the process and upload the file containing the controlled technology in the Google Drive where both Philippines and Singapore can modify the information. The expert will provide notes in the uploaded file.

4. The Guidelines on Export Authorization and its succeeding amendments shall apply on matters not specified in this MC such as, but not limited to, the review of the export authorization application, amendment, the responsibility of the authorization holder, validity of authorization, exemptions, suspensions, and grounds for annulment, revocation, limitation, or modification of authorization.

5. Post-Authorization Compliance

In addition to the outlined responsibilities of the authorization holder under MC No. 20-26, the following compliance obligations shall be fulfilled:

- 5.1. Upon request of the STMO, the authorization holder shall submit any form of document that serves as a verification of the intangible transfer or transmission of software and technology, including but not limited to the following:
 - 5.1.1. Sale document (if the product is sold);
 - 5.1.2. Proof of transfer of the technology, such as email receipts;
 - 5.1.3. Documentation that the item was received;
 - 5.1.4. Specifications of the products produced by the technology; and,
 - 5.1.5. Any other document or information as requested by STMO.
- 5.2. Authorization holders shall undergo a compliance audit subject to the rules and regulations stipulated under MC No. 22-16 (*Guidelines on Compliance Checks*) and its succeeding amendments.

6. Intellectual Property Protection

The STMO recognizes that a person's intellectual property is fundamental to the scientific and technological development of the country's strategic trade industry. The STMO shall protect and secure the exclusive rights of persons to the intellectual property of goods, software, and technology involved in the intangible transfer, as prescribed by Republic Act 8293, otherwise known as the Intellectual Property Code of the Philippines, and its related and succeeding amendments.

This Circular shall take effect immediately.

30 September 2024, Makati City.

Recommending Approval:


DOMINA PIA S. SALAZAR
Assistant Director

Approved by:


ATTY. JANICE SACEDON-DIMAYACYAC
Director