



**UNIVERSITY AT ALBANY**  
State University of New York

# Intangible Transfer of Technology (ITT) Controls in Asia Pacific

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## Presentation Topics

1. Key intangible transfer of technology (ITT) strategic trade management (STM) elements and concepts
2. Current state of ITT STM in Asia Pacific (APAC)
3. ITT STM challenges in APAC
4. Ideas for further ITT STM development in APAC
5. Conclusion



## Key ITT STM Concepts (1)

- **“Technology”**: specific information necessary for the "development", "production" or "use" of a product. The information takes the form of 'technical data' or 'technical assistance'
  - 'Technical data' may take forms such 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.
  - 'Technical assistance' may take forms such as instruction, skills, training, working knowledge, consulting services. 'Technical assistance' may involve transfer of 'technical data' \*

\* Wassenaar Arrangement Definition

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## Key ITT STM Concepts (2)

- **Tangible vs. intangible transfers (of technology)**

- A “tangible” transfer or export of technology would be sending things like hard-copy blueprints or diagrams, a model, or technical data on USB drive out of a country to another country
- An “intangible” transfer or export of technology would be sending or transmitting technology from a country to another country via electronic (e-mail, fax) or oral (phone) means, or making it available for electronic access
- The provision of “technical assistance” also may be a form of intangible technology transfer



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## Select Key Elements of ITT STM

- How “exports” (and/or “transmit” or other similar terms) are defined in the STM system
- How “strategic goods” and/or “technology” are defined in the STM system
- The types of ITTs subject to regulation (electronic vs. oral or visual)
- “Technology” transfers that are exempt from STM
- Dedicated ITT outreach and enforcement

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## APAC STM Systems with ITT Controls \*



- Australia
- China
- India
- Japan
- Korea
- Malaysia
- New Zealand
- Pakistan
- Philippines
- Singapore

*\* Based on presenter's own observations and understanding, all errors are presenter's own*

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## ITT STM in APAC

- Many countries/areas in APAC control tangible transfers of control-listed technology and any technology going to WMD-related end-uses
- Increasingly systems in APAC have introduced controls on intangible transfers of (strategic) technology, though most often electronic and/or “territory-origin” transfers only
- In some countries, controls similar to “deemed” exports have been (or will be) introduced
- Exceptions to controls on technology may not be as comprehensive in some cases

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## Australia ITT STM (1)

- Australia’s introduced ITT STMs in 2015
  - “**Supplying**” of listed military or dual-use technology from a person in Australia to a person outside of Australia by electronic means. “Supply” occurs when a person in Australia provides listed technology to another person outside of Australia. Examples of ‘supply’ include supply via email or fax, or by providing someone outside of Australia with passwords to access controlled technology stored electronically.
  - “**Publishing**” (putting in the public domain via print, internet, etc.) of listed military technology by Australian “persons” (citizens, corporations, and residents) anywhere in the world
- Australia also can exercise control on the “supply” and “provision” of “services” in Australia when the service-provider knows or should know the services are for a WMD program

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# Australia ITT STM (2)

- DECO Explanation of Encryption Controls under the DTCA 2012




Australian Government  
Department of Defence

## Defence Export Controls

### Overview of Cryptography and the Defence Trade Controls Act 2012

As a Participating State of the Wassenaar Arrangement, Australia has an international obligation to strengthen its export controls on the transfer of sensitive technology, including the overseas transfer of certain encryption-related technology. Australia meets this obligation through the *Defence Trade Controls Act 2012* (DTC Act). The introduction of the strengthened controls ensures Australia meets its international obligations and security requirements, while not unnecessarily restricting trade or research.

The *Defence and Strategic Goods List* (DSGL) describes all goods, software and technology that are subject to export control. Currently, a permit is required to tangibly export these items under the *Customs Act 1901* via the Customs (Prohibited Exports) Regulations 1958. On 2 April 2016 the offence provisions of the DTC Act will come into effect, and a permit will be required for the *intangible supply* of the same items. This will bring Australia into line with world's best practice on export controls. The *publication and brokering* provisions of the DTC Act only apply to military items, or items which are for a military end-use, and so the publication and brokering of cryptographic goods, software and technology are generally exempt.



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- Manage controlled goods and Technology
- Understand the legislation and assessment process
- Understand Strengthened Export Controls

Source: Australia DECO, <http://www.defence.gov.au/deco/Cryptography.asp>

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# China ITT STM

- June 2015 China MOFCOM Announcement of ITT Licensing – reminds enterprises that export controls apply to overseas ITT of controlled technology



## 中华人民共和国商务部产业安全与进出口管制局

Ministry of Commerce of the People's Republic of China  
Bureau of Industry, Security, Import and Export Control

首页 工作动态 政策规则 清单 目录 进出口管制 产业信息 知识园地 网上链接 关于我们

当前位置: 首页 > 进出口管制

### 商务部批准一批无形技术出口

文章来源: 产业安全与进出口管制局 2015-06-08 09:58 文章类型: 原创 内容分类: 新闻

近日, 商务部对一些出口无形技术的申请予以批准。在此, 商务部提醒广大企业, 在向境外出口与两用物项相关的无形技术时, 须按照相关出口管制法律法规的规定申请出口许可。

【推荐给朋友】 【大 中 小】 【打印】

推荐文章:

- 在线办事
  - 两用物项和技术出口管制
  - 最终用户和最终用途说明
- 关于我们
  - 领导致辞
  - 主要职责
  - 内设机构
  - 联系方法

Source: MOFCOM, BISIE, <http://aqyqzi.mofcom.gov.cn/article/ickqz/201506/20150601004662.shtml>

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# India ITT STM

- **Definition of “export”**

In relation to services or technology –

**Supplying, services or technology**

From India into the territory of any other country

**In India to the service consumer of any other country**

**By a service supplier of India, through commercial presence in the territory of any other country**

**By a service supplier of India, through presence of Indian natural persons in the territory of any other country**

- **Definition of “technology”**

Any information (including information embodied in software i.e. floppy disc, compact disc or any other medium), other than information in the public domain, that is capable of being used in

- The development, production or use of any goods or software;
- The development of, or the carrying out of, an industrial or commercial activity or the provision of service of any kind

When technology is described wholly or partly by reference to the uses to which (or the goods which it relates) may be put, it shall include services which are provided or used, or capable of being used in the development, production or use of such technology of goods

# Japan ITT STM

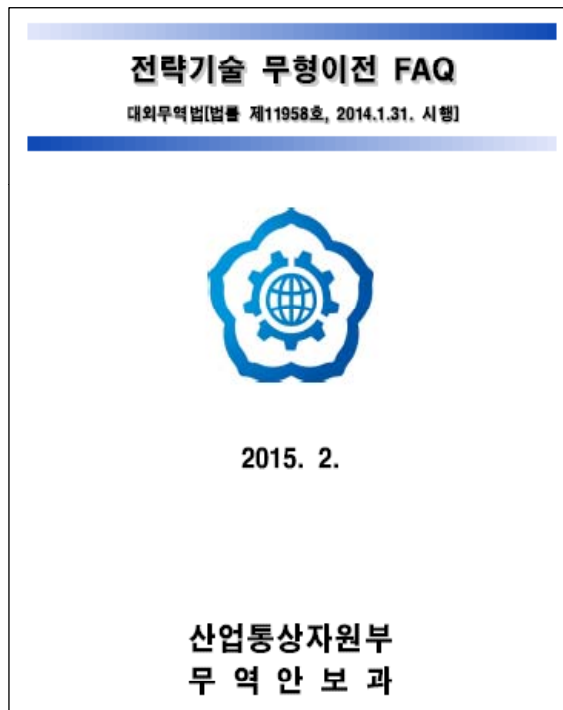
外為令及び貨物等省令のマトリクス 16. 補完品目					
外為令第16項		貨物等省令第28条		解説	
項番	項目	項番	項目	用語	用語の意味
外為令第16項	関税法（明治43年法律第54号）別表第25類から第40類まで、第63類から第95類まで、第68類、第68類から第93類まで又は第95類に該当する貨物の設計、製造又は使用に係る技術であつて、経済産業省令で定めるもの（1から15までの項の中欄に掲げるものを除く。）	貨物等省令第28条	外為令別表の16の項の経済産業省令で定める技術は、専ら関税法（明治43年法律第54号）別表第25類から第40類まで、第63類、第68類から第93類まで又は第95類に該当する貨物の設計、製造又は使用に係る技術とする。	専ら関税法（明治43年法律第54号）別表第25類から第40類まで、第63類、第68類から第93類まで又は第95類に該当する貨物の設計、製造又は使用に係る技術	関税法（明治43年法律第54号）別表第25類から第40類まで、第63類、第68類から第93類まで又は第95類に該当する貨物の設計、製造又は使用に係る技術のうち、関税法別表第25類から第40類まで、第63類、第68類から第93類まで又は第95類に該当する貨物以外の貨物に適用できる技術以外のものをいう。

（注）右2列「プログラム」及び「プログラムを除く技術」の欄は、外為令及び貨物等省令の条文が示す「許可を要する技術」に該当するものを「○」、当該条文においては該当しないものを「-」で示しているものです。「○」の場合、具体的にどのような技術が該当するか等の詳細については、外為令、貨物等省令及び解説当該部分を確認して下さい。  
なお、「技術」とは「プログラム」を含む概念ですので、貨物等省令の条文において「...に係る技術」とされている場合は、「プログラム」「プログラムを除く技術」の欄の両方に「○」が記載されています。

赤字：平成25年10月15日より施行の改正箇所

- **Special ordinance and list for the control of technology in general**
- **Controls apply to both oral and electronic transfers of strategic technology as well as to the provision of training and technical services**
- **Japan residents require a license to transfer listed technology to a non-resident in Japan and to transfer Japan-origin technology to any person when in a foreign country**
- **Special METI guidelines on cloud computing**

## Korea ITT STM



Source: Yestrade,  
<https://www.yestrade.go.kr/common/common.do?jPath=/im/imBm010D>

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- Korea MOTIE introduced clarified and expanded ITT controls in 2014
- Permit required for domestic transfer of controlled technology to foreign persons
- MOTIE issued FAQ guidance to assist traders with the new ITT controls

## Malaysia ITT STM

- **Definition of “export” includes:**

“(b) to transmit technology by any means to a destination outside Malaysia, and includes any oral or visual transmission of technology by a communication device where the technology is contained in a document the relevant part which is read out, described or otherwise displayed over the communications device in such a way as to achieve similar result (**‘Intangible Technology Transfer’**)”

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# New Zealand ITT STM

<ul style="list-style-type: none"><li>» Which goods are controlled?</li><li>&gt; How to export military and dual-use goods</li><li>&gt; How to import or export controlled chemicals</li><li>&gt; How your application is assessed</li><li>&gt; Contact us</li></ul> <hr/> <ul style="list-style-type: none"><li>&gt; UN Security Council sanctions</li><li>&gt; Trade statistics and economic research</li><li>&gt; Trade law and dispute settlement</li></ul>	<h2>New Zealand Strategic Goods List</h2> <p>Your goods, software and technology are controlled if they are listed on the New Zealand Strategic Goods Lists or if they are subject to catch-all provisions. The goods on the Strategic Goods List are derived from the control lists produced by the four export control regimes New Zealand belongs to - the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group and the Missile Technology Control Regime.</p> <p><a href="#">New Zealand Strategic Goods List [PDF, 2.4 MB]</a></p> <p>The Strategic Goods List includes military and dual use goods and technology.</p> <h3>What are dual-use goods?</h3> <p>Dual-use goods are goods and technologies developed for commercial purposes, but which may be used either as military components or for the development or production of military systems or weapons of mass destruction.</p> <h3>What is 'technology'?</h3> <p>'Technology' means specific information or software necessary for the development, production or use of a product. This information takes the form of 'technical data' or 'technical assistance'.</p> <p>'Technical assistance' may take the form of: instruction, skills, training, working knowledge, and consulting services and may involve the transfer of 'technical data'.</p> <p>'Technical data' may be 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 (ROM).</p>
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Source: New Zealand MFAT, <https://www.mfat.govt.nz/en/trade/trading-weapons-and-controlled-chemicals/which-goods-are-controlled/>

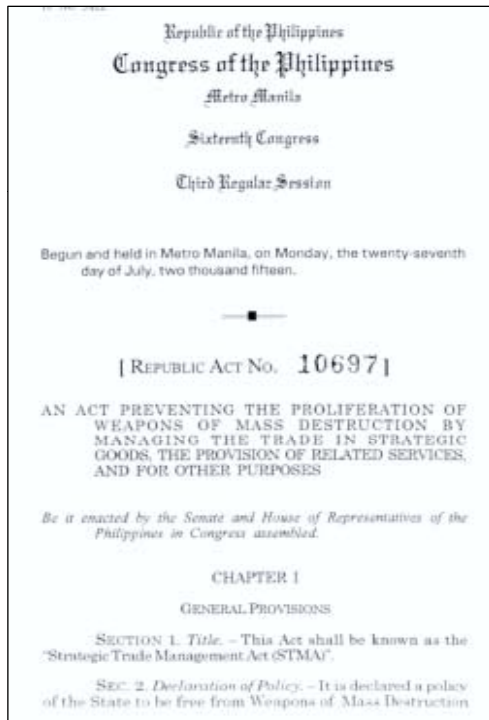
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# Pakistan ITT STM

- **“Export”** means –
  - i. shipment, transfer or transmission of goods or technology out of the territory of Pakistan; and
  - ii. a transfer of goods or technology within Pakistan with knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient outside Pakistan
- **“Services”** means providing training and technical assistance including intangible transfer such as disclosure of technical data relating to the purposes of this Act . . .



# Philippines ITT STM



Source: Congress of the Philippines,  
<http://www.gov.ph/2015/11/13/republic-act-no-10697/>

- **“Export** refers . . . 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”

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# Singapore ITT STM

- **“ITT”** refers to any transmission of controlled strategic goods technology carried out in Singapore by electronic means (e.g. email, fax), or the act of making the controlled strategic goods technology available in Singapore on a computer or server, so that it becomes accessible to a person in a foreign country.

Singapore Customs, Procedures & Systems Branch  
55 Newton Road, #07-01, Revenue House  
Singapore 307987  
Contact No.: 6355 2000  
Fax No.: 6355 2156  
Email: customs\_stgc@customs.gov.sg

APPLICATION FOR PERMIT TO TRANSMIT OR HAND-CARRY STRATEGIC GOODS RELATED SOFTWARE AND TECHNOLOGY

This form may take you 15 minutes to complete.  
You will need the following information to fill in the form:

- Particulars of your company;
- Information on the software or technology you will be exporting or transmitting; and
- End-user's information and the intended end-use of software or technology.

Note:

- Please fill in all fields. Indicate "NA" if the field is not applicable.
- Tick (✓) where applicable.
- This application must be signed:
  - If an individual, by the person directly interested or one of his employees authorised by him in writing;
  - If a partnership, by one of the partners or an employee of the firm duly authorised in writing by one of the partners; or
  - If a body corporate, by a director, the secretary or an employee duly authorised in writing by a director or the secretary of the body corporate.
- Please complete the application form and submit it together with the relevant supporting documents (via email, fax or post) to Singapore Customs.

**SECTION A APPLICATION PURPOSE**

(1)  New Application  Renewal of Application  Updating of Record  Addition of Product(s)

If the purpose is for the renewal of permit or updating of record, please fill in the existing permit number in the "Existing Permit No." field and Sections B, E, G and J.

If the purpose is for the addition of product(s), please fill in the existing permit number in the "Existing Permit No." field and Sections F, G and J.

Source: Singapore Customs, <http://www.customs.gov.sg/eservices/customs-forms-and-service-links#StrategicGood>

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## ITT STM Approaches in APAC \*

COUNTRY	Electronic Transfer	Oral/Visual Transfer	Upload / Download	In-Country Transfer
Australia	Y	Some	Y	WMD “catch-all”
China	Y	Possibly	Possibly	?
India	Y	“Services”	?	“Services”
Japan	Y	Y	Y	Y
Korea	Y	Y	Y	Y
Malaysia	Y	Y	Y	WMD “catch-all”
New Zealand	Y	N	Download	N
Pakistan	Y	Y	Y	Y
Philippines	Y	Y	Y	Y
Singapore	Y	N	Y	N

\* Based on presenter’s own observation and understanding, all errors are presenter’s own

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## Select Challenges to ITT STM in APAC

- **Emphasis on regulating trade in goods, and the more Customs-focused approach to trade control**
- **Differences in industrial and trade profiles across the region, so not all systems have ITT controls and/or have the capacity to enforce them at this time**
- **Controls on “technical assistance” are relatively limited**
- **Potential conflicts with efforts to establish and grow technology hubs, R&D centers, and tech development and cooperation programs**
- **“New” tech challenges: cybersecurity; encryption; cloud computing; Internet of Things (IoT)**

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## Ideas for ITT STM Development in APAC

- Gradual movement towards ITT STM harmonization in the region, starting with definitions and standards for determining what is controlled technology . . .
- . . . Together with programs to promote legitimate, productive intra-regional technology transfer such as “validated” technology development chains, “project licenses”, and intra-company transfer exceptions
- Industry outreach and compliance programs dedicated to ITT STM
- Enforcement efforts dedicated to ITT STM → support for whistleblowers and tips

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## Q+A And Discussion

*Thank you for your time and attention, I will be glad to answer any questions now, or you may contact me any time at:*

**Jay P. Nash**

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