

MEMORANDUM CIRCULAR NO. 21-35

Series of 2021

SUBJECT: GUIDELINES ON END-USE OR CATCH-ALL CONTROLS

WHEREAS, Section 3 of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA), states that 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(e) of the STMA defines end-use controls as a specific procedure authorizing the establishment of controls over any items, software, and technology not listed in the NSGL (unlisted goods) based on concerns related to weapons of mass destruction (WMD), their means of delivery, or military end-use in destinations subject to embargoes decided by the United Nations Security Council (UNSC), or to prohibited/ restricted end-users;

WHEREAS, Section 11 of the STMA provides specific conditions on how end-use controls may be imposed on goods that are not listed in the NSGL and related services;

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

1. Scope and Coverage

Any natural or juridical person who engages or intends to engage in the export, re-export, reassignment, transit, and transshipment of unlisted goods, including software or technology, and the provision of technical assistance or related services that are subject to End-Use or Catch-all Controls (CAC).

2. Individual Authorization

Individual authorization is granted for a person or entity to engage in any of the covered activities with respect to one end-user and consignee and covering one or more unlisted good/s, software, or technology.

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3. End-Use or Catch-all Controls (CAC) Criteria

3.1. End-use controls may be imposed if a covered person knows or has reasonable grounds to suspect OR the STMO informs the covered person that the unlisted goods, software, or technology or any of the covered activities may be used partly or entirely in any of the following:

3.1.1 **Criteria 1 – End-Use (WMD):** the acquisition, development, production, handling, operation, maintenance, storage, detection, identification, or dissemination of WMDs and means of delivery (see *Figure 1*)

3.1.2 **Criteria 2 – End-Use (WMD) and End-User:**

- a. the acquisition, development, production, handling, operation, maintenance, storage, detection, identification, or dissemination of WMDs and means of delivery; and
- b. end-user or the juridical or natural person receiving the goods is subject to an international sanction or an arms embargo imposed by a binding resolution of the UN Security Council (UNSC)

3.1.3 **Criteria 3 – End-Use (Military¹):** as parts or components of military items listed in the NSGL that have been exported without authorization or in violation of an authorization

3.1.4 **Criteria 4 – End-Use (Military) and End-User/ Destination Country:**

- a. as parts or components of military items listed in the NSGL or for military end-use; and
- b. purchasing country or country of destination or end-user or juridical or natural person receiving the goods is subject to an international sanction or an arms embargo imposed by a binding resolution of the UNSC

3.2 For the purpose of individual authorization application, the unlisted goods, software, or technology covered by CAC criteria shall be assigned with an NSGL code equivalent of **EUC99**.

¹ Military end-use refers to: (a) incorporation into “military goods” listed in the NSGL; (b) use of production, test or analytical equipment and its components for the development, production or maintenance of “military goods” listed in the NSGL; and (c) use of any unfinished products in a plant for the production of “military goods” listed in the NSGL.



Fig 1. Example of unlisted dual-use items that may be subjected to CAC a.) connectors or plugs if used in a nuclear reactor to produce plutonium; b.) ammonium chloride used to make missile propellant, and c.) helium gas used to dilute uranium hexafluoride gas for uranium enrichment.

4. CAC Decision Guide

4.1. The guide provided below may be used to verify if an individual authorization is required for the cross-border transfer of strategic goods.

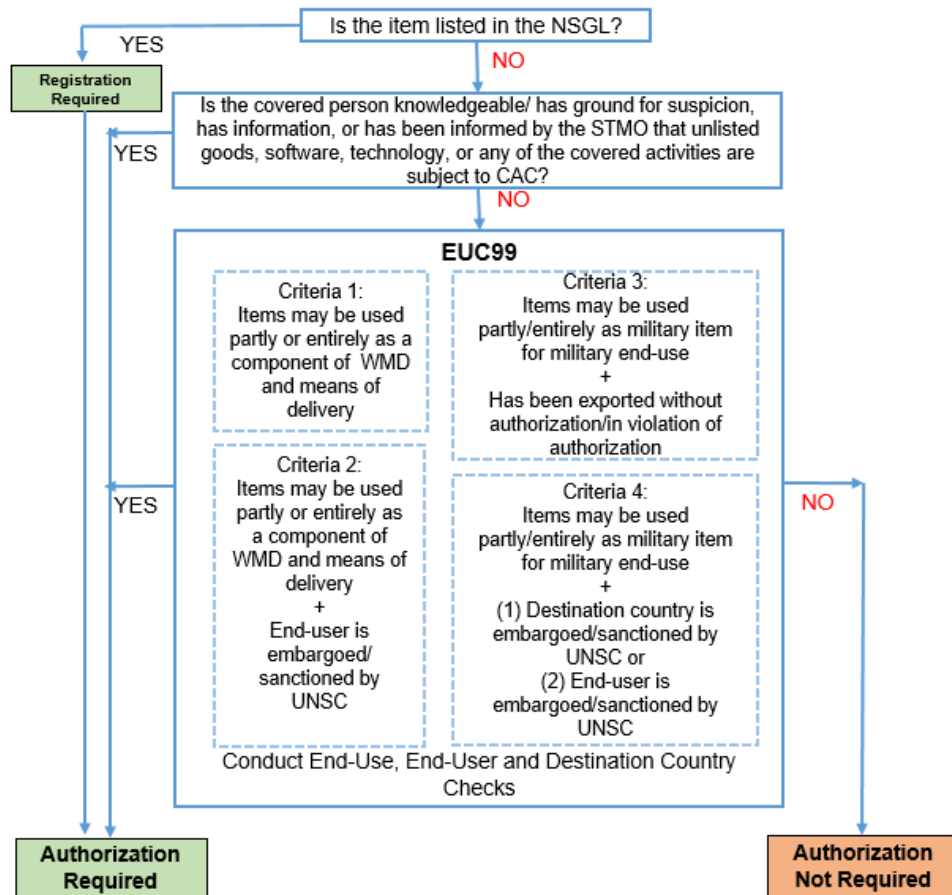


Fig 2. CAC Decision Guide Flowchart

4.2. Items must be checked against the NSGL. If the items are not listed, proceed to the next step.

4.3. Determine if the items meet the CAC criteria by assessing the three (3) factors in the transaction: end-use, end-user, and destination country.

4.3.1. **End-Use Check:** Items must be checked against the **STMO Commodity Watch-List**. This list is different from the NSGL. The Commodity Watch-List is a NON-EXHAUSTIVE list of goods that may still be used for WMD or military-related activities, although the goods have technical specifications below the parameters indicated in the NSGL.

COMMODITY WATCH-LIST	
1. Tributyl phosphate (TBP)	21. TIG welding units, electron beam welding units
2. Carbon/Glass/Aramid fiber	22. Radiation monitoring and detection equipment
3. Titanium alloys	23. Mill for fine powder
4. Maraging steel	24. Karl Fischer moisture equipment
5. Aluminum alloys tubes with a diameter of more than 75 mm	25. Equipment designed for producing prepegs
6. Flow-forming machines	26. Artificial graphite
7. N/C Machine tools	27. Gyroscopes
8. Isostatic presses	28. Rotary encoders
9. Filament winding machines	29. Trucks (Tractors, Trailers, Dump trucks)
10. Frequency changers	30. Crane trucks
11. Mass spectrometers and ion sources	31. Chambers for fermentation
12. Vibration test systems	32. Centrifugal separators
13. Centrifugal multiplane balancing machines	33. Freeze dryers
14. Pressure transducers	34. Reactors
15. Non-Destructive inspection equipment	35. Agitators
16. Oscilloscope or waveform digitizers and transient recorders	36. Heat exchangers or condensers
17. High power/voltage DC power supplies	37. Distillation or absorption columns
18. Generators	38. Filling equipment
19. Vacuum pumps	39. Unmanned air vehicles that are specially designed for incorporating spray machines
20. Radiation-hardened robots	40. Spray machines that are specially designed for installing in unmanned air vehicles

Table 1. STMO Commodity Watch-List

4.3.2. **End-User Check:** End-user must be checked for international sanctions or arms embargo imposed by UNSC resolutions. The STMO adopts the UNSC Consolidated List of Individuals and Entities as its List of Prohibited End-Users pursuant to MC No. 20-13.²

- a. UNSC Consolidated List Search: <https://scsanctions.un.org/search>
- b. STMO Restricted Party Screening Guide: bit.ly/3CxN37i

² DTI Memorandum Circular 20-13 on STMO's List of Prohibited End-Users. bit.ly/3ks4f86.

4.3.3. Destination Country Check: Information on countries subject to UNSC sanctions measures can be accessed through <https://www.un.org/securitycouncil/sanctions/information>.

4.4. To effectively utilize the decision guide (Figure 2), the potentially covered person must conduct the following:

4.4.1. SCREEN all customers and/ or end-users against denied or sanctioned parties list. Third-party software/ websites providing such information may be relied on during the initial conduct of due diligence.

4.4.2. INQUIRE for more details from the customers regarding the end-use of the unlisted goods, software, or technology or any of the covered activities

4.4.3. ASSESS if the end-use and end-user are of any concern.

4.4.4. CHECK for the relevancy of the unlisted goods, software, or technology or any of the covered activities with the customer's activities.

4.4.5. INFORM the STMO if you have any suspicion that the unlisted goods, software, or technology, or any of the covered activities may be used for WMD or military activity.

4.4.6. SEEK for STMO's preliminary advice through its STMO End-Use/r Advice Service if still unsure whether CAC applies to the transaction.

4.5. Red Flag Indicators

There are common red flags an exporter may encounter when examining the transaction/s. The following sample red flags may help in determining whether CAC may be required:

4.5.1. End-use red flags:

- a. The stated end-use of the customer is not consistent with end-user activity.
- b. The technological level of the equipment requested is not proportionate to the needs expressed by the end-user and to its operational capacity.

- c. The quantity ordered by the customer exceeds the usual and acceptable number of items ordered.

4.5.2. End-user red flags:

- a. The customer’s name or address is similar to one of the parties found on the denial lists or sanctions list.
- b. Addressed could not be located or situated on a suspicious area (e.g., a mailbox, an abandoned building, a hotel, etc.).
- c. Shipment route, means of shipping (ex. via air freight, sea cargo, pick-up, etc.), mode of payment (e.g., the customer wants to pay for cash for very expensive items when the terms of sale would usually call for financing) is abnormal.
- d. The customer is unfamiliar and not knowledgeable with the strategic items being ordered but still wants it.

4.5.3. Country of destination red flags:

- a. The country has a history of or with an existing sanction or embargo imposed by the United Nations Security Council (UNSC).
- b. The country is not known to be engaged in activities requiring the strategic goods ordered (e.g., a country with no known Electronics nor Semiconductor industry located in it is ordering very sensitive Integrated Circuits).

5. Individual Authorization Application Process

Upon determination that the CAC criteria are met, the covered person must apply for an individual authorization.

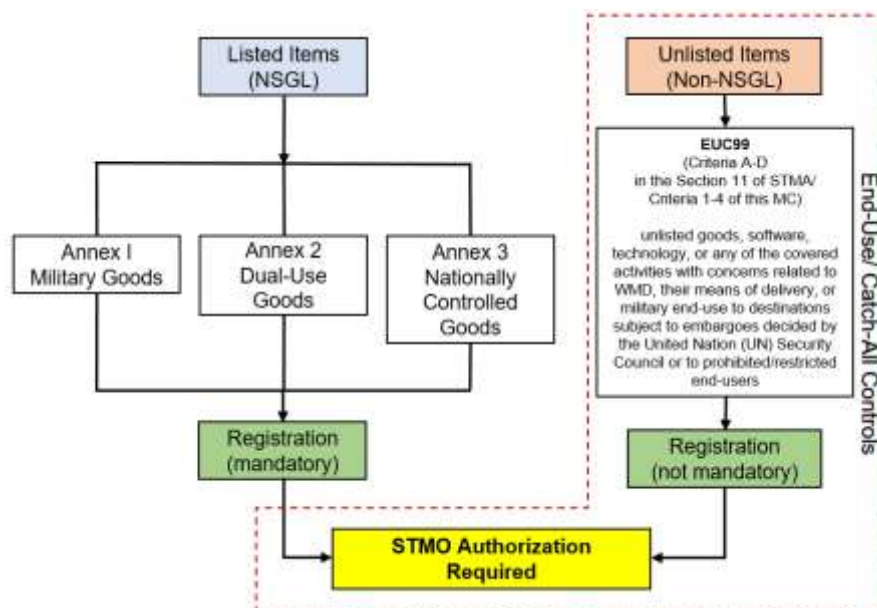


Fig 3. Authorization Application Process Guide

- 5.1.** The covered person shall submit a standard-format application form (Form A2-C) together with relevant documents to the STMO. The applicant or an authorized representative must sign the application.
- 5.2.** The following documents shall be appended in the application and must be submitted in English:
- 5.2.1.** Technical specifications of the unlisted goods, software, or technology, allowing the STMO to assess the capability and performance and verify possible end-use of it;
 - 5.2.2.** Documents certifying the origin and acquisition of the unlisted goods, software, or technology, when appropriate;
 - 5.2.3.** Copies of relevant commercial documents, in particular, any sales contract, order confirmation, invoice, or dispatch note, if available;
 - 5.2.4.** Original End-Use Statement or End-User Certificate (Form A2-2), if available;
 - 5.2.5.** Copies of relevant license/s or business permits, if applicable;
 - 5.2.6.** 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
 - 5.2.7.** Proof of payment of the processing fee; and
 - 5.2.8.** Other documents that may be required by the STMO that are relevant to the review and assessment of the application for authorization.
- 5.3.** The standard forms shall be made available on the STMO webpage at <https://www.dti.gov.ph/trabaho/strategic-trade-management/>.

Form Code	Description
Form A2-C	Application for Individual Authorization (For End-Use/Catch-all Controls)
Form A2-2	End-Use Statement or End-User Certificate Template

Table 2. List of Standard Forms for Authorization Application

- 5.4. The applicant shall submit the application form (both in Excel and scanned signed PDF) along with other documentary requirements to stmo_rad@dti.gov.ph.

6. STMO End-Use/r Advice Service

- 6.1. The STMO may provide end-use/r advice if, even after the conduct of checks outlined in Section 4, the person is still uncertain if the goods or activities are covered by CAC.

- 6.2. To avail of the service, the requesting party shall send an inquiry to the STMO via email at stmo_rad@dti.gov.ph with the subject STMO End-Use/r Advice Request_(Company Name). The following details must be provided:

6.2.1. Requesting party's Information such as business name, contact person, address, contact details, and business activity;

6.2.2. Commodity End-Use Information such as, but not limited to, technical specification/ description of the unlisted goods, software, technology, or any of the covered activities to verify it may be used, remodeled, restructured partly/entirely for WMD or military purpose;

6.2.3. End-User Information such as business name, contact person, address, contact details, and business activity;

6.2.4. Destination Country

- 6.3. The inquiry is limited only to three items, three end-users, and three destination countries per month.

7. **Memorandum Circular (MC) No. 20-26** or the Guidelines on Export Authorization 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.

This Circular shall take effect immediately.

14 October 2021, Makati City.

Recommending Approval:


ATTY. JANICE S. DIMAYACYAC
Director III

Approved by:

ATTY. LUIS MANUEL M. CATIBAYAN
Director IV