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Emerging Export Control Regimes in ASEAN & Best Practices for ICP:- Challenges and Pitfalls

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- **Emerging Export Control Regimes in ASEAN**

Thailand – Vietnam – Philippines – Indonesia

- **Introduction of Export Controls**
- **Best Practice**
- **What Should I do?**

Why am I here?

- To **Understand** the export controls law applicable to:
 - ❖ **You; and**
 - ❖ **Your company**
- To grasp the **Key Elements** that must be addressed to conduct business in a sustainable & compliant manner

*You have a part to play in fulfilling your company's vision i.e.
to comply with the export control laws & regulations
– A Good Corporate Citizen*

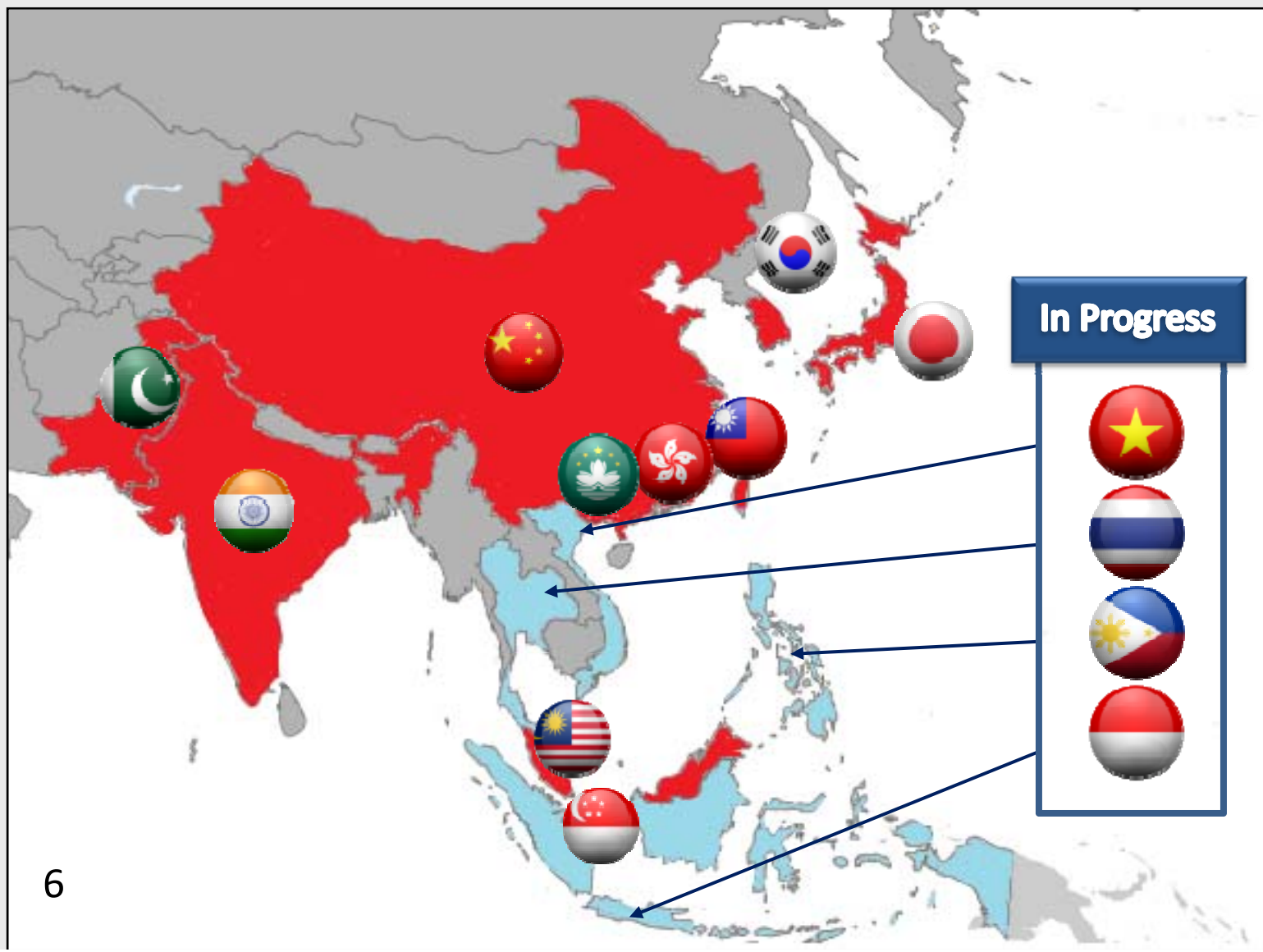
- To be **Prepared** for export compliance operational challenges
- To **Understand** industrial best practice
- To **Appreciate** the importance of export control
- To **Reconcile** day-to-day operational work with export compliance practices



Rising Export Control Regimes in Asia

Thailand • Vietnam • Philippines • Indonesia

Export Control in Asia

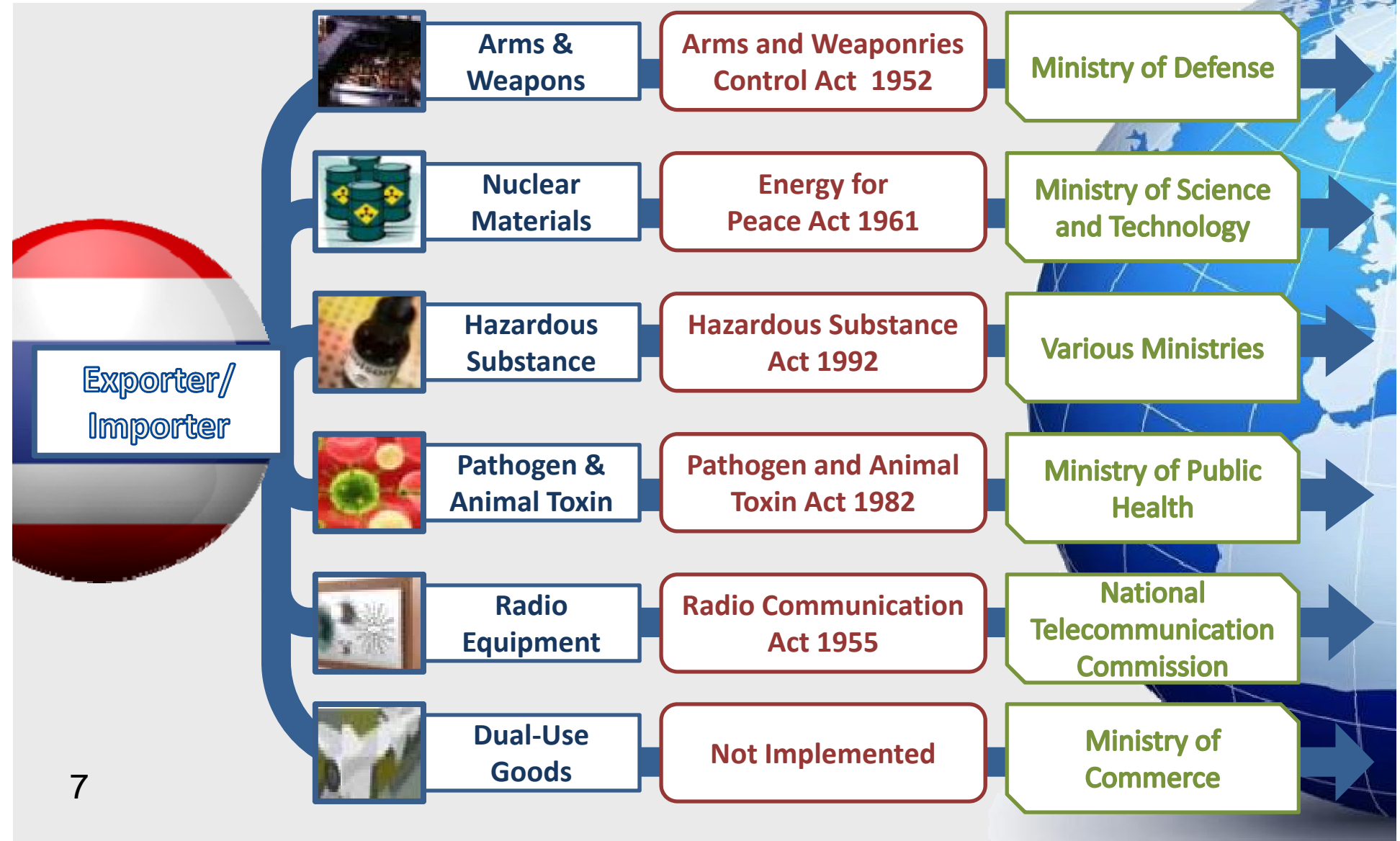


■ Countries with existing export control legislations

■ Countries which are formulating export control legislations

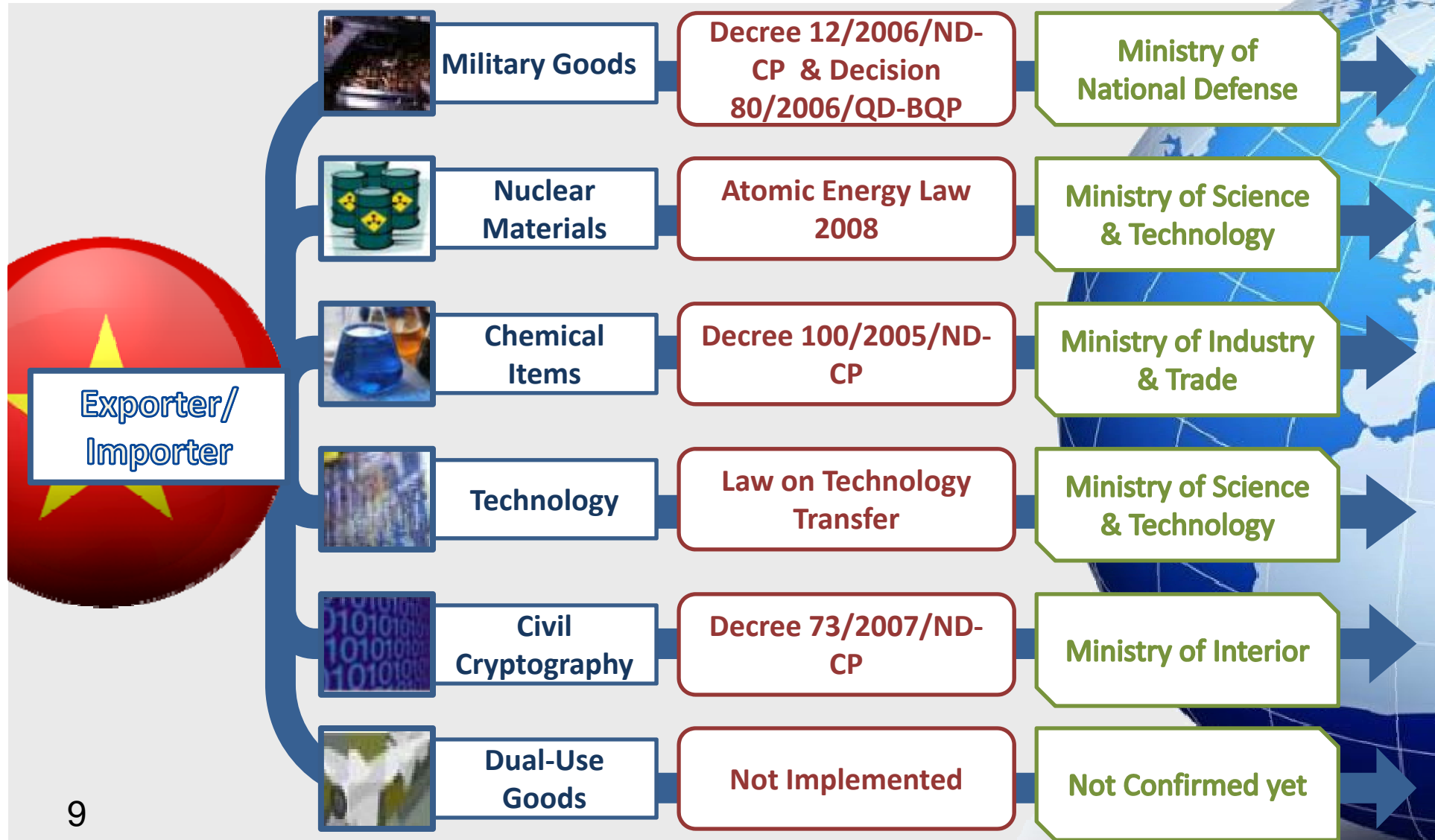
In Progress

Licensing Control in Thailand



- Control Lists: EU Convention
 - Munitions List & Dual-use List
- Scope of control:
 - Export / Re-export
 - Transshipment
 - Transit
 - Brokering
 - Intangible Transfer of Technology (“ITT”)
- “Catch-all” provision
- Single and Multiple licensing structure
- Decentralized vs Centralized Agency Structure
- A working committee from various ministries has been set up to work on above details on Thailand dual-use control
- Study US, EU and Asia export control systems

Licensing Control in Vietnam



- No “Dual-use” Definition
- “Catch-all” Provision
 - Currently no specific regulation
 - Regulations on management and use of military goods
 - Exporters not allowed to engage in transaction relating to military goods
- Transmission of Technology
 - No declaration required for “Software” form, exported via internet
 - However, still subject to list of technology in Law on Technology
- Brokering/Trading
 - Military Goods: Prohibited under Decree 102/2010/ND-CP
 - Nuclear and Radiation Weapons: Prohibited under Atomic Energy Law
 - Chemicals
 - Schedule 1: Prohibited
 - Schedule 2 or 3: Restricted under Decree 100/2005/ND-CP (License from MOIT)
 - Cryptography Products: specialized management under Decree 73/2007/ND-CP
- Study US, EU and Asia countries export control systems

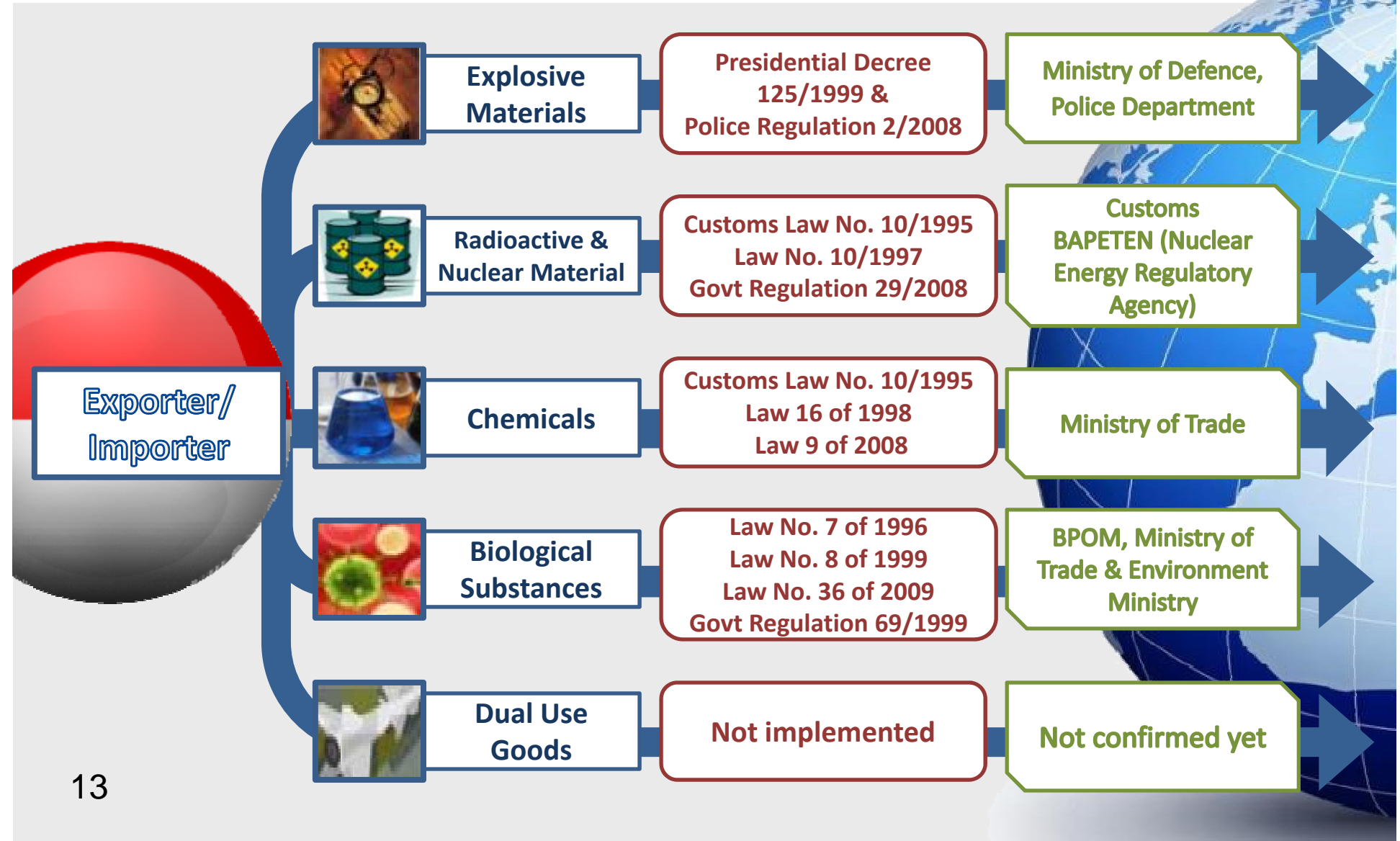
Licensing Control in Philippines



Export Control in Philippines

- No “Dual-Use” Provision
- Technical Working Group (“TWG”)
 - Created in July 2007 to establish Philippine Export Control System
- Progress on Proposed Philippine Legislation on Export Control
 - 2009:
 - House Bill 3268 (Rep. Rodolfo W. Antonino)
 - Senate Bill 6268 (Sen. Manny B. Villar, Jr.)
 - 2010:
 - Senate Bill 115 (Sen. Manny B. Villar, Jr.)
 - Senate Bill 2449 (Sen. Gregorio B. Honasan II)
 - 2011:
 - House Bill 4030 (Representatives Pablo John Garcia, Jr., Rodolfo W. Antonino, Mark Llandro Mendoza, Mark Wilfrido Enverga, Senen Sarmiento and Bataoil)
- Study US, EU and Asian countries export control systems

Licensing Control in Indonesia



- No “Dual-Use” Provision
- Have not issued umbrella export control legislation
- A committee (International Security and Nuclear Proliferation Committee: TBD) has been formed
- Indonesia has issued laws/legislations inline with UNSCR 1540 covering the following areas:
 - Chemicals Weapons
 - Biological Weapons
 - Nuclear and Radiation
- Study US, EU and Asian countries export control systems

Overall Export Control Trends

Country	Membership	Responsible Unit	Dual-Use		Defense & homeland security	
			Legislation	Enforcement	Legislation	Enforcement
Thailand	CWC, BWC	MOC	No	No	Yes	Yes
Vietnam	CWC, BWC	Not Determined	No	No	Yes	Yes
Philippines	CWC, BWC	OSETC	No	No	Yes	Yes
Indonesia	CWC, BWC	Not Determined	No	No	Yes	Yes

CWC = Chemicals Weapons Convention

BWC = Biological Weapons Convention



Introduction to Export Controls

What are Export Controls?

Export Controls

Definition

- Laws and regulations established to curb the proliferation of Weapons of Mass Destruction (“WMD”) and their means of delivery
- Export licenses are required to export controlled products or technology
- Usually based on international agreements

Scope

- Dual-use items (civil & military)
- Munitions (conventional military weapons and WMD)
- Other products under “Catch-All” provision

What are Strategic Goods?

Definition

Goods
Relating To

Design

Development

Production

Stockpiling

Use

Of

- Chemical, Biological, Radiological & Nuclear (“CBRN”) weapons
In general; Weapons of Mass Destruction (“WMD”)

- Conventional arms & military equipment & their delivery means (systems)

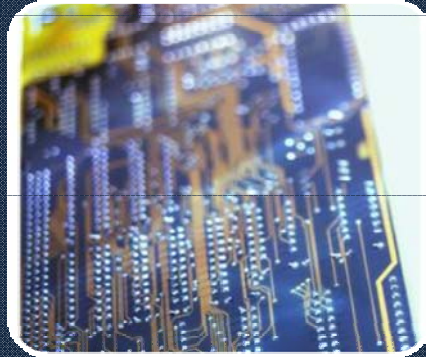
Strategic Goods include: Hardware, Software & Technology

What are Controlled? Who are Accountable?



All controlled **goods**

Regardless of country of origin
(H/W & S/W)



All controlled **technologies**

For design, development, manufacturing, installation, services, operation, maintenance, training and / or overseas technical discussion
Sent via electronic means, paper documents to an overseas party
(tangible & intangible)



All **exporters** of record

Include individuals, researchers, institutions, manufacturers, trading companies, resellers, 3rd party logistic providers, etc. dealing with controlled goods
(basically anybody whose name appears on the export documentation record)

“Catch-All” Provision

- Almost all export control regimes incorporate “catch-all” provisions:



An export control permit is compulsory for

- **Goods,**
- **Technology &**
- **Software**

which are not listed in control lists when you have any reason to **“suspect” or “know”** that they will be/are used in the production of WMD or conventional weapons

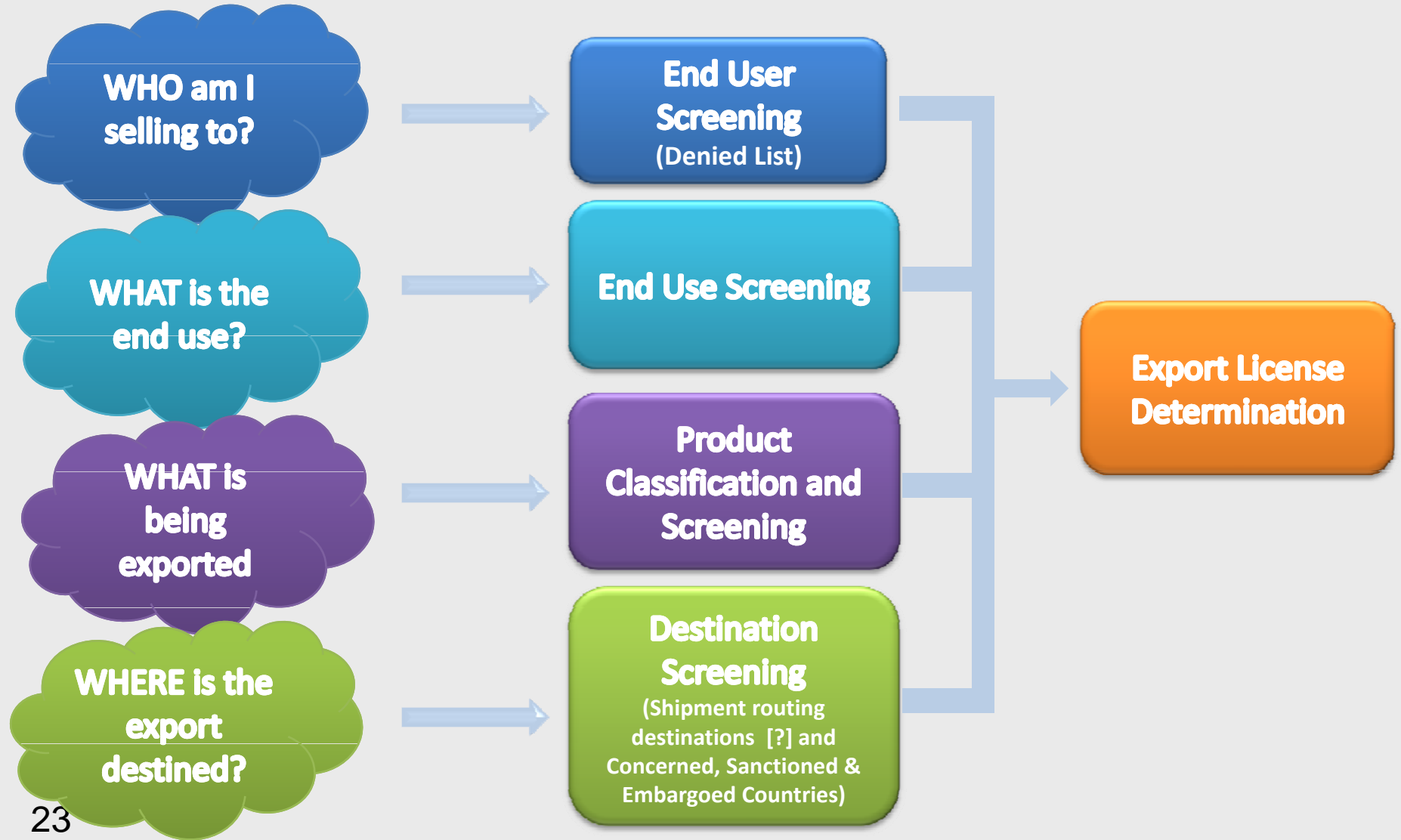
Industries Likely to be Affected



A Company Wide Effort



Company's Obligations



***Exporting is a
privilege, not a
right!***

It is ***mandatory*** to comply with the export control legislation of the countries you are exporting from

Official Request from METI

- On 3rd March 2006, METI issued the following notice addressed to Japanese companies & subsidiaries:

(which METI re-emphasized in 2007 Notice)

1. Ensure company-wide awareness on the importance of export controls
2. Top management is responsible for the establishment and implementation of an export control organization/ program in their company
3. Headquarters should ensure that:
 - Overseas subsidiaries are aware of the export control guidance, and
 - Overseas subsidiaries establish and implement the relevant export compliance rules and procedures



Best Practice

What is an ICP?

Export Control Internal Compliance Program (“ICP”)

- Export controls SOP across all business functions
- Pre-requisite for trade facilitation licensing schemes in most countries (e.g. bulk/multiple/general distribution license)
- Capture analysis, decisions, accountability and implementing procedures
- Level of detail dependent on complexity of company’s business operations
- One size does not fit all
- Scalable and organic in nature

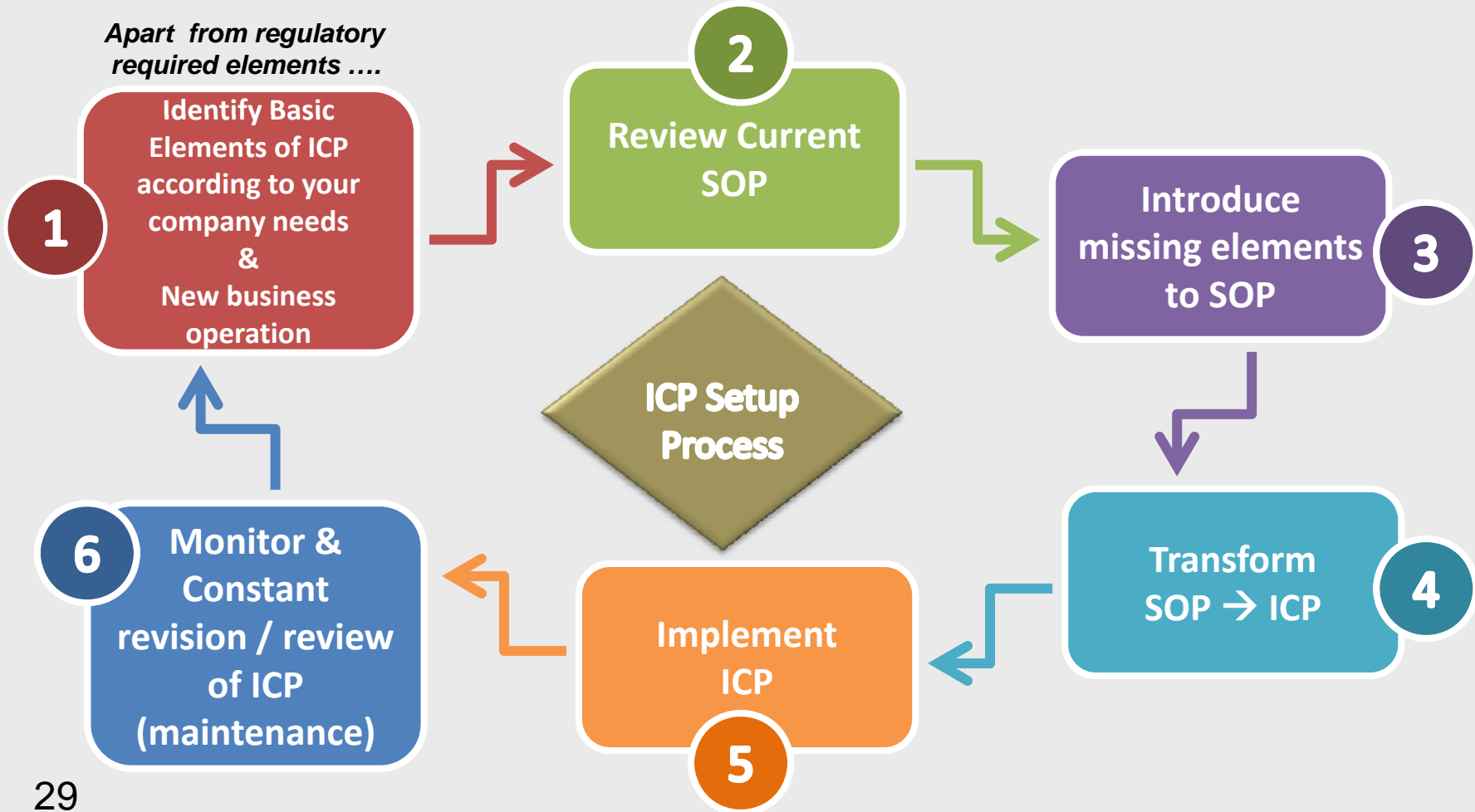
Why do we need an ICP?

General Objectives

- Standardize procedures – *operation consistency*
- Centralize export-related questions and issues
- Provide early warning and screening of all inquiries and orders
- Mitigation in case of violation

How to set up an ICP?

Apart from regulatory required elements



Key Elements of ICP

1

Company's Commitment Statement

- Clear statement from senior management to emphasize importance of compliance (*e.g. MD, CEO, Chairman, President*)
- Sufficient resources provided to develop/implement ICP
- Well communicated to employees, business partners and customers (e.g. intranet, notice board, letter, contracts, etc)

2

Strategic Goods Officer/ Committee

- Appointment of designated officer (management level) or a committee with clearly stated responsibilities
- Responsible for ensuring compliance with the export controls regulations & related domestic laws
 - ❖ Establish and maintain clear lines of communication between key personnel and others with export related functions
 - ❖ Document the designations, duties in company's document or manual
 - ❖ Circulate the list of personnel involved, responsibilities and positions, to all staff and update the list frequently
 - ❖ Regular meetings to ensure update of latest regulations, procedures, controlled list, etc

3

Product Classification

- To perform on all existing/new products and products from 3rd parties
- Provide/prepare an easily accessible **Product Classification Table**
- Updated for changes in composition of control list or specification of items as & when needed

4

Product Screening

- Systematic procedures to screen products prior to PO acceptance, manufacturing and release of shipments
- Able to check for export licence requirements and to hold shipment if necessary

5 End User Screening

- Maintain a list of prohibited/denial list (“DL”) of companies and customers (engage 3rd party service provider?)
- Red Flags Indicator and Catch-All control (CBRN) check list
- 3rd party report to verify the information provided by customers/end-users

6 End Use Screening

- Collect information about the final products produced by customers/end-users
- Get a confirmation letter/statement/certificate from customers/end-users on their intention (end application) of using the products acquired

7 Destination Screening

- Collect information about the final destination, including transit/transshipment destination
- Get a confirmation letter that the product will not be routed to countries (of concerns) without prior consent from the original shipper/exporter

8

Record Keeping

- Keep record for at least **5-10 years** after transactions have taken place
- Defined, systematic procedures on document keeping (create a matrix)
- Define the dept/section responsible for record keeping, type of documents to be kept and how the documents should be kept
- Define each level of document access and person in-charge of such documents

9

Regular Training

- Annual training program for staff of entire company
- Training programmes and courses should cater for multi-level education of staff ranging from operational level to management level

10

Reporting & Emergency Notification

- Strategic Goods Control Officer should report export control activities regularly to the top management
- Transparent reporting and decision-making responsibilities for exports
- Set up an emergency notification team whose responsibilities are to notify and mobilize staff and resources to resolve dubious cases or violations
- Establish a notification contact list
- Clear communication path to the notification team in the event of violations that may occur/have already occurred or dubious transactions

11

Guidance to Subsidiaries & Business Partners

- A written guidelines to all subsidiaries (include affiliates, branches and representatives) on the usage of ICP (customization of ICP to comply with local regulations if necessary)
- Conduct regular training/audit to subsidiaries and business partners

12

Regular Internal Audit

- Conduct self, internal and external audit regularly (min once every fiscal year-12 months):
 - ❖ Verification of guidelines in the ICP and the actual operational procedures
 - ❖ Document vouching to ensure no violation of export control regulations
 - ❖ Verification of correct licensing requirements
 - ❖ Detailed report of any known violations as well as corrective actions taken
 - ❖ Follow up on corrective action plan must be carried out
 - ❖ Audit can be extended to business partners
- Audit report to be submitted to the President/CEO for final approval

Challenges in Implementing ICP

1 Resources

- Dedicated
- Sufficiently senior (manager & above)
- Financial budget
- Underestimation of time and barriers to develop & implement ICP

2 Integration with Existing ICP

- Especially for Multi-National Companies (M&A)
- Localization required

3 Alignment of Business Partners & Subsidiaries

- Understanding of commercial constraints
- Clear definition of roles and responsibilities of each party
- Wide applicability (apply to 3PL, Subcontractors, Customers, Suppliers & Subsidiaries, Branches, Rep. across the region, etc)

4 Awareness and Training

- Involvement of multiple parties (logistics, sales, marketing, R&D, business partners, etc)
- Consistent and regular updates to ICP

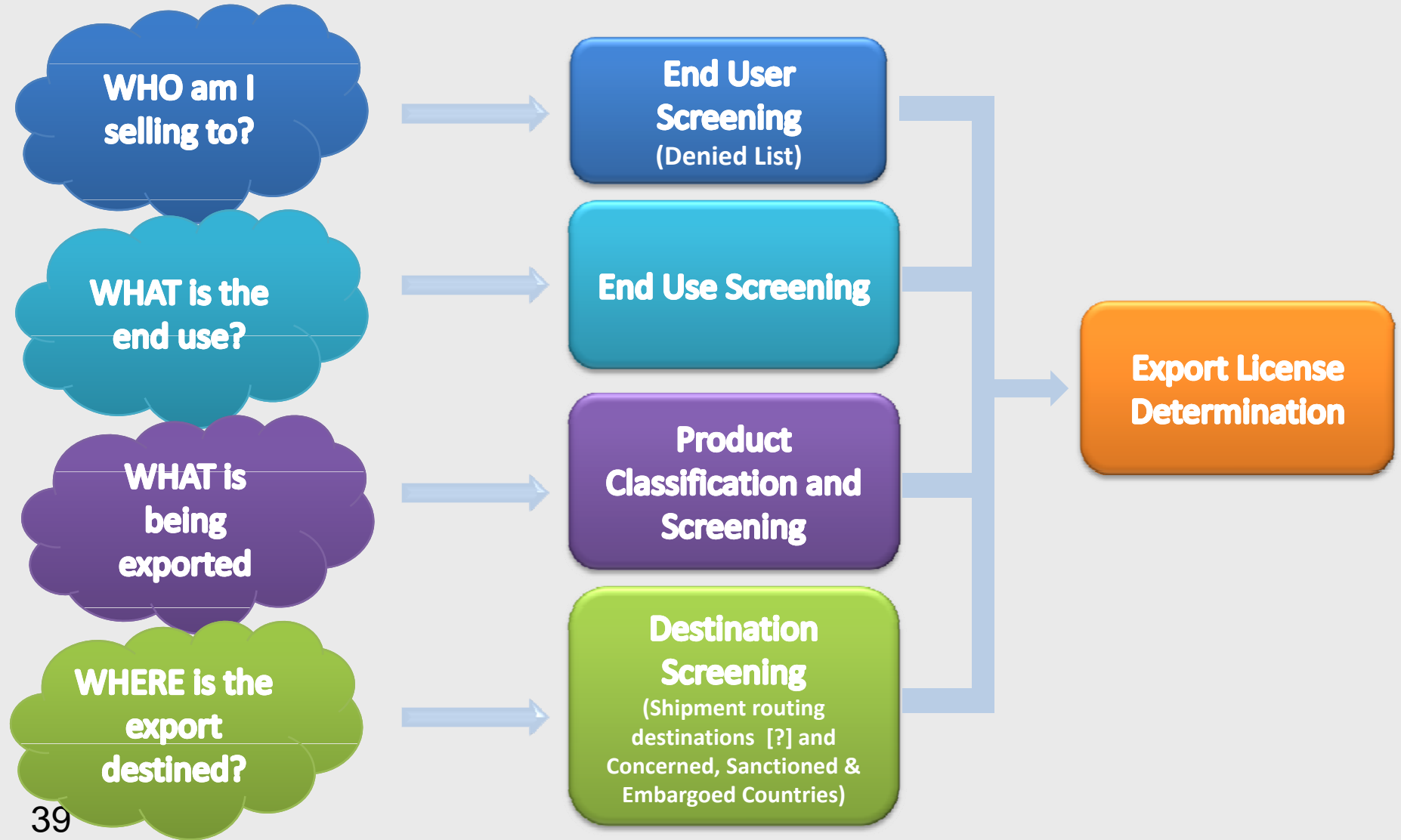
- I am not aware of it
- I don't produce or deal with any military related products
- It has no concern with me at all
- This is a US/EU/Japan issues
- My agents/distributor will take care of everything
- I have no resources for it
- My management is not committed, so why should I?
- I do not know where to start
- I don't have budget and it does not generate revenue
- Blindly follow Headquarters' ICP



What Should I Do?

- Review your **internal processes**
- Assess your **risk exposure** on any possible violations
- Fulfil / carry out **your obligation**
- Setup necessary procedures to comply with the local export control regulations (especially dual-use) and/or any country you have businesses activities; i.e. Internal Compliance Program **(ICP)**
- If no such regulations available, follow your parent company (your subsidiaries around the region?)
- **Call Bryan Cave for assistance**

Company's Obligations





Q & A



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