



MEMORANDUM

FOR : **The OIC Assistant Secretary for Environment and in concurrent capacity, Director Environmental Management Bureau**

The OIC, Assistant Secretary for Field Operations - Mindanao, and in concurrent capacity, Director Forest Management Bureau

The Assistant Secretary for Legal Affairs and Enforcement, and in concurrent capacity, Director Legal Affairs Service

FROM : **The Assistant Secretary Policy, Planning, International Affairs, and Climate Change**

SUBJECT : **REQUEST FOR COMMENTS/CONCURRENCE TO THE PROPOSED MOU BETWEEN US-DOC AND DTI ON ENHANCED EXPORT CONTROL ENFORCEMENT THROUGH INFORMATION SHARING**

DATE : **22 OCT 2024**

This refers to the letter dated 02 October 2024 from Undersecretary Bernardo C. Florence, Jr., the Head Secretariat of the National Security Council – Strategic Trade Management Committee (NSC-STCom), requesting the DENR's comments or concurrence to the proposed Memorandum of Understanding (MOU) on Enhanced Export Control Enforcement Cooperation through Information Sharing between the United States – Department of Commerce (US-DOC) and the Republic of the Philippines - Department of Trade and Industry (DTI).

The MOU aims to facilitate legitimate strategic goods transactions through a robust information sharing mechanism while adhering to the Philippines' non-proliferation obligations. This will allow the Philippines to address the gaps in implementing strategic trade regulations and further ensure that the country is compliant with international obligations.

Please be informed that the DTI-STMO has already consulted the Department of Foreign Affairs to make certain that necessary considerations have been addressed. A Special Authority (SA) is required for DTI to conclude and sign the MOU. One of the requirements for the issuance of SA include incorporating the inputs of the NSC-STCom, as well as Certificates of Concurrence from member agencies¹.

¹ Section 6 of the Republic Act No. 10697 or the Strategic Trade Management Act (STMA)
MEMO NO. 2024 - 940

In this regard, may we request your good Office to conduct the technical and legal review of the attached draft MOU. Your comments or concurrence will serve as basis of recommendation for the Secretary. We would appreciate receiving your comments or concurrence by **25 October 2024**.

Also attached is the Executive Brief, detailing the scope, objectives, and benefits of entering into agreement and information sharing, for your ready reference.

For your information and consideration, please.


NORALENE M. UY, Ph.D.



Office of the President
Malacañang

**NATIONAL SECURITY COUNCIL –
STRATEGIC TRADE MANAGEMENT COMMITTEE
SECRETARIAT**

02 October 2024

PLEASE SEE DISTRIBUTION LIST

**SUBJECT : REQUEST FOR COMMENTS/CONCURRENCE TO THE
PROPOSED MOU BETWEEN US-DOC AND DTI ON
ENHANCED EXPORT CONTROL ENFORCEMENT THROUGH
INFORMATION SHARING**

Dear NSC-STMCom Members:

This has reference to the draft Memorandum of Understanding (MOU) between the United States – Department of Commerce, and the Republic of the Philippines – Department of Trade and Industry regarding Enhanced Export Control Enforcement Cooperation through Information Sharing which aims to facilitate legitimate strategic goods transactions through a robust information sharing mechanism while adhering to the Philippines' non-proliferation obligations. This will allow the Philippines to address gaps in implementing strategic trade regulations and further ensure that the country is compliant with international obligations.

The DTI-STMO has already consulted the Department of Foreign Affairs (DFA) to make certain that necessary considerations have been addressed. As advised by the DFA – Office of American Affairs, a Special Authority (SA) is required for the DTI to conclude and sign the MOU. One of the requirements for the issuance of SA include incorporating the inputs of the National Security Council – Strategic Trade Management Committee (NSC-STMCom), as well as Certificates of Concurrence from the member agencies.

Relative thereto, the Secretariat respectfully forwards the following documents for your comment/s/concurrence: (1) Draft MOU, (2) Executive Brief, and (3) Certificate of Concurrence template for your ready reference and perusal. We would appreciate receiving your comment/s and/or Certificate of Concurrence preferably on or before October 11, 2024 through email address atcpmc.ntpcbs@gmail.com (cc: stmo_rad@dti.gov.ph and ecgarcla-atcpmc@op.gov.ph).

For further queries, your staff may coordinate with the Secretariat through viber no. 0917.6303234.

Thank you very much.

Very truly yours,


USEC. BERNARDO C. FLORECE, JR.
Executive Director, ATC-PMCI &
Head Secretariat, NSC-STMCom





Fwd: OSEC-2024-005980: Request for Comment/s and/or Concurrence on the Proposed MOU

DENR OSEC Referral <osec.referral@denr.gov.ph>

Fri, Oct 4, 2024 at 1:00 PM

To: Undersecretary for Organizational Transformation <ouot@denr.gov.ph>

Cc: atcpmc.mabini@gmail.com, "Undersecretary for Policy, Planning and International Affairs" <ouppia@denr.gov.ph>

Sir/Madam:

Respectfully referred to your good office for information and appropriate action, with EDATS No. OSEC-2024-005980.

Thank you!

NOTE: DO NOT REPLY TO THIS EMAIL. For updates, inquiries and other communications, please send to osec@denr.gov.ph.



OFFICE OF THE SECRETARY
4/F DENR Main Building
Visayas Avenue, Diliman
Quezon City

From: ATC PMC <atcpmc.mabini@gmail.com>

Date: Thu, Oct 3, 2024 at 11:37 AM

Subject: Request for Comment/s and/or Concurrence on the Proposed MOU

To: Office OSEC <osec@dfa.gov.ph>, OSEC DND <osec301@gmail.com>, <ouscad.dnd@gmail.com>, Office of Civilian Security <ocs@dfa.gov.ph>, <dilgbcabalosjr@dilg.gov.ph>, dilg.ouspo2022@gmail.com <dilg.ouspo2022@gmail.com>, Osec DOH <osec.doh@gmail.com>, DENR (osec@denr.gov.ph) <osec@denr.gov.ph>, DOH OSEC <dohosec@doh.gov.ph>, DOJ records <records@doj.gov.ph>, <osec@doj.gov.ph>, <usecty.doj@gmail.com>, Secretary Finance <secfin@dof.gov.ph>, <osec@da.gov.ph>, Office of the Secretary DOTr <osec@dotr.gov.ph>, DOST OSEC <osec@dost.gov.ph>, ONSA-ODG <onsa-odg@nsc.gov.ph>, DICT Information <information@dict.gov.ph>

Cc: cc: OES <oes@malacanang.gov.ph>, DTI Secretary <dtisecretary@dti.gov.ph>, Janice Dimayacyac <janicedimayacyac@dti.gov.ph>, Domina Pia S. Salazar <dominapiasalazar@dti.gov.ph>, Alethea C. Bravo <aletheabravo@dti.gov.ph>, Jesse Carla V. De Guzman <JesseCarlaDeGuzman@dti.gov.ph>, Regina Samantha Castro <ReginaSamanthaCastro@dti.gov.ph>

Goodafternoon Sirs and Mesdames,

The National Security Council - Strategic Trade Management Committee (NSC-STMCom) Secretariat respectfully transmits the attached proposed "Memorandum of Understanding between the US - Department of Commerce and the PH - Department of Trade and Industry regarding Enhanced Export Control Enforcement Through Information Sharing", Executive Brief, and COC Template for your agency's review, comment/s and/or concurrence.

Relative thereto, the Secretariat would appreciate receiving your comment/s and/or concurrence preferably on or before 11 October 2024 through email address: atcpmc.mabini@gmail.com (Attn: NSC-STMCom Secretariat).

Kindly acknowledge receipt of this email. Thank you very much.

Respectfully yours,

Elizabeth Cuevas-Garcia
NSC-STMCOM Secretariat
ecgarcia-atcpmc@op.gov.ph
0917.6303234

4 attachments

Letter to NSC-STMCom.pdf
61K

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF INDUSTRY
AND SECURITY**

AND

REPUBLIC OF THE PHILIPPINES, DEPARTMENT OF TRADE AND INDUSTRY

**REGARDING ENHANCED EXPORT CONTROL ENFORCEMENT
COOPERATION THROUGH INFORMATION SHARING**

- 1. PARTICIPANTS.** The Participants to this Memorandum of Intent (“MOU”) are the U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) and the Department of Trade and Industry of the Republic of the Philippines (“DTI”) (jointly referred to as “the Participants”).
- 2. PURPOSE.** The United States and the Philippines maintain a strong bilateral trade relationship and recognize that offenses against export control laws threaten their respective national security interests. BIS is the U.S. government agency responsible for administering and enforcing export controls applicable to dual-use and certain munitions items pursuant to the Export Control Reform Act of 2018 (“ECRA”) and the Export Administration Regulations (“EAR”). The Department of Trade and Industry (DTI) is the executive department of the Philippine government responsible for the advancement, promotion, governance, regulation, management and growth of industry and trade. The DTI is designated under Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA) as the Vice-chairperson of the National Security Council – Strategic Trade Management Committee (NSC-STMCom), which is the central authority on any and all matters relating to strategic trade management. The Strategic Trade Management Office (STMO), placed under the administrative supervision of the DTI, serves as the executive and technical agency of the national government for the establishment of the management systems for the trade in strategic goods pursuant to the STMA. To enhance the partnership and enforcement cooperation between the Participants, BIS maintains an export control officer based in Singapore with regional responsibility for Philippines, to aid in the facilitation of export enforcement collaboration.
- 3. INFORMATION SHARING.** The Participants agree to abide by the following agreements, laws, and policies (or any successor agreements or policies):
 - A.** Section 1761(h) of the ECRA prohibits the release of export control related information without a determination that such disclosure is in the U.S. national interest. Specifically, the ECRA prohibits the release of information obtained for the “consideration of, or concerning, license applications... unless the release of such

CONTROLLED UNCLASSIFIED INFORMATION

information is determined by the Secretary [of Commerce] to be in the national interest.” The authority to make such determinations has been delegated by the Secretary [of Commerce] to the Under Secretary for Industry and Security. Accordingly, BIS intends to share information with DTI in accordance with the provisions of applicable national interest determinations made by the Secretary or Under Secretary.

B. In carrying out all activities related to this information sharing agreement, the Participants will follow all applicable laws and DTI policies regarding the handling and sharing of DTI information, and all applicable laws and BIS policies regarding the handling and sharing of BIS information to which they may be granted access. The Participants will be responsible for providing relevant employees with appropriate training to ensure they understand their responsibilities under the above-referenced laws and policies, including:

- (i) Restricting access to information shared under this MOU to personnel with an official need to know.
- (ii) Informing those persons who are provided access to such information of their safeguarding responsibilities.
- (iii) Both BIS and DTI will establish a primary point of contact in their respective headquarters to coordinate and manage the exchange of information subject to this MOU.
- (iv) A Participant is expected to notify the other Participant if it becomes aware of any unauthorized disclosure of information provided by the other Participant.

C. For purpose of the sharing of information, the terms “dual-use strategic commodities” and “information” shall be understood based on the following definitions:

“Dual-Use Strategic Commodities” means commodities, software and technology that have both commercial and military end-use or proliferation applications and are controlled by the Participants pursuant to applicable laws and regulations for such reason.

“Information” means any fact, statement, document, or record in whatever form related to controls on trade in Dual-Use Strategic Commodities that each Party may possess, including but not limited to information on any dual user export licensing or enforcement-related activities and information received from license applicants and licensees such as, information contained in license applications, proprietary data, and end-user information.

D. Liaison. As needed to meet the purpose and objectives of this MOU and as available resources and funding permit, BIS agrees to utilize its export control officer based in Singapore, as the primary liaison for the sharing of information.

4. FUNDS. This MOU does not obligate funds or create a financial obligation between the Participants. All activities contemplated by this MOU are subject to the availability of appropriated funds and other necessary resources to the Participants.

5. NO PRIVATE RIGHT OF ACTION. This MOU is an administrative understanding between the Participants and is not intended to be legally binding. This MOU does not confer any rights or benefits on any third party and is not intended to give rise to any rights or obligations under the domestic laws of either Participant or under international law.

6. SEVERABILITY. Nothing in the MOU is intended to conflict with current laws or regulations of the Participants. If a provision of the agreement is subsequently deemed to be inconsistent with such authority, then that provision shall be invalid. The illegality or invalidity of any provision of this MOU shall not impair, affect, or invalidate the other provisions of this MOU.

7. AMENDMENTS AND TERMINATION. This MOU will become effective upon last signature and will be in effect until terminated. This MOU may, at any time, be modified or amended upon mutual written concurrence of the Participants. Each Participant is expected to provide written notice to the Designated Officials of the other Participant, through diplomatic channels, regarding any changes to its laws, regulations, or policies that affect the operation of this MOU. A Participant seeking to terminate the MOU shall strive to provide the other Participant with at least thirty (30) days written notice through diplomatic channels. Notwithstanding termination of this MOU, BIS and DTI must continue to treat any information accessed or acquired under this MOU in accordance with the information sharing provisions above.

9. DISPUTE RESOLUTION. The Participants undertake to endeavour in good faith to resolve any differences and disputes arising from under, or in connection with, this MOU through consultations and diplomatic channels.

8. EFFECTIVITY AND DURATION. This MOU shall take effect on the date of later written notification by the Participants, through diplomatic channels, indicating that the domestic requirements for its entry into force have been complied with.

This MOU will remain effective unless expressly terminated with a written notice of the above Participants, through diplomatic channels.

Matthew S. Axelrod
Assistant Secretary for Export Enforcement
Bureau of Industry and Security, U.S. Department of Commerce

Date

Allan B. Gepty
Under Secretary of International Trade Policy
Department of Trade and Industry, Republic of the Philippines

Date

ADDITIONAL LANGUAGE:

1. Disclosure and Use of Export Information

The Participants intend to coordinate to the extent practicable oversight, investigation, and enforcement activities of mutual interest. To facilitate this coordination, BIS and DTI may share information concerning ongoing investigative and enforcement activities pursuant to this MOU.

Information obtained from the other Participant pursuant to this MOU is only intended for intelligence, investigative, or administrative enforcement activities, unless otherwise authorized by the disclosing Participant. The Participants may seek authorization to obtain, use, or disclose information for criminal proceedings through other means, including the Treaty between the Government of the Philippines and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters.

DRAFT

DOCUMENT BRIEF: Memorandum of Understanding Between the United States Department of Commerce, Bureau of Industry and Security and the Republic of the Philippines, Department of Trade and Industry Regarding Enhanced Export Control Enforcement Cooperation Through Information Sharing

EXECUTIVE BRIEF	
Document Title	Memorandum of Understanding Between the United States Department of Commerce, Bureau of Industry and Security and the Republic of the Philippines, Department of Trade and Industry Regarding Enhanced Export Control Enforcement Cooperation Through Information Sharing
DTI Roles and Responsibilities	<p>As the executive and technical agency of Republic Act No. 10697, otherwise known as the Strategic Trade Management Act (STMA) of 2015, the Department of Trade and Industry – Strategic Trade Management Office (DTI-STMO) is mandated to carry out registration activities and the issuance of authorization/licensing to engage in the trade of strategic goods.</p> <p>Additionally, it is crucial for the STMO to establish and maintain a comprehensive database information system on strategic goods (military goods, dual-use goods, and nationally-controlled goods) and on persons engaged in the trade of strategic goods and the provision of related services (Chapter II, Section 9 of the STMA).</p>
Scope & Objectives	<p><u>Scope</u> The Understanding is limited to information pertaining to the export, licensing, and enforcement activities relating strictly to dual-use strategic commodities. Therefore, commodities, software, and technology that have both commercial and military-end use or proliferation applications and are controlled by both participants. The information shared could be a fact, statement, document, or record in whatever form related to trade controls of dual-use strategic commodities.</p> <p><u>Objectives</u> To maintain and enforce effective controls on trade in dual-use strategic commodities through information sharing.</p> <p>To enhance the partnership and cooperation between the United States – Department of Commerce (US DOC) Bureau of Industry and Security (BIS) and the DTI – Philippines.</p>
Benefits of Entering into agreement	The MOU will establish a robust information sharing mechanism. This will particularly aid the STMO - the lead agency responsible for managing the trade in strategic goods, and other support agencies and bureaus in effectively implementing the STMA. In this regard, the MOU would offer the following benefits:

DOCUMENT BRIEF: Memorandum of Understanding Between the United States Department of Commerce, Bureau of Industry and Security and the Republic of the Philippines, Department of Trade and Industry Regarding Enhanced Export Control Enforcement Cooperation Through Information Sharing

	<ol style="list-style-type: none"> 1) Support the STMO in its licensing evaluation process as it would equip the STMO with the necessary resources to validate data pertaining to US companies and verify their legitimacy. Through this Understanding, the STMO will be able to engage with its US counterparts to confirm the status of end-users, and mitigate any potential risk of diversion; 2) Gain access to classified or sensitive information that are vital to verifying the legitimacy of transactions and the accuracy of information submitted by the stakeholders. It is important to note that information sharing will only be granted in accordance with applicable laws and policies of both participants; 3) Safeguard legitimate businesses from becoming entangled in proliferators' supply chains. The exchange of information will aid in reducing the likelihood of Philippine companies being subjected to secondary sanctions and exploited for illicit purposes by non-state actors or terrorists; and, 4) The information received may be used as evidence in case of criminal violations of the STMA. <p>In addition, the MOU will strengthen the partnership and cooperation between the Philippines and the United States. This would allow the two nations to advance our shared interests.</p> <p>Further, it would also underscore the Philippines' commitment to fulfilling its international non-proliferation responsibilities and substantially contributing to global peace, security, and stability.</p> <p>Ultimately, an information sharing mechanism would enhance the Philippines' capability to identify transactions that are high-risk and may be non-compliant. The MOU would help facilitate the trade of legitimate and compliant dual-use strategic goods. Thus, through information sharing, it could increase efficiency and in time lead to more robust economic growth and opportunity for the country.</p>
<p>Actual Benefits of the Information Sharing</p>	<p>In August 2023, the STMO denied an authorization application for the export of Transistor (NSGL Code: 3A001.b.3.a.2) to Skyline Advanced Technologies Sdn Bhd as the ultimate end-user. The STMO follows the risk assessment criteria stipulated under Rule IV, Section 6 of the STMA IRR, which</p>

DOCUMENT BRIEF: Memorandum of Understanding Between the United States Department of Commerce, Bureau of Industry and Security and the Republic of the Philippines, Department of Trade and Industry Regarding Enhanced Export Control Enforcement Cooperation Through Information Sharing

	<p>includes the verification of the parties involved in the transaction to ensure that they will not facilitate the transfer or use the goods for the development of weapons of mass destruction or for any illegitimate military end-use.</p> <p>Prior to receiving the said export authorization application, the US DOC-BIS informed the STMO regarding Skyline Advanced Technologies Sdn Bhd as one of the entities providing support to Iran's proliferation networks. This information also served as one of the factors during the assessment of the application. Furthermore, the end-user was initially procuring a servomotor from another Philippine company, but Skyline Advanced Technologies Sdn Bhd withdrew its order since the STMO requested more information about the end-user during the application for the export of servomotors.</p> <p>On 19 December 2023, Skyline Advanced Technologies Sdn Bhd was added to the Specially Designated Nationals (SDN) list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).</p> <p>The information received from the US DOC-BIS significantly aided the denial of the said application and avoided the exposure of the Philippine companies to secondary sanctions. Ultimately, it protected the Philippine companies from being exploited by non-state actors for their illicit activities.</p>
Actions Needed	<p>As a prerequisite for the issuance of a Special Authority to conclude and sign the Understanding, the Department of Foreign Affairs requests the National Security Council – Strategic Trade Management Committee (NSC-STMCom) to be consulted and sign the attached Certificate of Concurrence.</p>

CERTIFICATE OF CONCURRENCE

This is to certify that the _____ (Name of Agency) _____ has
been consulted and concurs with the ratification of the
_____ [Title of the Agreement] _____.

[Name & Signature of Head of Agency]

[Official designation]

[Date]