



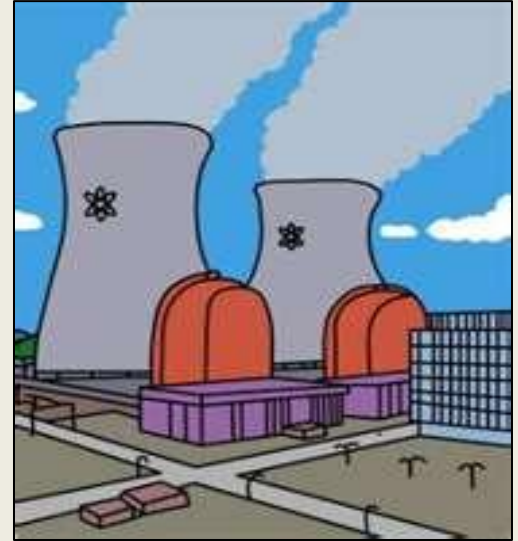
THE STRATEGIC TRADE ACT (STA) 2010

**“FACILITATING TRADE IN A
SECURE TRADING ENVIRONMENT”**



PROLIFERATION THREATS & CHALLENGES

- **Access to dual-use, WMD-relevant items & technologies by States with questionable conduct or intent**
- **Access by non-state actors/terrorist groups**
- **Emerging suppliers (states)**
- **Industry (complicit or ignorant)**
- **Inadequate strategic trade controls in transit or transshipment states**

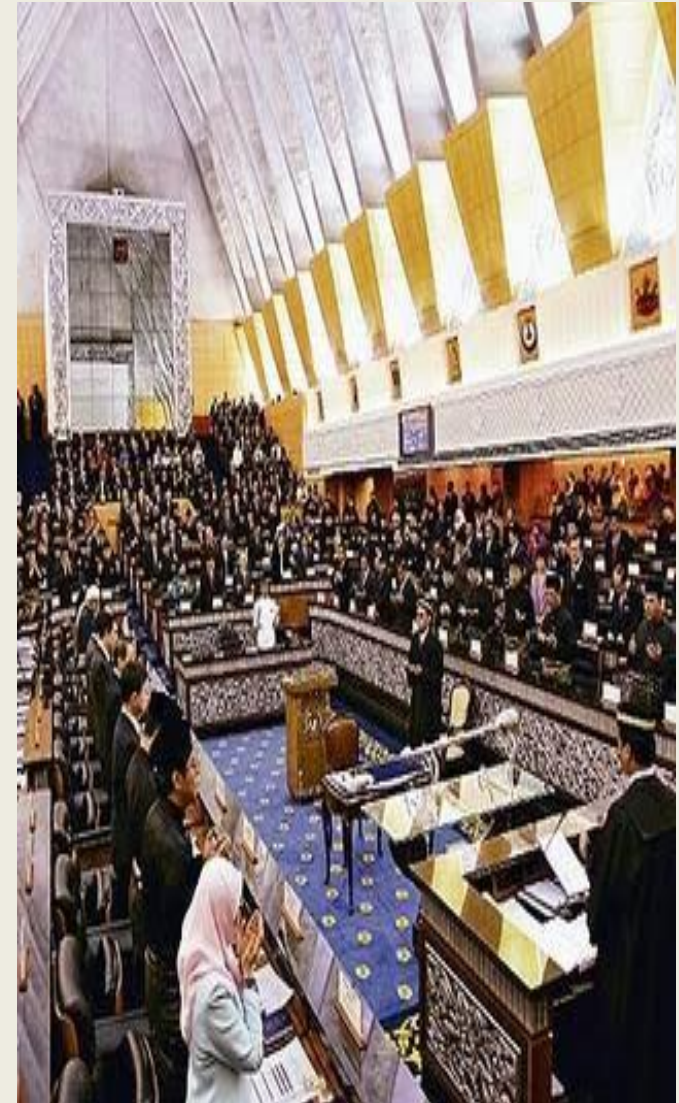


- * **Growing dual-use applications of items & technologies requires balancing trade with security imperatives.**

THE ENACTMENT OF STA 2010

UNSC Resolution 1540 in 2004

- **Cabinet - 26 March 2010**
- **Parliament**
 - **5 April 2010 (Dewan Rakyat)**
 - **6 May 2010 (Dewan Negara)**
- **Royal Assent - 2 June 2010**
- **Gazette - 10 June 2010**
- **Gazette of Regulations and Orders – 31 December 2010**
- **Enforcement for Category 0 Product – 1 January 2011**
- **Enforcement – 1 April 2011**
- **On-line Permit Application**
 - **1 July 2011**
- **Permit Validation by Customs**
 - **1 March 2012**



REGULATIONS AND ORDERS



STA 2010



**Strategic Trade
Regulations 2010**

Prescribes:

forms

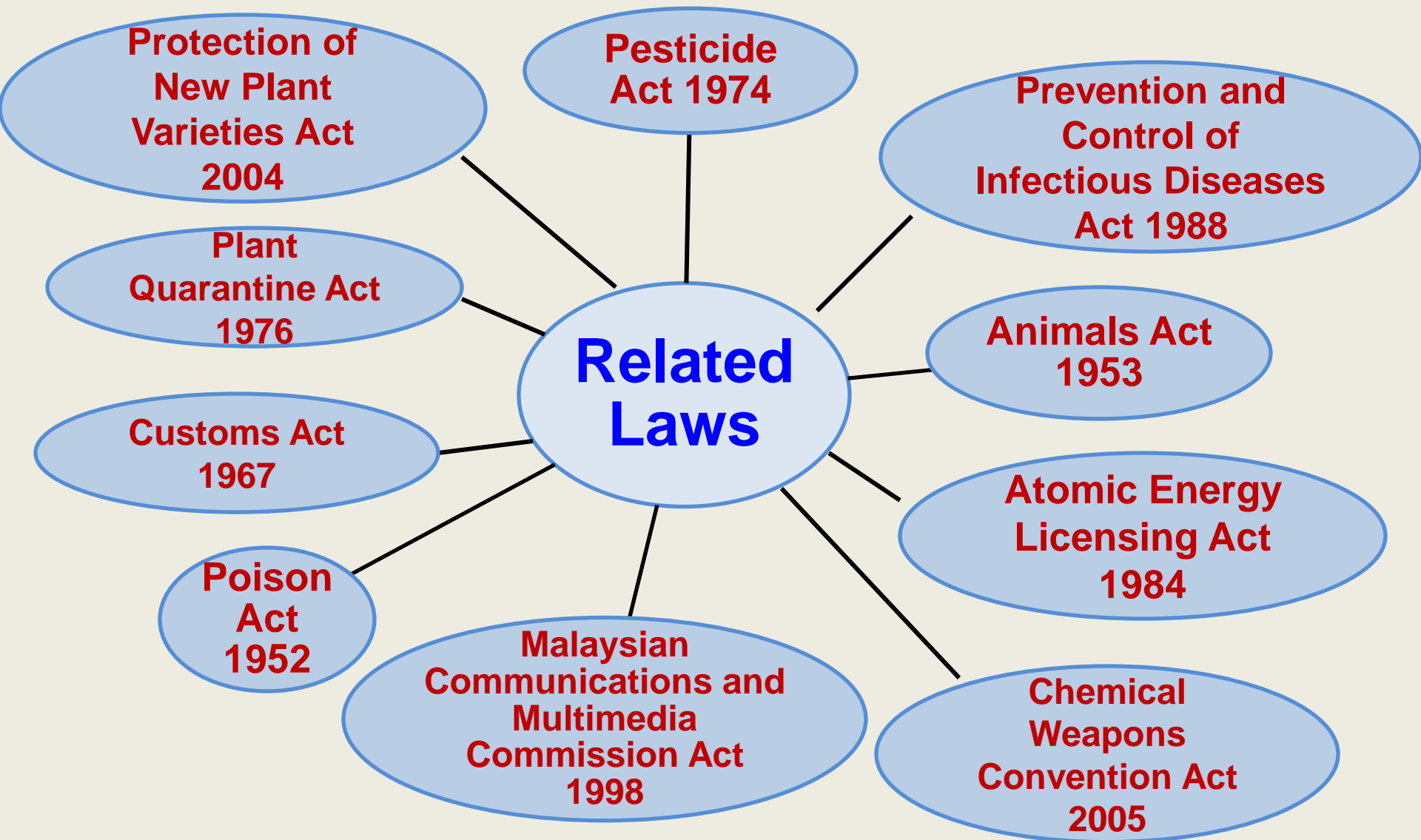
procedures

**any matter,
including
enforcement**

**payable
fees**

**Strategic Trade
(Strategic Items)
Order 2010**

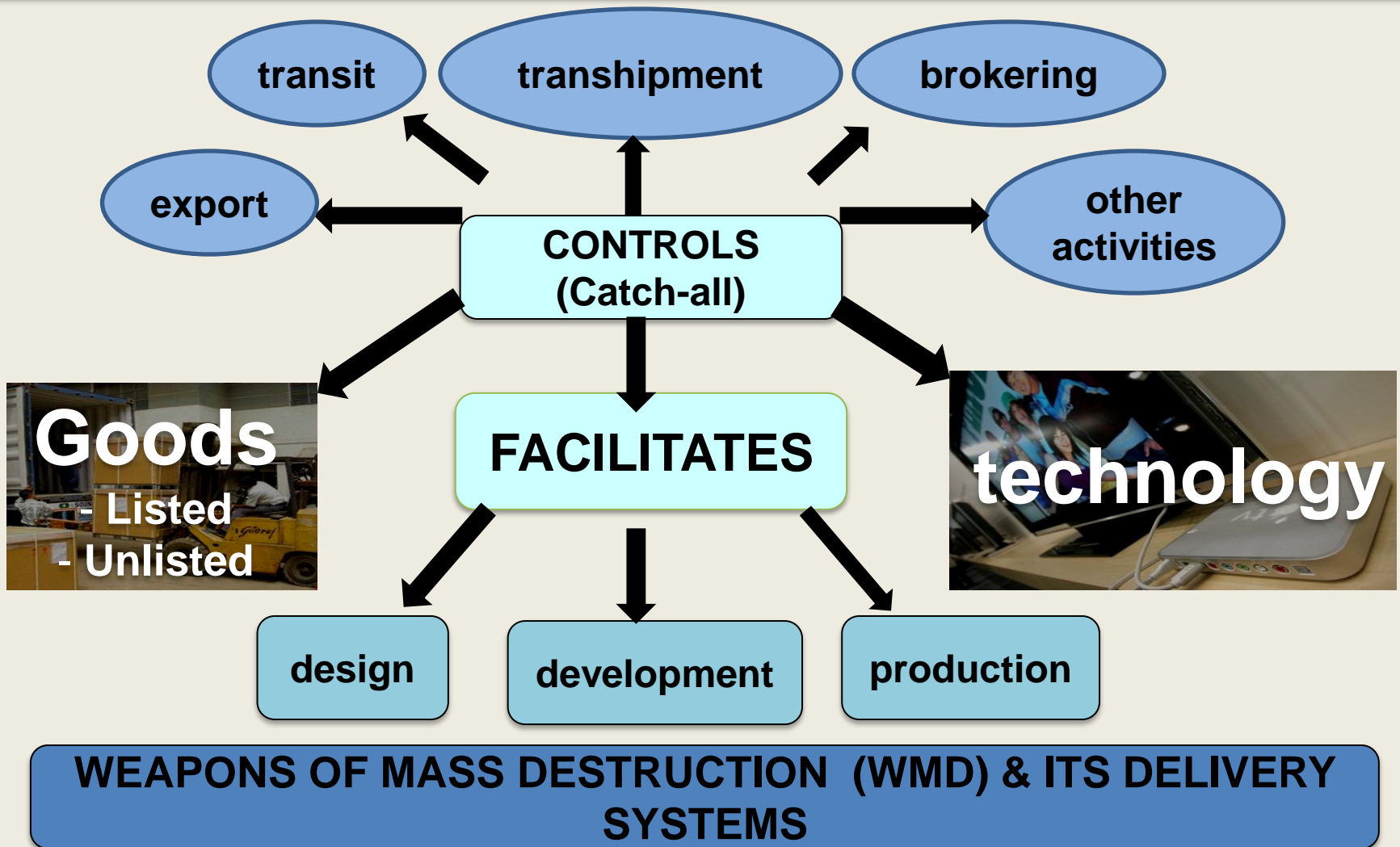
**Strategic Trade
(Restricted End-Users
and Prohibited End-
Users) Order 2010**



If these laws are in conflict or inconsistent:

STA shall prevail

OBJECTIVES OF STA



PARTNER AGENCIES

LICENSING MINISTRY/AGENCIES



Strategic Trade
Secretariat, MITI



Malaysian
Communications and
Multimedia Commission
(MCMC)



Atomic Energy
Licensing Board
(AELB)



Pharmaceutical
Services Division,
Ministry of Health

ENFORCEMENT AGENCIES



Royal Malaysian
Customs



Royal Malaysian
Police



Malaysian
Maritime
Enforcement
Agency



MCMC

Other officers
specified by
the Controller

DEFINITIONS



export

- 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

* “items” include goods and technology

CONT...

“INTANGIBLE TECHNOLOGY TRANSFER”

export

- to transmit technology by any means
- to a destination outside Malaysia
- includes any oral or visual transmission of technology
- by a communication device

CONT...

**bring in
transit**

- to bring items from any country into Malaysia
- by land, sea or air
- where the items are to be taken out from Malaysia

CONT...

transhipment

- to remove items from the conveyance on which they were brought into Malaysia
- and to place the items on the same or another conveyance for the purpose of taking them out of Malaysia
- where these acts are carried out using a bill of lading, airway bill or manifest

CONT...

brokering

- the activity of a person who, either on his own behalf or acting as an agent on behalf of another person-
- (a) negotiates, arranges or facilitates the purchasing, financing, conveying, sale or supply of items; or
- (b) buys, sells or supplies such items

BROKERING CONT...

- Transaction of WMD – UNSCR 1540's call to prevent “any assistance to such activities as an accomplice.”
- A broker is person/entity who facilitates the transaction of a strategic trade item from country A to country B. (third country trade)
- A broker does not necessarily have to be in possession of the brokered item or even land it in Malaysia
- For the purpose of the STA 2010, the person/entity involved in brokering is domiciled in Malaysia.

BROKERING CONT...

- **Who** is a broker?
 - Individuals
 - Companies
 - Freight forwarders
 - Delivery services
 - Financial institutions
 - Agents for foreign manufacturers
- A broker **has to be registered under the STA 2010** to deal in the specified strategic items. Registration certificate is **valid** for a period of **one year**.

CATEGORIES OF PERMITS

SINGLE-USE

ONE-TIME EXPORT, TRANSHIPMENT OR BRING IN TRANSIT PERMIT
for a **SINGLE COUNTRY / DESTINATION**

Valid for **6 months**

MULTIPLE- USE

(*NEEDS INTERNAL
COMPLIANCE PROGRAMME
(ICP))

MULTIPLE EXPORTS
OR TRANSHIPMENT of
the items for
**DIFFERENT
COUNTRIES /
DESTINATIONS**

Valid for **2 years**

PERMIT

BULK (*NEEDS ICP)

MULTIPLE EXPORTS OR
TRANSHIPMENT of items
for a **SINGLE COUNTRY /
DESTINATION**

Valid for **2 years**

SPECIAL

ONE-TIME EXPORT, TRANSHIPMENT OR BRING IN TRANSIT PERMIT
for a **SINGLE COUNTRY / DESTINATION** which the end-user is a
RESTRICTED END-USER

Valid for **1 year**

REGISTRATION PROCESS FLOW

DNT Registration for User ID and Password
www.dagangnet.com

Get User ID and Password

STA Registration
<http://www.mytradelink.gov.my>

Key-in information

Submit Application

Approved by MITI

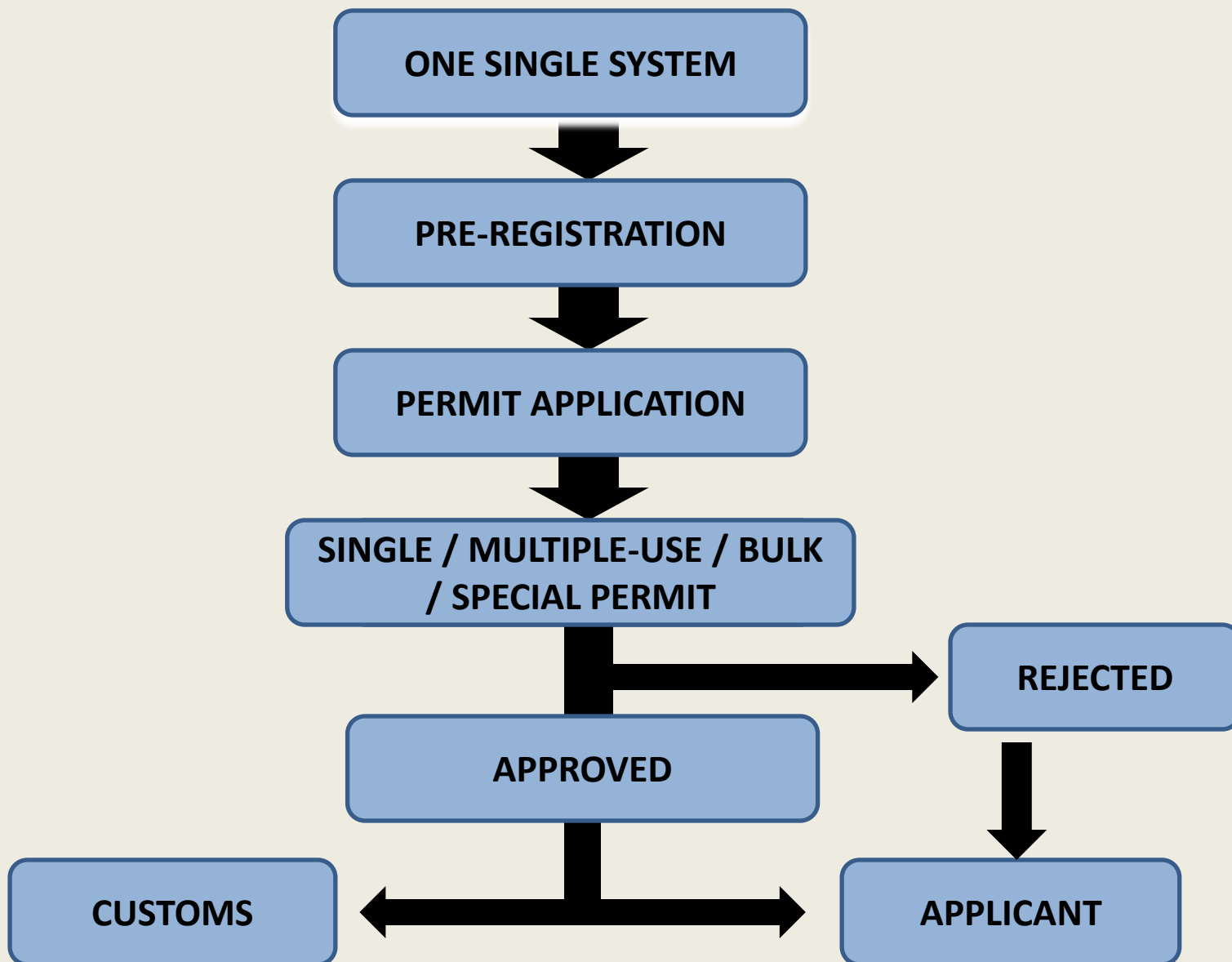
Get Digital Signature Token from DNT

Activation of Digital Signature

Permit Application



REGISTRATION / PERMIT APPLICATION



Classification of Products or Items

Strategic Items

Listed

A. Military

B. Dual-Use

- 0) Nuclear Materials, Facilities & Equipment
- 1) Materials, Chemicals, Microorganisms and Toxins
- 2) Material Processing
- 3) Electronics
- 4) Computers
- 5) Telecommunications and Information Security
- 6) Sensors and Lasers
- 7) Navigations & Avionics
- 8) Marine
- 9) Propulsion Systems, Space Vehicles & Related Equipment

Unlisted

- If a person is informed by the relevant authority; OR
- If a person knows/has reason to believe that the item will or may be used for a restricted activity.

STRATEGIC ITEMS

Categories and Numbering Scheme

1	C	1	18
Technical Category	Product Group	Regime Origin	Item. No.
0 Nuclear Materials, Facilities and Equipment 1 Materials, Chemicals, “Microorganism” and “Toxins” 2 Material Processing 3 Electronics 4 Computers 5 Telecommunications and “Information Security” 6 Sensors and Lasers 7 Navigation and Avionics 8 Marine 9 Propulsion Systems, Space Vehicles and Related Equipment	A Systems, Equipment, Components B Test, Inspection and Product Equipment C Materials D Software E Technology	0: Wassenaar or NSG Trigger List 1: MTCR 2: NSG Dual-Use List 3: AG 4: CWC	

e.g 1C118

Titanium-stabilised duplex stainless steel (Ti-DSS) having all of the following:

a) Having all of the following characteristics:

- **Containing 17.0 - 23.0 weight percent chromium and 4.5 - 7.0 weight percent nickel;**
- **Having a titanium content of greater than 0.10 weight percent; and**
- **A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10 percent is austenite by volume (according to ASTM E-1181-87 or national equivalents); and**

b) Having any of the following forms:

- **Ingots or bars having a size of 100 mm or more in each dimension;**
- **Sheets having a width of 600 mm or more and a thickness of 3 mm or less; or**
- **Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.**

e.g 1C350

TRIETHANOLAMINE (CAS 102-71-6)

Military Use

- Triethanolamine is a **precursor** for **nitrogen mustard gas**.

Commercial Use

- It is extensively used in personal care products, including **soaps, shampoos, hair styling products** and **dyes, skin cleansers**, and **cosmetics**. It is also used in the textile industry.

Triethanolamine serves as an **additive** for **cement, concrete**, and **polymers** (including **resins** and **rubber**).



DEFINITION OF TECHNOLOGY

Defined as **specific knowledge & information required development, production or use of products includes technical data and technical assistance**, in addition to hardware & equipment.

“Development” - before production e.g. design research, design analysis, design concepts, assembly of prototypes, pilot production schemes, design data etc.

“Production” - construction, production engineering, manufacturing, integration, assembly (mounting), inspection, testing and quality assurance.

“Use” – operation, installation (including on-site installation), maintenance (checking), repair, overhaul or refurbishing.

TYPES OF TECHNOLOGY

Technical Data

- Blueprints
- Plans
- Diagrams
- Models
- Formulae
- Tables
- Engineering design and specifications
- Manuals and instructions written or recorded
- 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



**Ph.D
programmes** in
nuclear
engineering,
physics or
microbiology

**Employment of
foreign
expatriates e.g.
lecturers**

**POTENTIAL
ITT
SITUATIONS**

Consultation on the
**development and
deployment** of
wireless
telecommunications
networks

E-mail exchanges of
documents related
to integrated circuit
production



INTANGIBLE TECHNOLOGY TRANSFER

DEEMED EXPORT - RELEASE OF TECHNOLOGY TO A FOREIGN NATIONAL INCLUDING EXCHANGE OF KNOWLEDGE, BLUEPRINT AND RESEARCH MATERIALS ON DEVELOPMENT OF STRATEGIC ITEMS IN THE LIST

Participation of foreign delegations in the company's internal technical conferences

Visual inspection by foreign nationals (company's blueprints, plans, technical specifications, etc.)

Technical assistance (including verbal exchanges)

Technologies and software (know-how & know-why)

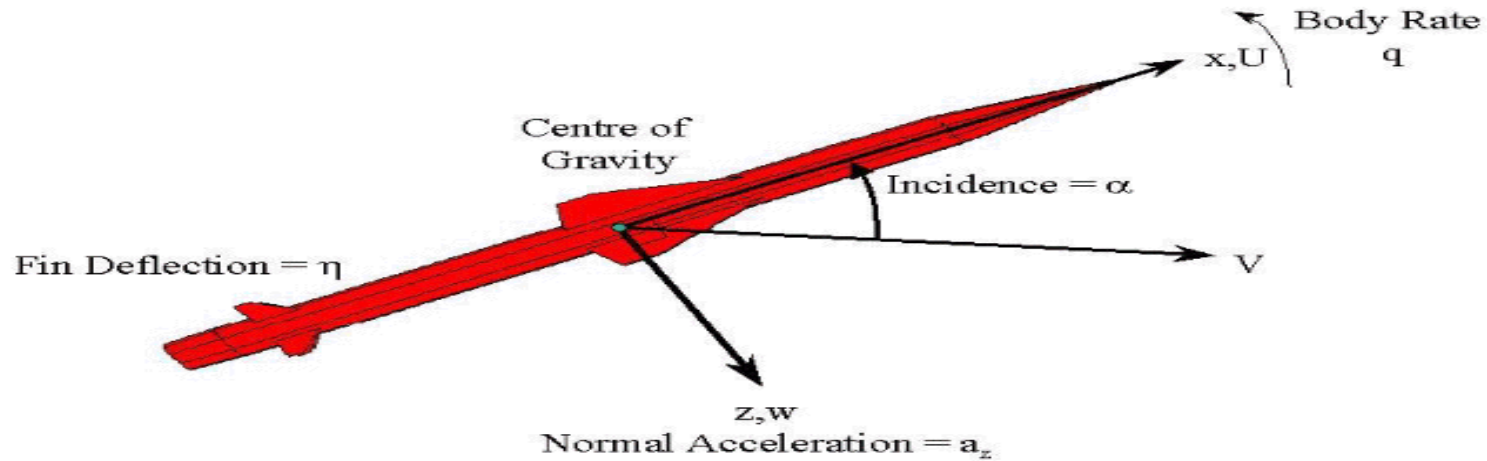
Foreign students studying sensitive technology

Collaboration with foreign students

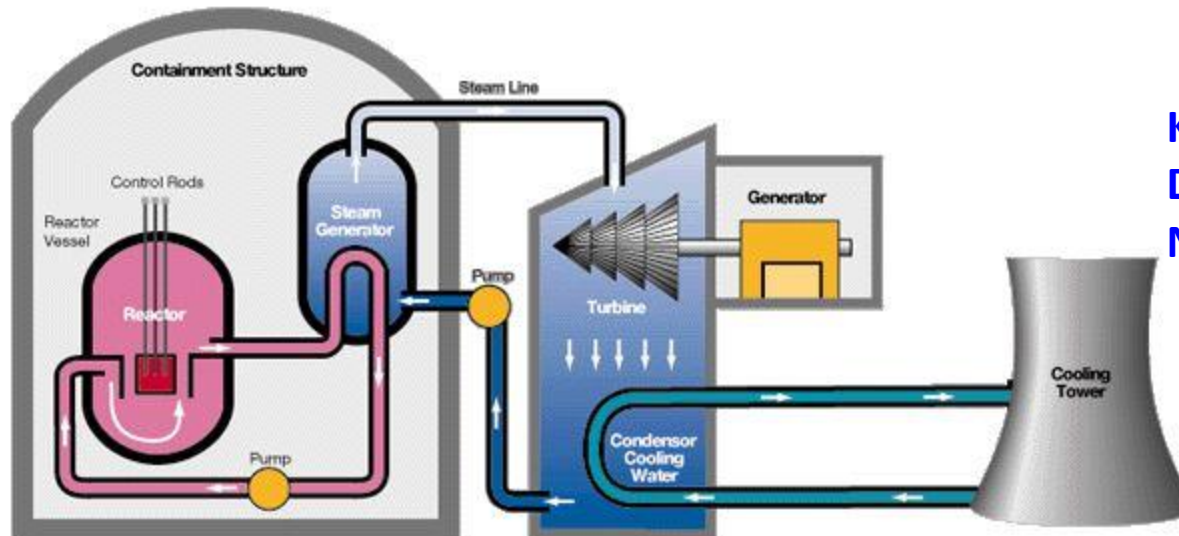
EXAMPLES OF CONTROLLED TECHNOLOGY

- 2E003b. “Technology” for metal-working manufacturing processes, as follows:
 1. Technology for the design of tools, dies or fixtures specially designed for any of the following processes:
 - a. “Superplastic forming”;
 - b. “Diffusion bonding”; or
 - c. “Direct-acting hydraulic pressing”
- 3E003 Other “technology” for the “development” or “production” of the following:
 - a. Vacuum microelectronic devices;
 - b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), ...
 - c. “Superconductive” electronic devices;
 - d. Substrates of films of diamond for electronic components
- ML22: “Technology” – Specific information necessary for the “development”, “production” or “use” of a product. The information takes the form of technical data or technical assistance.

EXAMPLES OF CONTROLLED TECHNOLOGY



Aero-dynamic Guidance



**Knowledge on
Development of
Nuclear Power Plant**

CONSIDERATIONS



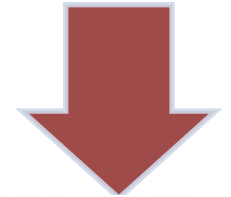
Information- parties, destination, type, scope, purpose of transfer, expertise of 'importing' country

Background of foreigner-education, past and present research involved in, ties to home country

CONTROL OF ITT

Awareness

- Sector specific (commercial R&D, institutes of higher learning, Govt research bodies)



Internal Compliance Programme

- Management commitment, security plan(physical and information), procedures to handle technology, screening of personnel, training, record keeping, internal audit



Audit

- Including site-visits by regulators



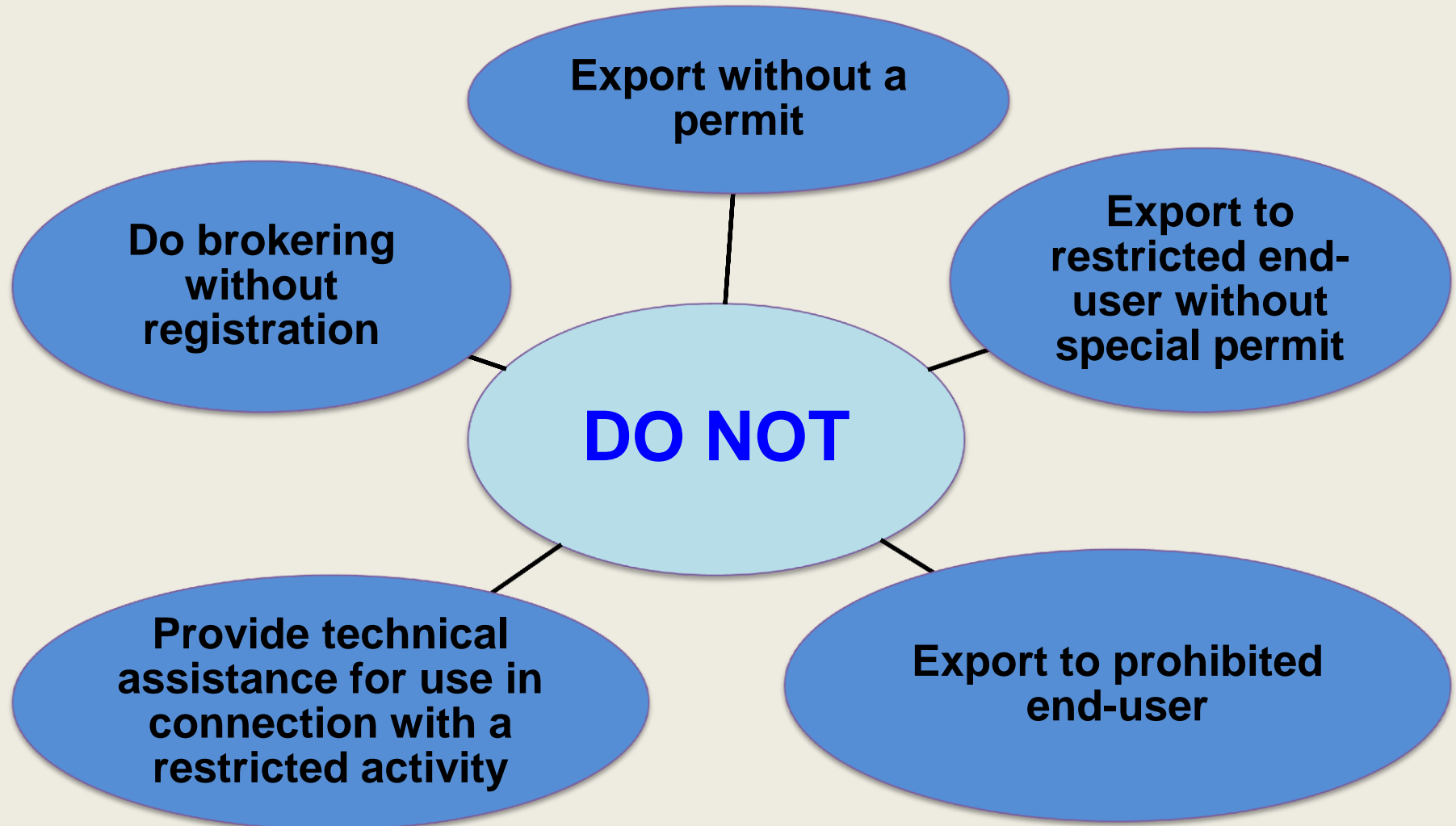
Awareness:
Which technology to
control? The
requirements? Who? Why?

**CHALLENGES IN
CONTROLLING ITT**

Increasingly **integrated**
world (economically,
politically, socially)

Legality:
Appropriate export
control legislation,
burden of proof in
ITT, enforcement

OFFENCES



PENALTIES

- Severity of penalty depends on intent and knowledge

For arms and related materials

- With the intent and knowledge to unlawfully export, tranship or bring into transit without a permit:
 - Where death is the result – a death sentence or imprisonment for natural life
 - In the case of a body corporate a minimum fine of RM 30 million
 - In any other case, imprisonment for not less than 10 years or with a fine of not less than RM10 million or both (body corporate – RM20 million)
- Without the intent and knowledge to unlawfully export, tranship or bring into transit without a permit:
 - Imprisonment of not less than 5 years or fine of not less than RM5 million or both (body corporate - RM10 million)

CONT...

For strategic items and unlisted items

- With the intent and knowledge to unlawfully export, transship or bring into transit without a permit:
 - imprisonment for a term of not less than 10 years or a fine of not less than RM10 million or both (body corporate – RM20 million)
- Without the intent and knowledge to unlawfully export, transship or bring into transit without a permit:
 - imprisonment of not less than 5 years or fine of not less than RM5 million or both (body corporate - RM10 million)

FACILITATION UNDER THE STA 2010

- **To ensure smooth implementation of the Act as well as to facilitate business:**

- 1) Exemption**
- 2) Establishment of ICP**
- 3) Amendments to the STA 2010 Regulations**
- 4) On-line permit application system**

1) EXEMPTION

- Transit and Transshipment

- arrive in a **Free Commercial Zone (FCZ)** or brought immediately into FCZ
- **remain** in the FCZ
- not exceeding **30 days**



* 95% of transit and transshipment of strategic items are exempted from applying for permits.

**HOWEVER, THE EXEMPTION DO NOT APPLY TO
THE FOLLOWING COUNTRIES...**



North Korea



Iran



Congo



Ivory Coast



Lebanon



Sudan



Afghanistan



Iraq



Liberia



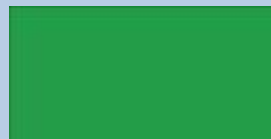
Rwanda



Somalia



Eritrea



Libya

AND...

- **No exemption for Transshipment Permit for Schedule Three items of the STA Regulations 2010, e.g:**
 - ❖ **Military items – rifles, revolvers, pistols, ammunitions, bombs, torpedoes, rockets, missiles, war vessels, war aircrafts**
 - ❖ **Nuclear reactors, gas centrifuge plant**
 - ❖ **Uranium, maraging steel, tungsten, molybdenum**
 - ❖ **Toxic chemicals, human pathogens**

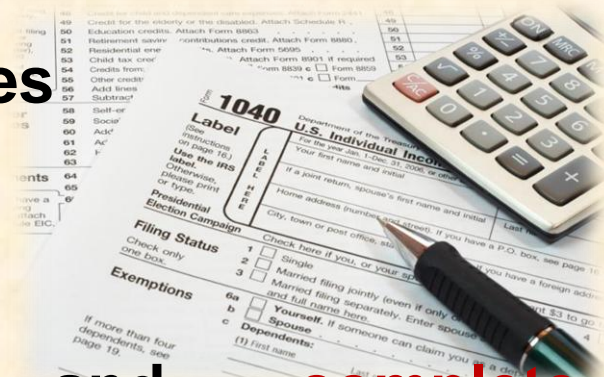
2) INTERNAL COMPLIANCE PROGRAM (ICP)

- It is a set of **procedures** that have to be implemented **within a company** before an item is exported using **multiple-use or bulk permit**.
- The procedures in place **ensure that the company complies** with the Strategic Trade Act 2010 and associated Regulations.
- The Controls can be done:
 - manually
 - electronically, etc.
- **Other names** for ICP:
 - Internal Control Plan
 - Export Management System
 - Export Compliance Program
 - Trade Compliance Program



GOALS OF THE ICP

- **Centralise** export-related procedures
- **Standardise** control procedures
- Provide **early warning**
- Generate **record keeping** and **complete documentation** for sensitive exports
- Develop and maintain **good relationship** with **export control authorities**
- **Keep updated** on export control laws and regulations
- **Train all employees** on the need for export control (company-wide)



WHY IS ICP NECESSARY?

- **Ensure compliance** with applicable laws and regulations
- **Detect** export control **violations**
- Contribute to **non-proliferation** of sensitive items, technology and information



KEY ELEMENTS OF ICP

- **Company-wide awareness** of export control
- **Highest level of support**, i.e. letter from CEO or equivalent
- Clearly assigned **accountability**
- **Written** compliance manuals, policies and procedures
- ICP to be **integrated with standard business procedures**
- **On-going training** on policies and procedures
- **Regular audits/self-assessments**
- **Corrective action plans**



MITI'S ICP CHECKLIST

AN EFFECTIVE ICP REQUIRES THE FOLLOWING:

- 1) Management Commitment**
- 2) Screening Process**
- 3) Training**
- 4) Record-keeping**
- 5) Audit**



3) AMENDMENTS TO THE STA REGULATIONS -Effective 1 December 2011

(a) Period of application for permits in Regulation 10, 11, 12 and 13 as follows:

- **Single use permit (for export and transit) – reduced from 30 working days to 30 days and for transhipment from 5 days to 5 working days;**
- **Special permit (for export, transit and transhipment) – reduced from 2 months to 30 days; and**
- **Bulk and multiple use permits (for export, transit and transhipment) – reduced from 2 months to 30 days.**

CONT...

(b) Period of submission of Delivery Verification Statement (DVS) as follows :

- **Single use permit (for export, transit and transshipment) – from 2 months from the date of permit issued to 2 months from the date export (validity of 6 months);**
- **Special permits – from 2 months from the date of permit issued to 2 months from the date of export (validity of 1 year); and**
- **Bulk and multiple use permits (for export, transit and transshipment) – from 2 months from the date issued to whenever requested by the relevant Authority (validity of 2 years).**

CONT...

- (c) Additional provision in Regulation 11 to allow applicants to apply bulk and multiple permit for transit;
- (d) Editorial amendments to Form 2, 4 and 8;
- (e) New format to Form 5 (End-Use Statement) and Form 6 (Delivery Verification Statement) that are more simplified and business friendly taking into account comments and consultations with all stakeholders; and
- (f) To exclude ECCN 5A2 (systems, equipments and components) and 5B2 (test, inspections and production equipment) from the Third Schedule.

POTENTIAL COLLABORATION WITH IPTAs

- To avoid the misuse of the strategic technology, STS is looking forward to your cooperation in the following suggestions:
 - 1) Outreach to lecturers and students on STA 2010
 - 2) Control of deemed export of technology
 - 3) Screening of foreign lecturers and students

REFERENCE ON STA 2010

- www.miti.gov.my > Guidelines > Strategic Trade Act
- Guideline and Checklist on ICP is provided in the MITI web - STA
- A copy of the Strategic Trade Act 2010, Regulations and Orders can be purchased from Percetakan Nasional Berhad or is available upon subscription at <http://www.lawnet.com.my/lawnetPublic/>
- Feedback and comments on this subject can be sent to admin.sts@miti.gov.my.
- **STS Hotline** – 03-6203 9846
- **STS Client Day**, every 4th Wednesday of the month, 10 a.m. to 12 noon in the Strategic Trade Secretariat Office, MITI.



THANK YOU

FAIZAL MOHD. YUSOF

**DEPUTY STRATEGIC TRADE CONTROLLER
STRATEGIC TRADE SECRETARIAT, MITI**