

MEMORANDUM CIRCULAR NO. 21-10
Series of 2021

SUBJECT: GUIDELINES ON COMMODITY CLASSIFICATION

WHEREAS, Section 2 of the Strategic Trade Management Act (STMA) states that any natural or juridical person engaged or intending to engage in the activities covered under the STMA shall be responsible for classifying commodities in accordance with the National Strategic Goods List (NSGL).

WHEREAS, Section 3 of the STMA provides that the following activities shall be subject to an authorization issued by the Strategic Trade Management Office (STMO): export, import, transit, transshipment, re-export, reassignment of strategic good, and the provision of related services.

WHEREAS, Section 4 of the STMA creates a National Strategic Goods List (NSGL) which describes with specificity the strategic goods subject to authorization. The NSGL is composed of three (3) annexes: Military Goods (Annex 1), Dual-Use Goods (Annex 2), and the Nationally Controlled Goods (Annex 3).

NOW, THEREFORE, this Circular is hereby issued to advise and guide all persons on the methodology to classify strategic goods.

1. Commodity Classification

Commodity Classification determines whether an item, software, or technology is under the NSGL. It is strictly a technical decision about an item or a related service. An item's end-use or destination plays no part in determining whether the item is on the NSGL or not.

2. Definition of Terms

2.1. **Accessories** refer to items that are not necessary for the normal functioning of a higher-level unit but expand the unit's functioning beyond its normal measure.

2.2. **Components** refer to items that are necessary for the normal functioning of a higher-level unit.

2.3. **Development** is related to all stages before serial production, such as design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, the process of transforming design data into a product, configuration design, integration design, and layouts.

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2.4. **Production** means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance.

2.5. **Use** means operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing.

3. Person Responsible for Commodity Classification

3.1. An applicant shall be responsible for commodity classification. The applicant needs to classify its commodities under the NSGL before applying for authorization.

4. General Methodology of Classifying a Commodity

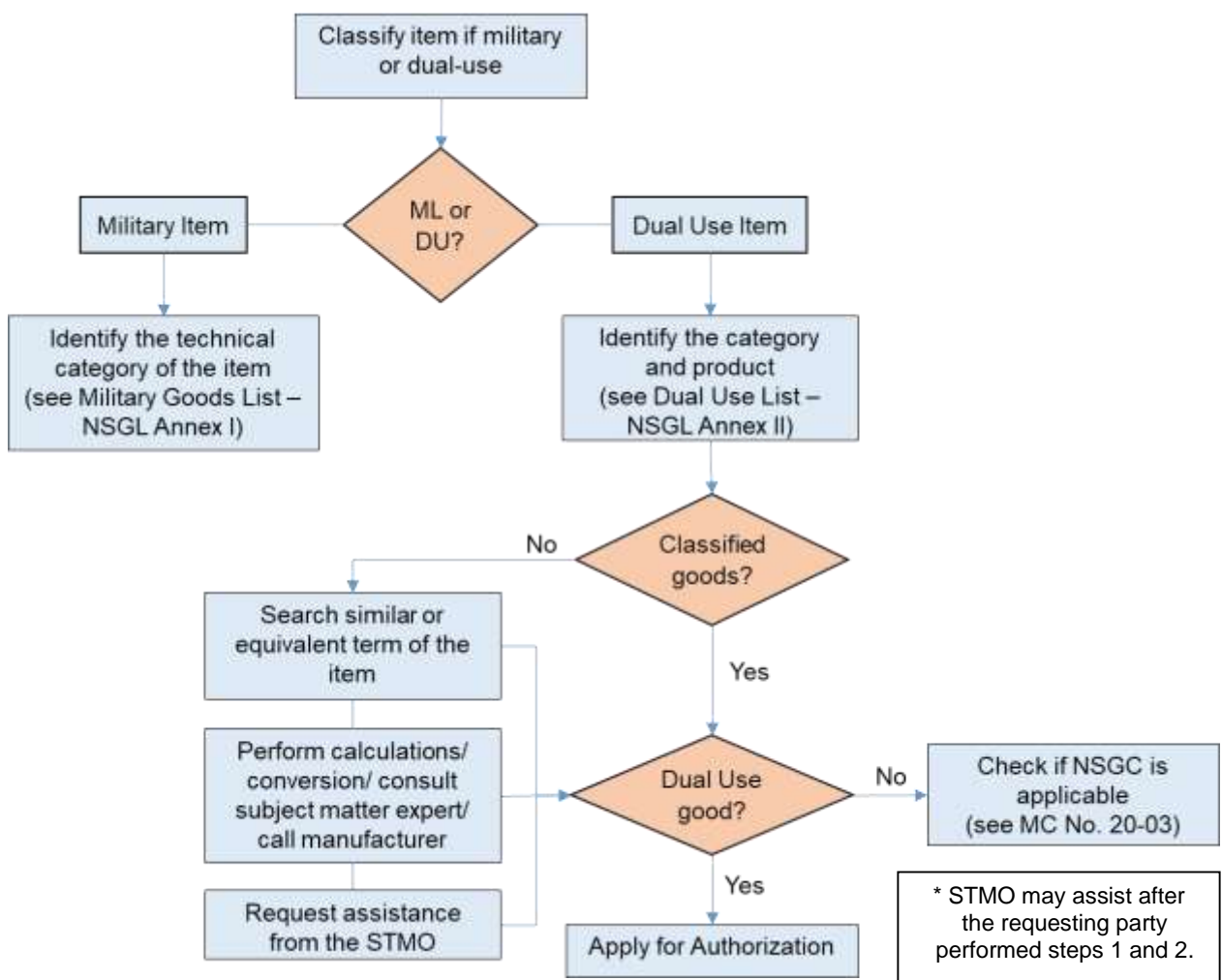


Fig 1. Commodity Classification General Process

4.1. The applicant shall determine whether the item is military or dual-use.

4.2. If the applicant determines that the item is military, it shall identify the appropriate category in accordance with the Military Goods List (NSGL Annex 1).

The Military Goods List (NSGL Annex 1) is a negative list, i.e., a military item is regulated unless there is an exemption.

4.3. If the applicant determines that the item is dual-use, the methodology below must be followed:

4.3.1. Identify the correct technical category and product group in accordance with the Dual-Use Goods List (NSGL Annex 2).

4.3.2. Once a decision is made that an item falls within a certain product group, the next step is to determine which entry within the product group the item falls. The applicant may follow these steps:

- a. Begin by reading the heading for each entry.
- b. Select one or more headings that most closely describe the item.
- c. Using the product information, select the most appropriate entry for the item. The applicant must compare the product literature describing the item vis-à-vis the technical specifications in the NSGL entries.

4.3.3. After applying the abovementioned steps and it is still difficult to determine the proper NSGL code for the item, the applicant may do any of the following:

- a. Using the PDF file of the NSGL, use the find function to search similar or equivalent terms in the control list.
- b. Work from information in the product literature and perform calculations, if necessary, to generate the technical specifications needed. If the applicant does not have enough information about a product, it should perform a calculation or conversion to determine the item's technical parameters, if possible.

For example, an item's product literature may provide the parameters in English units, whereas the description in the NSGL uses metric or international units. In this case, the applicant must convert the English units into metric units.

In other cases, the applicant may have to define a measurement through a mathematical calculation. Suppose there is a parameter in the entry that is not provided in the product information. In that case, the applicant may be able to use the information provided to calculate the other parameter.

- c. Consult a subject matter expert who has technical knowledge of the item's technical parameters.

- d. Consult parent company/ subsidiaries/ affiliates, specifically those located in countries with strategic trade management or export control laws, if they are exporting the same item and request classification.

Note: The NSGL is the same list as the European Union Control List, which most countries with strategic trade management/ export control laws adopt.

- e. Call the manufacturer to get additional technical specifications and information.
- f. Request assistance from the STMO.

4.3.4. An applicant should note that the Dual-Use Goods List (NSGL Annex 2) is a positive list, i.e., a dual-use item is controlled if its technical parameters match or exceed the parameters prescribed in the relevant control list entry.

5. Determining Commodity Jurisdiction – Military or Dual-Use

- 5.1. The first step is to identify whether an item is to be assessed against the Military Goods List (NSGL Annex 1) or the Dual-Use Goods List (NSGL Annex 2).
- 5.2. The decision is generally based on what an item was “originally designed” for or what it has been “modified” for. To make such a determination, the applicant needs information on the commodity's origin and history: How was the item originally used? Why was the item created? Who and under what project the development of the item was funded? Has it been designed or modified specifically for military use? Has it changed over time? Special characteristics, such as whether it conforms to military standards?

The information on the current application or use of the item can be relevant but is not the main deciding factor. A commercial item is considered “modified” for military end-use by adding one or more specially designed components.

- 5.3. A dual-use item has been designed for commercial use but can be sold to commercial and military end-users. The term “dual-use” is based on the fact that two possible end-users can use the item. Thus, despite its commercial use, many dual-use items have equal performance, or in some cases, better than their military equivalent. This is the reason why they are controlled.
- 5.4. The distinction of whether an item is military or dual-use determines whether an item requires authorization from the STMO. Almost all military goods would require authorization, while dual-use goods are licensable only if they match or exceed the parameters specified in the NSGL. Nevertheless, even

if an item is not listed in the NSGL, an authorization may still be required if it satisfies the catch-all conditions under Section 11 of the STMA.

6. Categories under the Military Goods List (NSGL Annex 1)

6.1. The Military Goods List (NSGL Annex 1) is based on the EU Common Military List.

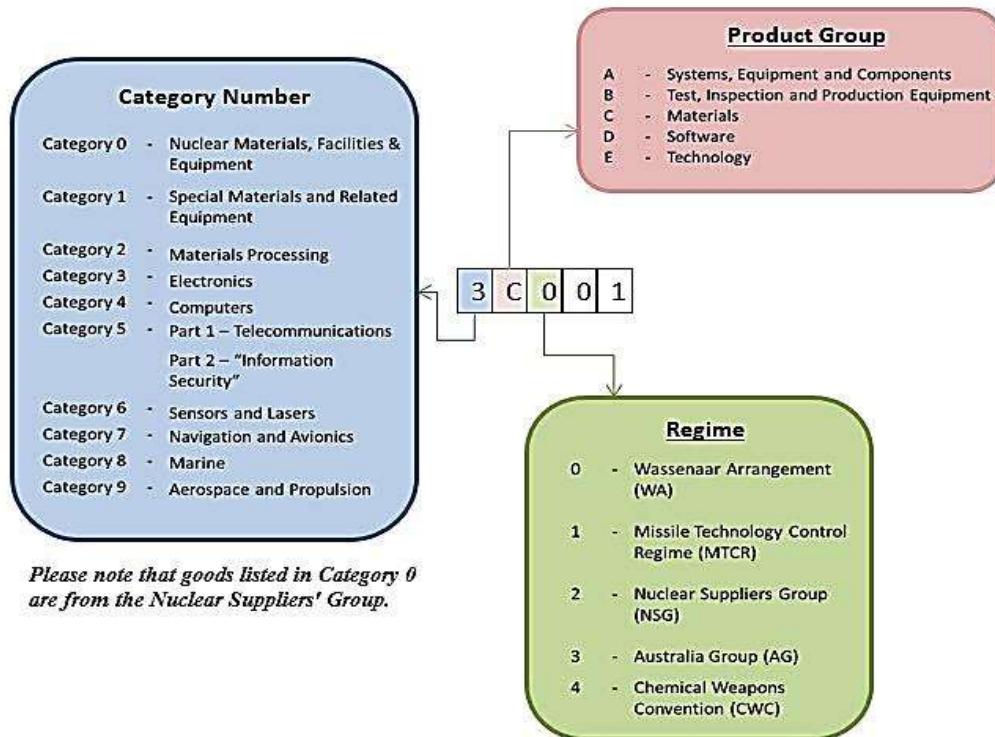
6.2. Military items are specially designed, developed, assembled, manufactured, adapted, configured, or modified for a military application. They include entire products (substances, materials, devices, equipment, systems, etc.) and specifically designed assemblies, accessories, attachments, associated equipment, parts, and components. It also includes technology and software related to these military items.

6.3. The Military Goods List (NSGL Annex 1) consists of 22 “ML” categories:

ML 1	Arms and Automatic Weapons with a Caliber of 12.7 mm or less	ML 12	High-Velocity Kinetic Energy Weapon Systems
ML 2	Arms and Automatic Weapons with a Caliber Greater than 12.7mm	ML 13	Armored or Protective Equipment
ML 3	Ammunition	ML 14	Specialized Equipment for Military Training or for Simulating Military Scenarios
ML 4	Bombs, Torpedoes, Rockets, Missiles	ML 15	Imaging or Countermeasure Equipment
ML 5	Fire Control and Related Alerting and Warning Equipment	ML 16	Forgings, Casting, and Other Unfinished Products
ML 6	Ground Vehicles and Components	ML 17	Miscellaneous Equipment, Materials, and Nuclear Power Generating Equipment
ML 7	Chemical or Biological Toxic Agents, Tear Gases	ML 18	Production Equipment and Components
ML 8	Military Explosives and Fuels	ML 19	Directed Energy Weapon Systems – Lasers
ML 9	Vessels of War, Special Navy Equipment	ML 20	Cryogenic and “Superconductive” Equipment
ML 10	Aircraft	ML 21	Software for the Development, Production or Use of Items in the Military List
ML 11	Electronic Equipment, Spacecraft	ML 22	Technology for the Development, Production or Use of Items in the Military List

7. Categories under the Dual-Use Goods List (NSGL Annex 2)

7.1. The Dual-Use Goods List (NSGL Annex 2) is also based on the EU Consolidated Dual-Use List. It is made up of individual entries that are identified by a five-character code. This five-character NSGL code is illustrated as follows:



7.1.1. The **first character** of every NSGL code places the item into one of 10 broad technical categories. The categories are labeled from 0-9:

- 0 = Nuclear materials, facilities, and equipment
- 1 = Special materials and related equipment
- 2 = Materials processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and “information security”
- 6 = Sensors and lasers
- 7 = Navigation and avionics
- 8 = Marine
- 9 = Aerospace and propulsion

7.1.2. The **second character** represents one of five product groups (A-E). Each of the ten technical categories contains the same five groups.

- A = Systems, equipment, and components
- B = Test, inspection, and production equipment
- C = Materials

D = Software
E = Technology

7.1.3. The **third through fifth characters** represent the multilateral regimes or unilateral policy under which the item is controlled. The regime or control rationales are:

000-099 = Wassenaar Arrangement
(conventional arms and related dual-use items)
100-199 = Missile Technology Control Regime
200-299 = Nuclear Suppliers Group
300-399 = Australia Group
(chemical substances, biological agents and their production equipment)
400-499 = Chemical Weapons Convention
500-899 = Reserved
900-999 = NSGL Annex 3 (Nationally Controlled Goods List)

7.2. The applicant shall perform the following steps after ascertaining that an item is dual-use:

7.2.1. Identify the correct technical category (**0-9**) for the item. In determining which product category to select, an applicant must first consider the item's technical specifications.

7.2.2. Identify the correct product group (**A-E**) for the item. If a determination cannot be made as to which product group is correct, then the applicant must consider the item's general use.

7.2.3. Determine if the item's technical specifications match or exceed the control levels of any of the individual entries within that group on the NSGL.

7.3. The end-use of a specific item should not be considered when classifying a commodity. The problem arises when an applicant attempts to classify an item with both hardware (Group A) and production equipment (Group B) characteristics. This is called "**technical overlap**." It raises the question, "Is the item controlled based on its technical merit (hardware) or its use in various applications?"

7.3.1 To further provide clarification, the following explanations are given:

- a. Group A controls systems, equipment, and components that can be used in civil or military applications. For categories 3 – 9, group A is the largest and most important group.
- b. Group B items are typically used to manufacture, inspect, or test items in group A of the same category. Production and test equipment not applicable to a specific category is controlled in category 2.

- c. For example, category 3 (Electronics), product group A controls integrated circuits with both civil and military applications. Integrated circuits are controlled under product group A rather than group B because they are not used in the testing, inspection, or production of electronic equipment by themselves. Group B contains control list entries that specifically control equipment for the manufacture and testing of semiconductor devices, including integrated circuits.
- d. When an applicant classifies an item that may have a "technical overlap," the applicant must first look at its primary strategic use. The primary use of the item usually determines how it is controlled.

7.4. The applicant should keep in mind that an item is controlled if it performs matching or exceeds the limits stated in the Dual-Use Goods List (NSGL Annex 2).

8. Control List Headings

8.1. The heading is like a title. Most control list headings provide a brief and general description of the items that are controlled. On occasion, however, the heading may be somewhat lengthy and provide a specific, technical description of the controlled items. In such cases, the heading itself is considered the entry.

8.1.1. For example, the heading for 1B225 *is* the entire entry. Its heading reads:

Electrolytic cells for fluorine production with an output capacity greater than 250 g of fluorine per hour.

In this entry, the control description and control parameters are contained within the heading. No additional paragraphs are needed.

8.1.2. There is a similar example from the Military Goods List (NSGL Annex 1):

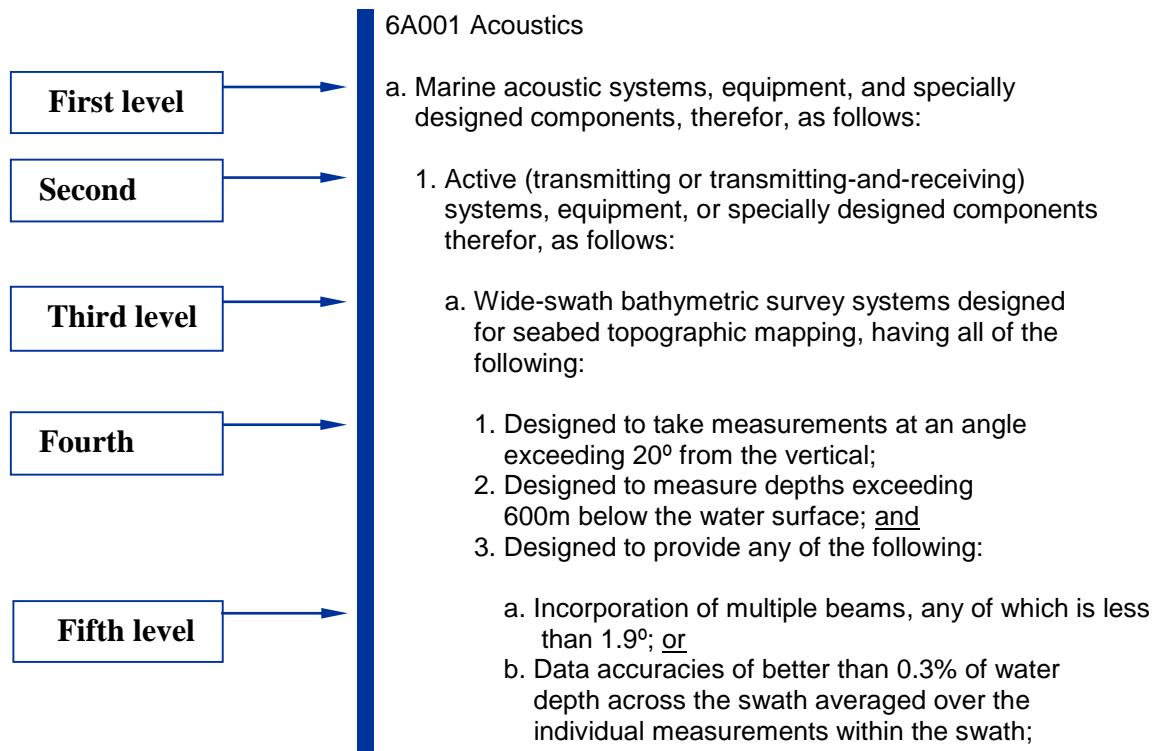
ML16. Forgings, castings, and other unfinished products, the use of which in a specified product is identifiable by material composition, geometry, or function, and which are specially designed for any products specified by ML1 to ML4, ML6, ML9, ML10, ML12, or ML19.

8.2. However, in most cases, an entry contains a heading and a separate body of text describing the controlled items.

9. Body of Text

9.1 The body of text begins with a list of items that the entry controls. It also contains technical descriptions and special notes regarding the strategic items.

9.2 In some cases, the list of items is divided into subsets. See the example below:



9.3 The applicant must pay careful attention to the wording because there are two ways to apply these parameters, as an item may be controlled by more than one technical parameter.

9.4 If the text preceding the parameters says “*having all of the following characteristics*” and the parameters are connected by the word “and,” then the item is controlled if it meets all the specifications set in the parameters.

9.5 However, if the text preceding the parameters states “*having any of the following characteristics*” and the parameters are connected by “or,” then the item is controlled if it meets any of the parameters set in the control list entry.

10. Special Language and Advisory Notes

10.1 Special Language appears in NSGL headings and entries to further define or clarify controls. It is used to maintain consistency in the NSGL and limit the scope of controls by eliminating ambiguity. Thus, when an applicant sees quotation marks around words or phrases, this means that the term has been interpreted in the NSGL in a pre-defined manner.

10.1.1. Examples of the special language used in the NSGL are the following:

a. “***Specially Designed Components Therefor***”

This phrase means that any part and component unique to the larger system are controlled in addition to the item itself.

For example, the heading for 4A001 reads as follows: “*Electronic Computers and Related Equipment, having any of the following “electronic assemblies” and specially designed components therefor.*”

In this case, if the controlled equipment breaks down and the exporter wants to send parts to the end-user for repairs, the exporter will have to apply for an export license before sending the parts.

b. **“Except”**

The word “*except*” indicates that not all items falling within the technical parameters are controlled. Thus, all items immediately following the word “*except*” are not controlled under that control list entry.

c. **“Specially Designed For”**

The phrase “*specially designed for*” means items that are unique to that application and are not capable of any other application. Further, the term “*designed for*” means that the item was originally used for a particular application, but it may have other applications as well.

d. **“Usable In” and “Capable Of”**

The phrases “*usable in*” and “*capable of*” mean that the item can be used in a particular application, but it may not have been designed for that application.

10.2. Further, the applicant must give special attention to the following **Advisory Notes**:

10.2.1. Defined terms that are used in **more than one entry** in the NSGL are identified with “double quotes” around them.

The definition can be found in a separate list at the start of the Dual-Use Goods List (NSGL Annex 2) and at the end of the Military Goods List (NSGL Annex 1).

After the defined term, the numbers placed in parentheses refer to the control list categories in which the term is used. In the example given below, the term “FADEC Systems” appears in both categories 7 and 9.

Sample defined term:

"FADEC Systems" (7 9) means Full Authority Digital Engine Control Systems – A digital electronic control system for a gas turbine engine that is able to autonomously control the engine throughout its whole operating range from demanded engine start until demanded engine shut-down, in both normal and fault conditions.

- 10.2.2. There are also advisory notes that explicitly state when an entry does not control items. For instance, NSGL code 6A006 categorically states that it does not control medical equipment.

Sample Entry with a Note:

6A006

"Magnetometers," "magnetic gradiometers," "intrinsic magnetic gradiometers," underwater electric field sensors and compensation systems, and specially designed components, therefor, as follows:

Note: 6A006 does not control instruments specially designed for fishery applications or biomagnetic measurements for medical diagnostics.

- a. "Magnetometers" and subsystems as follows: ...

- 10.2.3. "Technical Notes," on the other hand, are used to explain the meaning of a term used in a controlled entry.

Sample Entry with a Technical Note:

2A226

Valves having all of the following characteristics:

- a. A 'nominal size' of 5 mm or greater;

Technical Note: For valves with different inlet and outlet diameters, the 'nominal size' in 2A226 refers to the smallest diameter.

- 10.2.4. "Nota Benes" is used as a "signpost" to direct the user to a different area of the NSGL.

Sample Entry with an NB:

2B004

Hot "isostatic presses" having all of the following, and specially designed components and accessories therefor:

NB: See also 2B104 and 2B204

11. An Item Described by Several Entries

- 11.1. An item may appear in more than one entry in the NSGL. It is even possible for an item to appear in entries belonging to different technical categories.
- 11.2. For example, vibration test equipment is controlled within categories 2 and 9. However, in category 2, the basis for the control is the Nuclear Suppliers Group, and it describes a category of vibration test systems that can be used for nuclear weapons, nuclear power plant manufacturing, etc. In category 9, the basis for the control is the Missile Technology Control Regime, and it describes acoustic vibration test equipment that falls within some of the same parameters as the entry in category 2.
- 11.3. The strategy is to review all entries that describe an item, regardless of where in the list they appear. Then, the applicant must select one entry that is most appropriate to make a final decision.

12. Classification of Complex Items

- 12.1. In many cases, items subject to classification are complex, such as complete systems, combined kits, assembled goods. Specific types of assembled goods are those designed on a modular basis. For modularly assembled goods, consisting of listed and non-listed modules, only those modules that match or exceed the NSGL parameters are regulated.
- 12.2. For classification of systems and combined kits that are not controlled by themselves, the following "**Principal Element Note**" applies:

"The controls' object should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes."
- 12.3. It must be noted, however, that in judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value, and technological know-how involved and other special circumstances that might establish the controlled component or components as the principal element of the goods being procured.

13. Commodity Classification Assistance by the STMO


- 13.1. To assist industry stakeholders in the classification, the STMO shall publish the latest updates on the NSGL on its website. The STMO shall develop commodity classification modules as part of its industry outreach.
- 13.2. The STMO may assist industry stakeholders in classifying their commodity provided that the requesting party performed an initial classification of the item by following the Commodity Classification Methodology provided in Sections 4 - 12 of this Circular. The STMO may decline such a request if the requesting party fails to perform the initial classification. **The STMO limits the number of items from a requesting party to three (3) per month.**
- 13.3. The following are the requirements for requesting commodity classification from the STMO:
 - 13.3.1. Commodity Classification Form (Form A2-1) signed by the company's authorized technical personnel with PRC issued licensed or Science & Technology (S&T) educational background; and,
 - 13.3.2. Technical Specification of the Commodity (e.g., product literature with technical parameters).
- 13.4. Commodity Classification Form (Form A2-1) is available on the STMO webpage at <https://www.dti.gov.ph/trabaho/strategic-trade-management/>.
- 13.5. The requesting party shall submit the documentary requirements to the STMO through the following email address: **stmo_rad@dti.gov.ph**. The subject of the email shall follow this format: **ComClass Request_(Company Name)**.

This Memorandum Circular shall take effect immediately.
10 March 2021, Makati City

Recommending Approval:


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