THE STRATEGIC TRADE ACT (STA) 2010

INTANGIBLE TECHNOLOGY TRANSFER (ITT) IMPLEMENTATION IN MALAYSIA

" Facilitating Trade in a Secure Trading Environment."

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Definition of Technology

Ministry of International
Trade and Industry

What is Technology according to STA?

↳ " specific information and data in any form for the design, development, production or use of another item and includes technical data, technical assistance and software."

Types of Technology

Technical Data
- Blueprints
- Plans
- Diagrams and Models
- Formulae and Tables
- Engineering designs and specifications
- Manuals and instructions in print or electronics format

Technical Assistance
- Instructions
- Skills
- Training
- Provision of working knowledge and consulting services
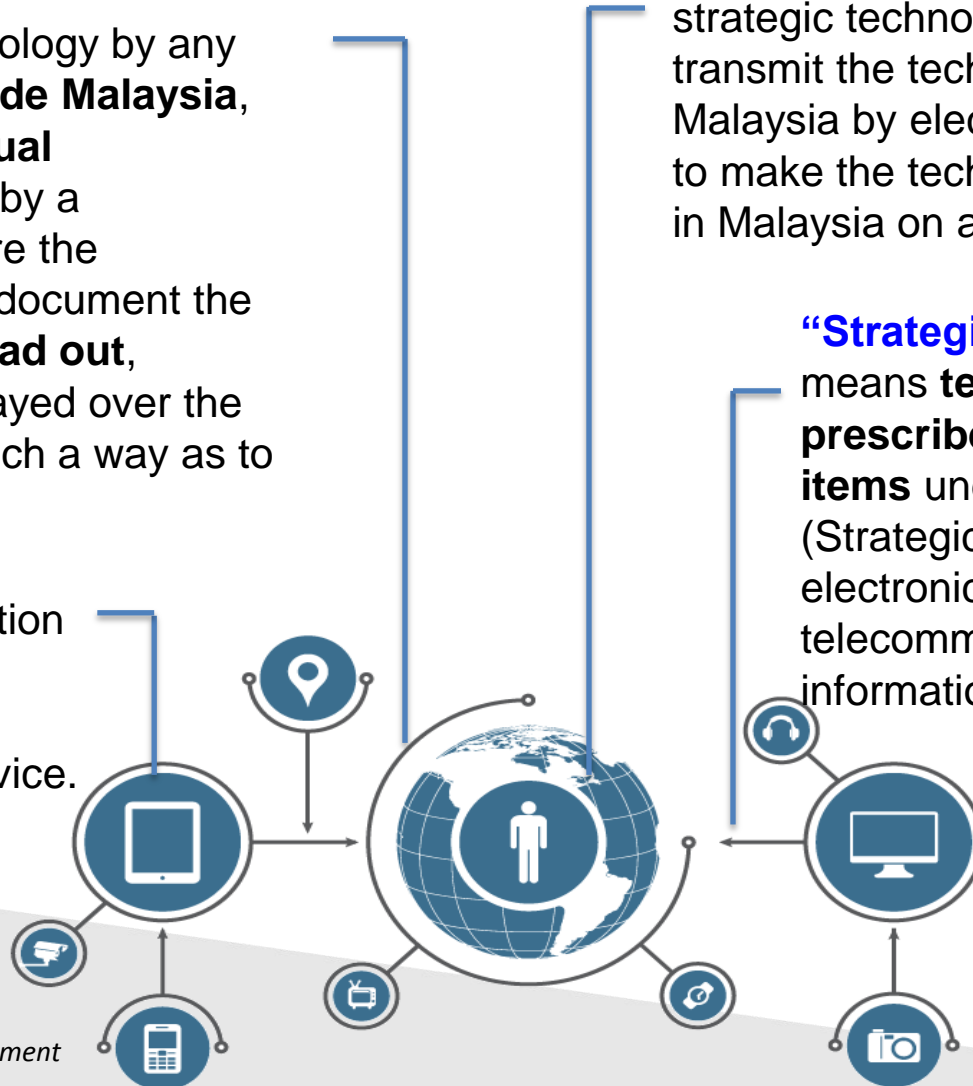- The transfer of technical data

ITT in Perspective

Section 2, STA 2010 - Interpretation

"Export" – to transmit technology by any means to a destination **outside Malaysia**, and includes any **oral or visual transmission** of technology by a communication devices where the technology is contained in a document the **relevant part of which is read out**, described or otherwise displayed over the communications device in such a way as to achieve a similar result.

"Software" – means a collection of programmes or microprogrammes recorded, stored or embodies in any device.

"Transmit" – in relation to strategic technology, means – to transmit the technology in Malaysia by electronic means, or to make the technology available in Malaysia on a device.

"Strategic technology" – means **technology prescribe as a strategic items** under Section 7 (Strategic Items) such as electronics, computers, telecommunications & information security.

ITT Risk

Two variations of ITT risks relating to WMD Proliferation

Transfer of knowledge as technical assistance, through instruction

Transfer of controlled technology or technical data by intangible means

For example: Teaching PhD programs in nuclear physics

For example: Email exchanges of documents related to highly sensitive information.

Why Control Technology?

The technology needed for WMD and delivery system programs is as important – or more important – than strategic commodities themselves.

Section 10, STA 2010 : Provision of Technical Assistance

(1) :   No person shall provide any technical assistance within or outside Malaysia if such technical assistance is intended for use in   connection with a restricted activity.

ITT Concern Parties

CONCERN PARTIES

Scientist – data, results or experiment – foreign scientists directly (collaboration) or during conferences (presentations, discussions)

Industry – via consultancy, manuals and training to the buyer, after-sales service, troubleshooting and adapting the product for related uses.

Academia – via courses, projects and students.

Brokers – facilitate such transfers by sharing information regarding suppliers of controlled technologies or by setting up a controlled transaction.

ITT: Potential Situations

Employment of foreign expatriates

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

Technical assistance (including verbal exchanges) on sensitive technology

Visual inspection by foreign nationals (company's blueprints, plans and technical specifications

Foreign students studying sensitive technology

Collaboration with foreign students for sensitive courses

Our Approach

- ❑ **STA 2010 <u>does not</u> aim to over regulate or restrict the freedom of legitimate research, but the need to balance it with export control regulations.**

- ❑ **Assist relevant industries/ genuine researchers to <u>understand the risks</u> (and penalties) associated with proliferation of WMD in carrying out research projects.**

- ❑ **The <u>implementation</u> of ITT in the institutions/entities (through self-declaration) will be based on the 5 elements of Internal Compliance Programme (<u>ICP</u>).**

- ❑ **The <u>comprehensive</u> and <u>facilitative</u> <u>ITT guideline</u> will be used as a guide for any persons dealing with ITT :** *http://www.miti.gov.my/miti/resources/ITT_Guidelines_2016-Final.pdf*

ITT Guideline

- ❑ **Finalised in December 2016 and was <u>developed based on various consultations/ engagements</u> with relevant industries, academia, research institutions and Government agencies.**

- ❑ **<u>Objective</u>: Ensuring that control is exercised over ITT of both dual-use and conventional weapons technology and promoting ICP to be adopted by institutions/entities as guidance.**

- ❑ **The <u>Guideline</u> <u>contains</u> ITT Control Mechanism namely:**

  - ✓ **flowchart on application;**
  - ✓ **ICP for ITT;**
  - ✓ **exemptions for technology transfer; and**
  - ✓ **FAQs.**

Facilitating Trade in a Secure Trading Environment

INTERNAL COMPLIANCE PROGRAMME (ICP)

Elements of ICP

- **Management Commitment**
- **Screening Process**
- **Training**
- **Record-keeping**
- **Audit**

ITT Exemption

Section 9 (7), STA 2010 : Exemption

(7) :   This section shall not apply to the export of any document in which any strategic technology is recorded, stored, or embodied, or to the transmission of such strategic technology, to the extent that the export or transmission is necessary to facilitate:

- The **installation, operation, maintenance** or **repair** of any items which have been exported;

- An **application for a patent**; and

- A research in such strategic technology, the results of which have **no practical application** (i.e. basic scientific research).
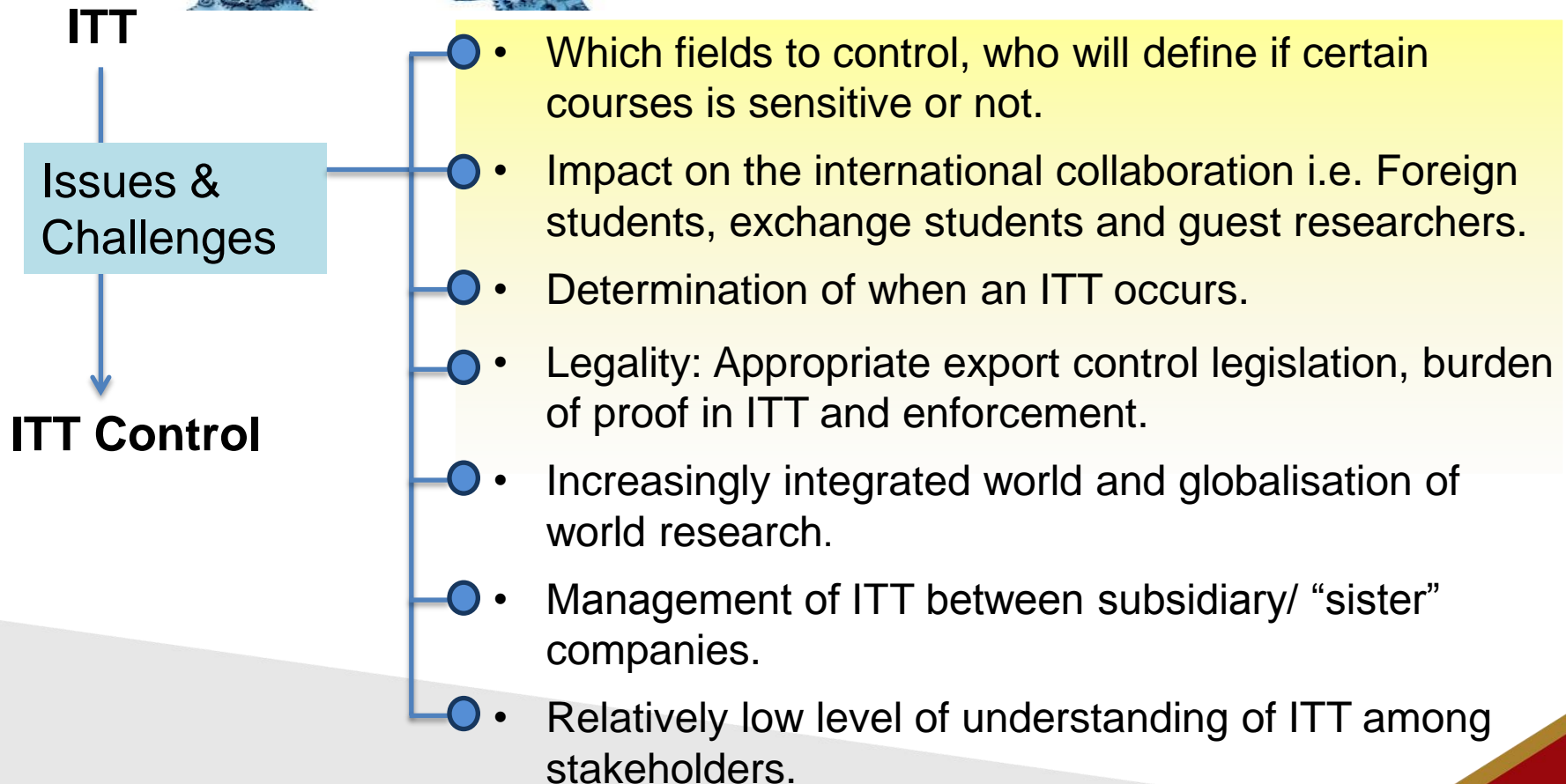
Common ITT Exemption

- **Information "in the <u>public domain</u>"**
  - o Technology or software has been made available without restrictions upon its further dissemination.

- **"<u>Basic</u> scientific research"**
  - o Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts.
  - o Not primarily directed toward a specific practical aim or objective.

- **<u>Minimum</u> "technology" necessary for the installation, operation, maintenance (checking) and repair of items authorised for export**
  - o Transfer is authorised as part of approval of the commodity license.

ITT Issues & Challenges

ITT

Issues & Challenges

ITT Control

- Which fields to control, who will define if certain courses is sensitive or not.

- Impact on the international collaboration i.e. Foreign students, exchange students and guest researchers.

- Determination of when an ITT occurs.

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

- Increasingly integrated world and globalisation of world research.

- Management of ITT between subsidiary/ "sister" companies.

- Relatively low level of understanding of ITT among stakeholders.
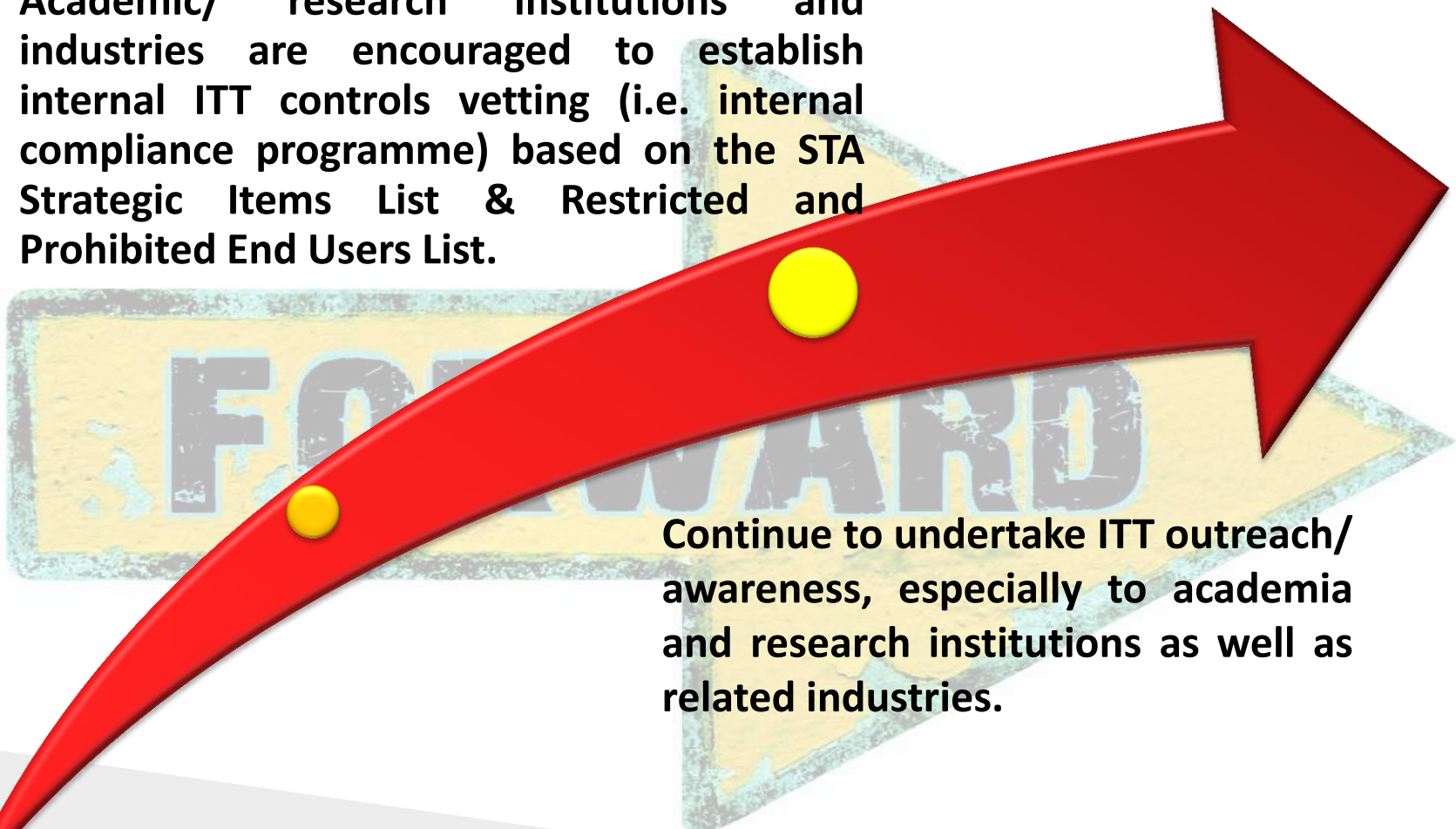
Benefits of ITT Compliance

- ❑ **Leverage on STA to enhance Malaysia's image as a <u>secure</u> place for doing research and attract more <u>genuine researchers</u> and <u>legitimate post-graduate</u> students.**

- ❑ **Promote <u>technology transfer</u> and <u>foreign direct investment</u> into Malaysia.**

- ❑ **Enhance <u>collaboration</u> with foreign research universities which required strong internal ITT compliance.**

- ❑ **<u>Safeguard</u> our academicians and researchers. The valuable research undertaken by academia with proper export control can contribute towards preventing misuse of technology by proliferators to harm global security and regional economic prosperity.**

Moving Forward

Academic/ research institutions and industries are encouraged to establish internal ITT controls vetting (i.e. internal compliance programme) based on the STA Strategic Items List & Restricted and Prohibited End Users List.

Continue to undertake ITT outreach/ awareness, especially to academia and research institutions as well as related industries.

MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY

unlisted item
technology
registration   multiple permit
nuclear weapon
prohibited   training   special permit
brokering
record keeping
strategic technology
software chemical weapon
customs declaration
trade
single permit
military items
UNSCR 1540
strategic items
controller
penalty
investigation
ITT
dual use items
goods bring in transit toxin
relevant authority financial proliferation
delivery verification statement
export
red flag indicator
bulk permit
transship
screening biological weapon
management commitment
end user statement
STA2010
audit
transmit
security
exemption
internal compliance program
awareness
restricted
authorized officer technical assistance

Thank you

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