

# *Overview of Japan's Export Controls*

## *(Fourth Edition)*

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## **FOREWORD**

The security environment surrounding Japan and the world has become ever more severe. North Korea, ignoring condemnations and sanctions by the international community, has conducted nuclear tests and deployed ballistic missiles. China is unilaterally attempting to change the status quo with its territorial assertion over the East China Sea and the South China Sea. In the Middle East, the nuclear talks between Iran and the P5+1 nations may reach final agreement, but Gulf countries are concerned about Teheran's regional influence. In addition, a militant group calling itself the Islamic State is casting a long shadow over the international peace-keeping efforts in the region.

Recognizing the above, the Government of Japan adopted in December 2013 the National Security Strategy (NSS) and is now making efforts to drastically change the legal framework related to national security. This has already led to a change in its export control policy. In April 2014, the government set out the new Three Principles on Transfer of Defense Equipment and Technology, with which it replaced the long-lasting Three Principles on Arms Exports, and opened the way to allow arms exports under the new policy guideline.

At this time, it is my great pleasure to introduce the fourth edition of *Overview of Japan's Export Controls*, which is a guide to Japan's export control system. This up-to-date edition covers all the changes that have been made in Japan's export control system since the publication of the third edition in October 2012. In addition, in compiling this new book, we reviewed the previous one and rewrote it completely with a new structure, making the fourth edition more comprehensive and informative, yet maintaining its brevity.

The first edition was compiled in 2009 by members of CISTEC's International Relations Committee as a booklet for handing out to persons of foreign government authorities, research institutions, industry associations, and private companies, whom they visit for exchange annually. Again, I deeply appreciate the continued efforts made by all the committee members to update this little English book, especially by Tamotsu Aoi, an export control specialist at the International Security Trade Control Department of Mitsui & Co., Ltd., who wrote this fourth edition.

Step by step, this has been improved and attracting a wider range of readers. It would be more than a pleasure for me if this book helped people working overseas, as well as in Japan, to deepen their understanding of Japan's export control system.

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## **I. Historical Background**

Japan's export control system was founded back in 1949 when the country was still under the Allied Occupation. Stepping forward into the post-World War II recovery, the Japanese government introduced that year the Foreign Exchange and Foreign Trade Control Act, which was enacted to control foreign exchange and foreign trade transactions, and which is still the basic law that governs export controls in Japan.

Three years later in 1952, Japan joined COCOM, the Coordination Committee for Multilateral Export Controls, and started implementing export controls within the framework of the multilateral export control regime that was started in 1949 and ended in 1994 after the end of the Cold War.

Much later in 1987, the basis of Japan's present day export control system was established. This development was in fact a consequence of the so-called Toshiba Machinery Incident, which involved exports of state-of-the-art machine tools from Japan to the Soviet Union. The disclosure of these exports created an international uproar, especially in Washington, D.C., that this transfer of technology, a violation of national as well as COCOM regulations, seriously undermined Western-bloc security.

In response to this incident, the government drastically enhanced controls by amending the basic law. In order to make the system more effective, the authority not only increased the penalties, but also ordered individual companies to establish an appropriate system of corporate export controls based on an internal compliance program (ICP). Shortly thereafter in 1989, the organization CISTEC was created as a driving force for the sound development of export controls in Japan.

Since then Japan's export control system has been evolving in response to year-to-year changes in the political and security situations of Japan and the world. Catch-all control related to weapons of mass destruction (WMD) was introduced in 2002, brokering and transit controls were introduced in 2007 and technology transfer control was enhanced in 2009. Further, in April 2014, the government realigned its arms export control policy and set out the new Three Principles on Transfer of Defense Equipment and Technology, replacing the Three Principles on Arms Exports which had lasted for almost 50 years.

Today, Japan, as a signatory to major non-proliferation treaties and a member to all the existing international export control regimes, is implementing robust export controls consistent with the international standards and norms. In addition, Japan not only commits itself to international non-proliferation goals, but also promotes its outreach activities in Asia, expanding cooperative networks in the region.

## **II. Administrative Authority**

In Japan, the Ministry of Economy, Trade and Industry (METI), originally formed in 1949, is the competent authority that administers export controls. In METI, the Security Export Control Policy Division, the Security Export Inspection Office, and the Security Export Licensing Division are the units in charge. As shown below, they are situated under the Trade Control Department of the Trade and Economic Bureau, and form a staff of about 80 officers in total.

### **(1) The Security Export Control Policy Division**

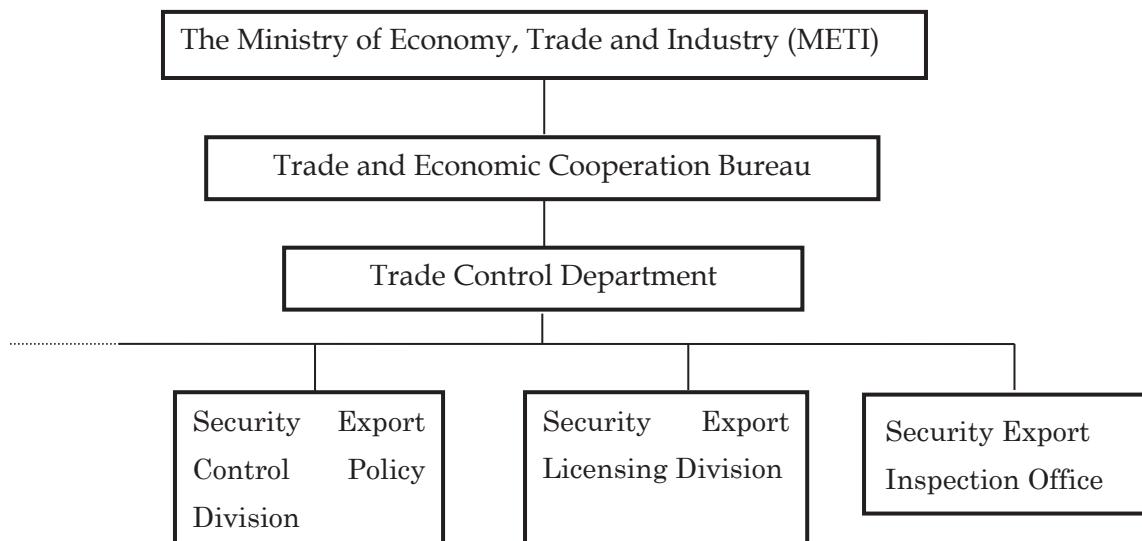
The Security Export Control Policy Division is responsible for export control policy setting, legislation, and overall administration. It joins discussions in international export control regimes and organizes international outreach activities.

### **(2) The Security Export Licensing Division**

The Security Export Licensing Division is responsible for examining license applications and issuing licenses. It has some one hundred officers including those in regional offices.

### **(3) The Security Export Inspection Office**

The Security Export Inspection Office is responsible for conducting company inspections. It gives instructions and guidance to exporters and conducts domestic outreach activities.



### **III. Legal Framework**

#### **3-1. Legal Structure**

The legal structure of Japan's export control system is extremely complicated. It is not a simple set of law and regulations, but is a complex mix of primary legislation and secondary legislation. Actually, the basic law is followed by a wide scope of subordinate regulations issued from time to time in the form of cabinet orders, ministerial ordinances, notifications, notices and guidance, which are intertwined with each other. Of those, the principal ones are as follows.

##### **(1) The Foreign Exchange and Foreign Trade Act (1998) (basic law)**

The Foreign Exchange and Foreign Trade Act (the Act), originally enacted in 1949, is the basic law that provides the legal basis for export controls in Japan.

##### **(2) The Export Trade Control Order (1949) (Cabinet order)**

The Export Trade Control Order specifies the controlled goods pursuant to the provisions of Article 48-(1) of the Act.

##### **(3) The Foreign Exchange Order (1980) (Cabinet order)**

The Foreign Exchange Order specifies the controlled technology including software pursuant to the provisions of Article 25-1-(1) of the Act.

As mentioned, the above are further followed by many orders, notices, etc., which form the regulations as a whole. Please refer to Appendix 2 for more details. This multilayer legal structure, a tangled web, characterizes the Japanese system, making it extremely hard for exporters to understand the points.

#### **3-2. The Foreign Exchange and Foreign Trade Act**

##### **3-2-1. Overview**

In 1949, when Japan had just started its economic reconstruction after the war, the basic law was introduced first as the Foreign Exchange and Foreign Trade Control Act to strictly control foreign exchange and foreign trade transactions for the purpose of normalizing trade activities and maintaining Japan's balance of payments. Half-century later in 1998, when foreign exchange business was completely liberalized, it was amended and superseded by

the current Foreign Exchange and Foreign Trade Act, in which the law's control implication was eliminated.

The Act is now the only law that states the basic framework and the principles of the control on exports of both arms and dual-use items. Article 48-(1) stipulates that any person intending to export specific goods must obtain a license from METI, and Article 25-1-(1) that those intending to transfer specific technology to a foreign person or to a foreign country must obtain a license from the ministry.

As per its title, the Act is the principal economic law concerning foreign exchange and foreign trade, which covers such broad areas of cross-border transactions as foreign trade, foreign payments, foreign capital transactions, and direct investments in Japan. Note in this regard that the Act is administered by two ministries: the Ministry of Finance; and the Ministry of Economy, Trade and Industry. Basically, the former is responsible for foreign exchange matters, and the latter for foreign trade matters including export controls, which just account for a small portion of the Act.

### 3-2-2. Key Articles

Here, some key articles related to export controls have been selected from the Act and restated in English. Note that the translation is not official and is for reference only.

#### Article 1 (Purpose)

The purpose of this Act is, on the basis of freedom of foreign exchange, foreign trade, and other foreign transactions, to enable proper expansion of foreign transactions and the maintenance of peace and security in Japan and in the international community through the minimum necessary control or coordination of foreign transactions, and thereby to ensure equilibrium of the international balance of trade and stability of currency, as well as to contribute to the sound development of the Japanese economy.

#### Article 48 (License for Exports)

(1) Any person who intends to conduct an export of specific kinds of goods to specific regions set forth in Cabinet Order as considered obstructing the maintenance of international peace and security, shall obtain, pursuant to the provision of the order, a license from the Minister of Economy, Trade and Industry.

(2) The Minister of Economy, Trade and Industry, when he/she considers it necessary for the assured enforcement of the provisions of Article 48-(1), may impose, pursuant to Cabinet

Order, the obligation to obtain a license on a person who intends to export specific kinds of goods to a region other than the specific regions set forth in the article.

(3) In addition to the cases prescribed in Articles 48-(1) and 48-(2), the Minister of Economy, Trade and Industry may impose, pursuant to Cabinet Order, the obligation to obtain an approval on a person who intends to export specific kinds of goods or to export goods to the specific regions, or on a person who intends to export goods through a specific transaction, to the extent necessary to maintain equilibrium of the international balance of trade, to achieve the sound development of foreign trade and the national economy, to sincerely fulfill obligations under the treaties and other international agreements Japan has signed, to contribute, in cooperation with other countries, to achieving international peace, or to implement a cabinet decision as set forth in Article 10-(1).

## Article 25 (Service Transaction)

### Article 25-1

(1) Any resident or non-resident who intends to conduct a transaction to provide any technology pertaining to the design, production, or use of specific goods set forth in Cabinet Order as considered obstructing the maintenance of international peace and security (herein after called "specific technology") in a specific foreign country (hereinafter "specific country"), or any resident who intends to conduct a transaction to provide specific technology to a non-resident of a specific country, shall obtain, pursuant to the provisions of the order, a license from the Minister of Economy, Trade and Industry.

(2) The Minister of Economy, Trade and Industry, when he/she considers it necessary for the assured enforcement of the provisions of Article 25-1-(1), may impose, pursuant to the provisions of Cabinet Order, the obligation to obtain a license for a resident or non-resident who intends to conduct a transaction to provide specific technology in a foreign country other than specific countries, or for a resident who intends to conduct a transaction to provide specific technology to a non-resident of a foreign country other than specific countries.

(3) The Minister of Economy, Trade and Industry may impose, pursuant to the provisions of Cabinet Order, the obligation to obtain license for a person who intends to conduct either of the following transactions.

1) Either of the following transactions related to the provisions of Article 25-1-(1), when the minister considers it necessary for the assured enforcement of the provisions of the article:

- (a) Export, to a specific country, of documents, drawings, or other forms of media on which information related to specific technology is written or recorded (hereinafter called "specific recorded media").
  - (b) An electric or electronic transfer, from Japan to a specific country, of information related to specific technology.
- 2) Either of the following transactions related to the provisions of Article 25-1-(2), when the minister considers it necessary for the assured enforcement of the provisions of the article:
- (a) Export of specific recorded media to a foreign country other than specific countries.
  - (b) An electric or electronic transfer, from Japan to a foreign country other than specific countries, of information related to specific technology.
- (4) Any resident who intends to enter into a contract, with a nonresident, for selling and buying, leasing, or donating goods that will move between foreign countries shall obtain, pursuant to the provisions of Cabinet Order, a license from the Minister of Economy, Trade and Industry if such transaction is set forth in the order as considered obstructing the maintenance of international peace and security.

## Article 25-2

- (1) The Minister of Economy, Trade and Industry may impose a penalty on a person who conducted a transaction subject to the provisions of Article 25-1-(1) without obtaining a license as stipulated in the article that prohibits, for up to three years, conducting a transaction to provide any technology pertaining to the design, production, or use of goods (hereinafter called in this article "design technology") in a foreign country or to a non-resident; exporting any documents, drawings, or other form of media on which information related to design technology involved in the transaction was written or recorded (hereinafter "export of technology-recorded media"); transferring electrically or electronically from Japan to a foreign country any information related to design technology involved in the transaction (hereinafter "foreign technology transfer"); or exporting specific kinds of goods that involve specific technology.
- (2) The Minister of Economy, Trade and Industry, in the case that the obligation of obtaining license was imposed as stipulated in Article 25-1-(2) or 25-1-(3), may impose a penalty on a person who conducted a transaction, or any related act, subject to the provisions of those articles without obtaining the license to prohibit, for up to twelve months, conducting a transaction to provide any design technology in a foreign country or to a non-resident,

exporting technology-recorded media or a foreign technology transfer that was involved in the transaction, or exporting specific kinds of goods that involve specific technology.

(3) The Minister of Economy, Trade and Industry may impose a penalty on a person who conducted a transaction subject to the provisions of Article 25-1-(4) without obtaining a license as stipulated in the article to prohibit, for up to three years, entering into a contract, with a non-resident, for selling and buying, leasing or donating goods that will move between foreign countries, or exporting goods.

#### Article 53 (Sanctions)

(1) The Minister of Economy, Trade and Industry may impose a penalty on a person who conducted an export of goods that is subject to the provisions of Article 48-(1) without obtaining a license as stipulated in the article to prohibit, for up to three years, conducting an export, or conducting a transaction to provide any specific technology in a foreign country or to a non-resident, an export of technology-recorded media that was involved in the transaction, or a transfer, electrically or electronically, from Japan to a foreign country, of any information related to specific technology.

#### Article 55-10 (Exporters' compliance standard)

(1) The Minister of Economy, Trade and Industry shall set in a ministerial ordinance a standard that must be complied with by a person who is involved in exports of goods or transfers of technology that are subject to the provisions of Article 48-(1) or 25-1-(1) when he/she conducts such exports or transfers (hereinafter such person is simply called "exporter," such conduct "export or transfer," and such standard "exporters' compliance standard").

(2) The exporters' compliance standard shall include provisions related to the requirement of checking if specific technology to be transferred in a transaction subject to the provisions of Article 25-1-(1) or specific kinds of goods to be exported to a specific region set forth in Article 48-(1) meet the category of "specifically important goods or technology" (see the next article) or not, as well as other provisions that must be complied with when conducting such export or transfer.

(3) The specifically important goods or technology mentioned in the preceding article means specific technology, or specific kinds of goods stipulated in Article 48-(1), whose transfer in a specific country or to a nonresident of a specific country, or whose export to a specific region stipulated in the article, is set forth in Cabinet Order as considered obstructing the maintenance of international peace and security.

- (4) An exporter shall conduct an export or transfer in compliance with the exporters' compliance standard.

#### Article 55-11 (Instruction and advice)

The Minister of Economy, Trade and Industry may give an instruction or advice to an exporter when he/she considers it necessary to have him/her conduct an export or transfer properly, complying with the exporters' compliance standard.

#### Article 55-12 (Recommendation and order)

(1) In such case that any instruction or advice stipulated in the preceding article was given to an exporter, the Minister of Economy, Trade and Industry, when he/she considers his/her compliance still insufficient, may further give a recommendation to the exporter to fully comply with the exporters' compliance standard.

(2) The Minister of Economy, Trade and Industry, when the exporter still does not follow the recommendation, may give an order to him/her to take necessary measures to meet it.

#### Article 68 (On-site Inspection)

(1) To the extent necessary for enforcing this Act, the competent minister may have an official of the ministry enter the business office, office, factory, or other facility of a person who conducts foreign exchange business or other transactions or acts governed by this Act, to inspect books and documents and other objects or to question relevant persons.

(2) When the official enters such a facility pursuant to the provisions of the preceding paragraph, he/she shall carry identification and present it to the relevant persons.

(3) The authority for on-site inspection or questions pursuant to the provisions of paragraph (1) shall not be construed as being granted for a criminal investigation.

#### Article 69-6 (Penalties)

(1) Any person who meets either of the following conditions shall be subject to a penalty of not more than seven years of imprisonment or a fine not more than seven million yen, or both. If five times the value of the items involved exceeds seven million yen, however, the fine shall be up to five times the value of the items.

- 1) Any person who conducted a transaction subject to the provisions of Article 25-1-(1) or 25-1-(4) without obtaining a license as stipulated in the article.
  - 2) Any person who conducted an export of goods that is subject to the provisions of Article 48-(1) without obtaining a license as stipulated in the article.
- (2) Any person who meets either of the following conditions shall be subject to a penalty not more than ten years of imprisonment or a fine not more than ten million yen, or both. If five times the value of the items involved exceeds ten million yen, however, the fine shall be up to five times the value of the items.
- 1) Any person who conducted a transaction subject to the provisions of Article 25-1-(1) without obtaining a license as stipulated in the article, concerning specific technology that is set forth in Cabinet Order as can be used for the development, manufacture, or use of nuclear weapons, chemical or bacterial substance for military use, equipment used for spraying such substance, or rockets or unmanned air vehicles used for delivering them (hereinafter called in this article "nuclear weapons, etc."), or concerning the technology that is set forth in the order as can be used for the development, manufacture, or use of goods that are used especially for the development, manufacture, use or storage (herein after "development, etc.") of nuclear weapons, etc.
  - 2) Any person who conducted a transaction subject to the provisions of Article 25-1-(4) without obtaining a license as stipulated in the article, or conducted an export subject to the provisions of Article 48-(1) without obtaining a license as stipulated in the article, concerning specific kinds of goods stipulated in Article 48-(1) but set forth in Cabinet Order as those that are used specifically for nuclear weapons, etc. or for the development, etc. of such weapons.
- (3) Any attempted violation in respect of Article 69-6-(1), 2) and 69-6-(2), 2) (only in the case of exporting goods) is subject to a penalty.

### 3-3. Book of Export Control Law and Regulations

All the relevant legislation is consolidated and compiled into a 1,000-page book titled, *List of the Goods and Technologies Subject to Security Trade Control, and Related Law and Regulations*, which is published annually by the Japan Machinery Center for Trade and Investment (JMC). This is a book Japanese people handling export controls must always keep within reach.

## **IV. Control System**

### **4-1. Overview**

As stated in Article 1 of the Foreign Exchange and Foreign Trade Act, it is the policy of the Government of Japan to impose necessary as well as minimum controls on export transactions to contribute to the maintenance of national as well as international peace and security while maintaining the principle of free trade. Accordingly, the government requires a Japanese person to apply for a license when exporting specific goods to a foreign country or transferring specific technologies to a foreign person or a foreign country.

### **4-2. Transactions Subject to Control**

Under the Act, the following transactions are subject to control.

- (1) Export of goods
- (2) Transfer of technologies
- (3) Transshipment of goods
- (4) Brokering transactions related to goods or technologies

### **4-3. Control Types**

Japan enforces two types of control: list control; and catch-all control. The former is an item- or list-based control and the latter an end-use- or end-user-based control. List control requires exporters to apply for a license when exporting or transferring controlled (listed) items to a foreign country, while catch-all control requires the same when the items being exported will be used for certain applications related to WMD or conventional arms. Note in this regard that the catch-all scheme is also adopted in brokering control and transshipment control. What is unique in Japanese catch-all control is that the government adopted a concept of "objective" condition in which it objectified the so-called "know" condition.

### **4-4. List Control**

#### **4-4-1. Control Lists**

List control is a control that is implemented by listing sensitive items (goods, technology, or software) subject to control in certain lists as part of the regulations. In Japan, controlled goods and controlled technologies, including software, are listed separately in Attachment List No. 1 to the Export Trade Control Order and in the Attachment List to the Foreign Exchange Order, respectively, and details of each item are specified in the Ministerial

Ordinance Specifying Goods and Technologies Pursuant to the Provisions of Attachment List No. 1 to the Export Trade Control Order and the Attachment List to the Foreign Exchange Order.

Each control list contains 16 categories of items, and those under categories 1 through 15 are controlled items subject to list control, while others under category 16 are non-controlled items but are subject to catch-all control. The controlled items on both lists are basically identical to those specified by the international export control regimes (NSG, MTCR, AG, WA) and the Chemical Weapons Convention (CWC) (see the table below). Also, the items are identified by classification numbers that are specific to Japan, not according to the European numbering system which is used by the EU member nations as well as by some other countries.

The Controlled Items

Japanese Category	Type of Control	Classification of the Items			International Regimes
1	List Control	Military items	Arms		WA/ML
2		Dual-use items	WMD-related	Nuclear items	NSG
3				Chemical weapons	AG
3-2				Biological weapons	AG
4				Missiles	MTCR
5			Conventional arms-related	Advanced materials	WA Cat. 1
6				Material processing	WA Cat. 2
7				Electronics	WA Cat. 3
8				Computers	WA Cat. 4
9				Communication/Information security	WA Cat. 5
10				Sensors and lasers	WA Cat. 6
11				Navigation/avionics	WA Cat. 7
12				Marine	WA Cat. 8
13				Aerospace/propulsion	WA Cat. 9
14				Other ML items	Except for WA/ML
15				Sensitive items	WA very sensitive
16	Catch-All Control	Items other than those under Categories 1 - 15			

Note: More details are shown in Appendix 3.

#### 4-4-2. Export of Goods

An export of controlled goods on Attachment List No. 1 to the Export Trade Control Order requires a license issued by the Minister of Economy, Trade and Industry for all countries and regions.

#### 4-4-3. Transfer of Technologies

Covered by a separate article in the Act, technology transfer in Japan is controlled in a unique manner based principally on the "residency" of the person who transfers or receives technology. Before April 2009, when the Act was amended, the rule was so simple that a transfer of controlled technology or software from a resident to a non-resident was subject to licensing. In April 2009, however, the control was rearranged and enhanced to match the present age of globalized economy in which people move freely from country to country and technology from person to person electronically.

Especially important is that a concept of border-based control was introduced in this enhancement. For a person, for example, bringing out controlled technologies with him/her to a foreign country or sending out controlled technologies to a foreign country with just one click now requires a license, if it is a transaction for "providing" such technologies (see the provisions of Article 25-1 (1) of the Act).

The essence of the current technology transfer control is described as follows. (Hereinafter, the term "technology" is used to mean technology as well as software)

##### (1) Technology transfer from Japan to a foreign country

Any person, resident or non-resident, shall obtain a license when transferring controlled technology on the Attachment List to the Foreign Exchange Order from Japan to a foreign country. A license is not required, however, when the technology is for the person's own use in the foreign country.

##### (2) Technology transfer within Japan

Any resident shall obtain a license when transferring controlled technology in Japan to a non-resident.

##### (3) Technology transfer within a foreign country

Any resident shall obtain a license when transferring controlled technology in any foreign

country. A license is not required, however, when the technology was sourced in a foreign country and the transaction is completed only in a foreign country. Note that, effective August 1, 2012, a transfer of controlled technology from a resident to another resident in a foreign country requires no license if the recipient is the Japanese Ministry of Defense. The definitions of "resident" and "non-resident" are described in the table below.

Definition of Resident and Non-resident

Category	Resident	Non-resident
Japanese nationals	1) A person residing in Japan 2) A person working in Japan's diplomatic establishment abroad	1) A person who left Japan for the purpose of working in a foreign office 2) A person who left Japan for the purpose of staying abroad for more than two years 3) A person who has been staying abroad for more than two years 4) A person subject to either of the three categories described above, but who has been temporarily back home, staying in Japan for less than six months
Foreign nationals	1) A person working in an office in Japan 2) A person who has been staying in Japan for more than six months	1) A person residing in a foreign country 2) A person who is an official of a foreign government or an international institution 3) A diplomat, consul, or a person accompanying or serving the diplomat or consul
Legal persons	1) Japanese corporations registered in Japan 2) Foreign corporations' subsidiaries and other offices registered in Japan 3) Japan's diplomatic establishments abroad	1) Foreign corporations registered abroad 2) Japanese corporations' subsidiaries and other offices registered abroad 3) Foreign governments' diplomatic establishments or international organizations in Japan

Note: UN and US military personnel are regarded as non-residents.

## 4-5. Catch-All Control

### 4-5-1. Background

In Japan, catch-all control was first introduced in 1996 as the so-called Complementary Control, in which 87 specific items were specified as those subject to the control. In that sense, this control was somewhat like an extension of the list control described earlier, or could be called catch-some control. After that the present style WMD catch-all control was introduced in 2002 to replace the Complementary Control. Then in 2008, the government expanded it further by introducing military catch-all control.

### 4-5-2. WMD Catch-All Control

#### 4-5-2-1. Overview

WMD catch-all control requires exporters to obtain a license when METI orders them to do so in respect to a specific transaction ("informed" condition), or when exporters are aware that the item will be used for the development, manufacture, use, or storage of WMD, in other words, if the transaction falls under certain conditions provided objectively by the government ("objective" condition).

Note in this regard that in Japan, weapons of mass destruction, or WMD, are defined as nuclear weapons, chemical or bacterial substance for military use, equipment used for spraying such substance, or rockets or unmanned air vehicles used for delivering them.

The scope of items subject to the control is broad. Unlike list control, any goods and technologies, including non-controlled items, are subject to WMD catch-all control, except for specific non-sensitive items such as food and timbers.

All countries and regions are subject to WMD catch-all control except for the following 27 countries: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the U.K., and the U.S.A.

As written earlier, two conditions are set forth to invoke this WMD catch-all control: "informed" condition and "objective" condition. The objective condition generally corresponds to the "know" condition adopted by the Western countries. The point is that instead of providing the definition of "know," which is usually subjective, the Japanese government objectified the awareness condition so that exporters can easily judge if the

items in question will be used for the WMD applications stated above.

#### 4-5-2-2. Informed Condition

Exporters have to obtain a license if it is requested (or informed) by METI to do so in respect to a specific export transaction. The “inform” is given when METI considers that there exists a considerable risk that the item in question will be used for the development, manufacture, use, or storage of WMD.

#### 4-5-2-3. Objective Condition

Objective condition consists of “end-use” condition and “end-user” condition, which are described separately as follows.

##### 4-5-2-3-1. End-use Condition

Exporters have to obtain a license if they are aware, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the item will be used for the development, manufacture, use or storage of WMD.

Furthermore, a license is also required if an exporter knows, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the item will be used for any of the specific activities listed below.

- (1) Development of nuclear fuel or nuclear source material
- (2) Research on nuclear fusion (except for research on astronomy and a nuclear fusion reactor)
- (3) Development of nuclear reactors (except for a light-water reactor for power generation) or parts and attachments therefor
- (4) Manufacture of heavy water
- (5) Processing of nuclear fuel
- (6) Reprocessing of nuclear fuel
- (7) Activities stipulated below but are carried out by military or military-related entities
  - (a) Development or manufacture of chemical substances
  - (b) Development of microorganisms or toxins
  - (c) Development of rockets or unmanned air vehicles
  - (d) Research on aerospace

#### 4-5-2-3-2. End-user Condition

Exporters have to obtain a license if they are aware, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the end-user has been engaging, or used to engage, in the development, manufacture, use or storage of WMD.

Furthermore, exporters are also required to submit a license application when they wish to export goods to entities on the End-User List unless it is apparent that those will not be used for WMD purposes. The End-User List is a list provided by METI that can be compared to the U.S. Entity List. It lists foreign entities that are considered to be involved in development, production, manufacturing or storage of WMD. As of 15 April 2015, the list contained a total of 527 entities in eleven countries and regions: Iran (295 entities), North Korea (121), Pakistan (33), China (43), Syria (15), India (4), UAE (6), Afghanistan (3), Taiwan (3), Israel (2), and Hong Kong (2). Note, however, that the End-User List is neither an embargo list, nor a black list. Nor does it automatically prohibit exporting goods to listed entities. This list is reviewed and revised annually.

The End-User List is available at the following site:

<http://www.meti.go.jp/policy/anpo/end-userlist.html>

#### 4-5-2-3-3. Guideline for Judging “When Apparent”

This guideline is provided by METI to help exporters make proper judgment if an item to be exported will be used apparently for a purpose other than the WMD-related activities stipulated in the catch-all regulations. See Appendix 6 for more details. While Red Flag Indicators provided by the U.S. Bureau of Industry and Security (BIS) are used as a check list to detect possible violations, this guideline is used as a list to check if a transaction can be cleared of the catch-all conditions related to WMD end-use.

#### 4-5-2-3-4. Commodity Watch List

The Commodity Watch List, first published in 2003, is a list of specific dual-use goods with high risks of diversion for the development, manufacture, use or storage of WMD. It contains 40 such items, plus 12 additional ones which apply specifically to exports to Syria. Exporters are required to check and verify the end-use and end-user carefully when exporting any of such items or related technologies so that the export will not contribute to the development, manufacture, use or storage of WMD. See Appendix 5 for the items on the list which are related to WMD applications.

In addition, when exporting any items on the Commodity Watch List to any organization listed on the End-User List, a license is required should the attached WMD symbols (N, B, C, or M) agree to each other. A license is required, for example, when exporting a missile-related item on the Commodity Watch List to a listed entity of missile concern.

#### 4-5-2-3-5. Reporting Obligation

Even if an export transaction does not legally require a catch-all license, an exporter is required to report it to METI if he/she has happened to know for any reasons after the shipment that the items involved are or will be used for any WMD applications.

### 4-5-3. Military Catch-All Control

#### 4-5-3-1. Overview

The two cabinet orders related to export controls were amended on August 27, 2008 to introduce control on non-controlled items for military end-use, which was effected on the first day of November of the same year. Since then Japan has been implementing catch-all control related to both WMD and conventional weapons.

#### 4-5-3-2. Military Catch-All Control on Countries Under UNSC Arms Embargo

With regard to the exports destined for countries under UN Security Council arms embargo, all non-controlled items (except for food, timbers, etc.) are subject to licensing if:

- (1) exporters are informed by METI that the items in question are or may be intended for a military use, or
- (2) exporters have come to know, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the items will be used for the development, manufacture, or use of conventional weapons.

As of April 2015, the countries and regions under UNSC Arms Embargo are: Afghanistan, Central Africa, Democratic Republic of Congo, Cote d'Ivoire, Eritrea, Iraq, Lebanon, Liberia, Libya, North Korea, Somalia, and Sudan.

#### 4-5-3-3. Military Catch-All Control on Countries Not Under UNSC Arms Embargo

With regard to the exports destined for countries not under the arms embargo, all non-listed

items (except for food, timbers, etc.) are subject to licensing if the exporter is informed by METI that the items in question are or may be intended for a military use.

This control is not applied, however, to exports destined for the following 27 countries: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Republic of Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the U.K., or the U.S.A.

#### 4-5-3-4. Commodity Watch List

In relation to military catch-all control, METI has also published Commodity Watch List which covers 34 goods as described in Appendix 8. Similarly, exporters are required to check and verify the end-use and end-user carefully when exporting any of such goods or related technologies so that the export will not contribute to the development, manufacture or use of conventional weapons.

#### 4-6. Brokering Control

In June 2007, METI enforced regulations to control WMD-related brokering and transshipment services. Those regulations were introduced to meet the requirements of the UN Security Council Resolution 1540 adopted in April 2004. The brokering control was further enhanced in April 2009.

The term “brokering” is defined as an overseas transaction in which any goods or technology move from one foreign country to another, and in which a person, including a legal person, in Japan is engaged directly or through its overseas office. The control scheme is as follows.

##### (1) Brokering of arms or arms-related technology

Brokering of arms or arms-related technology under category 1 of the control lists requires a license.

##### (2) Brokering of goods other than arms or of technology related to the goods

A person in Japan must obtain a license when it enters into a contract, directly or through its overseas subsidiary, for selling and buying, leasing or donating goods or technology, with foreign companies if;

- (a) The person has been so informed by METI, or

- (b) The person has come to know, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the items will be used for the development, manufacture, use or storage of WMD.

This regulation of clause (2), however, does not apply to the transaction of moving goods or technology to or from Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the U.K., or the U.S.A.

#### 4-7. Transshipment Control

Transshipment control is applied to foreign goods passing through Japan. The term "transshipment" is defined as an act to transship foreign goods at airports or seaports in Japan.

##### (1) Transshipment of arms

Transshipment of arms under category 1 of the control list requires a license.

##### (2) Transshipment of goods other than arms

A person in Japan must obtain a license when transshipping goods if;

- (a) The person has been so informed by METI, or
- (b) The person has come to know, through written information on such documents as contracts or corporate brochures, or through notification from the importer or any other parties, that the items will be used for the development, manufacture, use or storage of WMD.

Transshipment control does not apply, however, to the transaction whose destination is Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the U.K., or the U.S.A.

#### 4-8. Special Controls for Countries of Concern

##### (1) Iran

METI exercises special controls on Iran complying with the series of UN Security Council Resolutions adopted in the past. It is now prohibited to export to the country weapons and nuclear- and missile-related items listed by NSG and MTCR. Also, exports of items listed by AG and WA are subject to stringent controls.

##### (2) North Korea

As for North Korea, no items can now be exported to the country. The government imposed this export ban in 2009 as an extraordinary measure limiting its implementation period. So far, the government has been renewing it whenever it expired. As of this writing in April 2015, the government has decided to extend the export ban until April 13, 2017.

##### (3) Russia

In response to the Ukraine crisis that broke out in 2014, the Japanese government decided in September that year to prohibit exports to Russia of weapons, as well as other controlled items if they would be used for any military applications.

## **V. Licensing System**

### **5-1. Overview**

In Japan, an export license is issued only by the Minister of Economy, Trade and Industry. When necessary, exporters must submit license applications to the Security Export Licensing Division of the Trade Control Department, or to its regional office, where licensing officers examine the applications focusing on the end-use and the end-user.

### **5-2. Licensing Policy**

#### **5-2-1. Dual-use Items**

A license will be issued if METI has determined that the items involved will not materially contribute to the design, development, or production of WMD or conventional weapons, nor be circumvented or re-exported to countries or entities of concern. In practice, METI examines each application based on the following criteria.

- (1) The item will undoubtedly be delivered to the end-user.
- (2) The item will undoubtedly be used by the end-user.
- (3) The transfer will not obstruct the maintenance of international peace and security.
- (4) The item will be controlled in an appropriate manner by the end-user.

#### **5-2-2. Military Items**

##### **5-2-2-1. Overview**

Japan as a peace-loving nation has traditionally been taking a very tough stance against exports of arms or anything of military significance. Such a stance first resulted in the introduction in 1967 of the guideline called the Three Principles on Arms Exports which prohibited arms exports with limited exceptions. This policy of arms export prohibition lasted until 2014, when the government set out a new guideline called the Three Principles on Transfer of Defense Equipment and Technology.

##### **5-2-2-2. The Three Principles on Arms Exports**

The policy guideline of the Three Principles on Arms Exports is a resolution declared in 1967 by Sato Administration. With that resolution, the government prohibited arms exports to the countries categorized as follows.

- (1) Communist bloc countries,
- (2) Countries subject to arms embargo under UN Security Council Resolutions, and
- (3) Countries involved in or likely to be involved in international conflicts.

Note that this policy was reinforced in 1976 by Miki Administration by expanding the export prohibition to all countries, after which exports of arms and arms-related items from Japan were, in principle, totally prohibited.

#### 5-2-2-3. The Three Principles on Transfer of Defense Equipment and Technology

In 2014, the said policy of arms export prohibition was reviewed and realigned. This was done along with the Abe Administration's efforts to reestablish its security policy framework so that Japan can take more responsibility for the peace and stability in the world.

Recognizing that the security environment was causing increasingly serious concern, the Japanese government in December 2013 established the National Security Council (NSC) and adopted the National Security Strategy (NSS), Japan's first-ever action of this kind after the war. In the NSS, the government presented policy guidelines related to Japan's national security, describing the assessment of global and regional security environment, challenges, and the strategic approach Japan should take as a "Proactive Contributor to Peace," which is based on the principle of international cooperation. Then in April 2014, the government set out in accordance with the NSS the Three Principles on Transfer of Defense Equipment and Technology, with which the old principles described above ceased to exist.

As a result, arms export controls are now implemented based on the following principles. Exports of arms are not denied blindly but may be permitted, subject to strict and careful examination by the authorities, including the NSC when necessary, under the new policy guideline.

##### Principle 1

An overseas transfer of defense equipment and technology will not be permitted when:

- (1) It violates obligations under treaties and other international agreements that Japan has concluded.
- (2) It violates obligations under UNSC resolutions.
- (3) It is to a country involved in an armed conflict.

## Principle 2

An overseas transfer of defense equipment and technology may be permitted when:

- (1) It helps promote Japan's peace building and international cooperation.
- (2) It serves Japan's national security by:
  - (a) implementing international joint development and production projects with its allies and partners,
  - (b) enhancing defense and security cooperation with its allies and partners,
  - (c) supporting the Self-Defense Forces' overseas activities, or
  - (d) assuring the safety of Japanese nationals overseas.

## Principle 3

- (1) In principle, a license is granted only when the government of the recipient country can assure proper controls to prevent unauthorized use and third-country re-transfer.
- (2) In this regard, the recipient country is required to obtain the prior consent of the Japanese government if it intends to do the above.

### 5-3. Export License

Exporters may obtain either an individual export license or a bulk export license, depending on the sensitivity and security concerns of the items and the destinations.

#### 5-3-1. Individual Export License

##### 5-3-1-1. Overview

When exporting controlled items, exporters are required to obtain an individual export license unless the export is eligible for a bulk export license. An individual export license is always required when the export is subject to licensing under catch-all control. This is a transaction-based license and is valid for six months after the date of issue. It will in principle become invalid if the licensee failed to export the items within the six-month period, though the exporter can submit an application to extend the validity before it expires.

An exporter is required to submit the following documents when applying for this license.

- (1) An application form in which details of exporters, products, the end-user, shipping route and others are stated.
- (2) Related documents such as written contracts, purchase orders, plant layout drawings, etc.

(3) Other documents as may be required by METI such as product catalogues, the end-user's leaflets, the end-user's End-Use Certificate, and so on.

#### 5-3-1-2. End-Use Certificate

One of the most important conditions to obtain an individual export license is to make sure that the items will not be illicitly re-exported or re-sold. METI in this regard may ask the exporter to submit an End-Use Certificate (EUC) obtained from the end-user as a precondition of granting the license for certain sensitive items such as high-end machine tools.

For this purpose, the authority provides a prescribed EUC form on which the end-user is required to fill in necessary information. In this regard, METI also provides a statement titled, "Notice relating to the End-Use Certificate," in which what METI requires of the end-user in regard to the assurance process is clearly mentioned (see Appendix 9).

#### 5-3-2. Bulk Export License

##### 5-3-2-1. Overview

A bulk export license simplifies the licensing procedures by allowing licensees to make multiple exports of controlled items under certain conditions related to classification, destinations, end-use, and so on. Effective on July 1, 2012, the bulk licensing system was rationalized and rearranged into the five license types, as shown in the following table.

The Bulk Export Licenses

Category	No	Name of the licenses
General bulk license	1	General Bulk Export License
Special bulk license	2	Special General Bulk Export License
	3	Special Bulk Export License
	4	Special Bulk Export License for Repair or Replacement
	5	Special Bulk Export License for Overseas Subsidiaries

The concept of a general bulk license is to allow much more simplified licensing procedures for exports to 27 specific countries that are implementing robust controls as members of the international export control regimes, while special bulk licenses allow the same for exporters who are implementing rigorous controls meeting specific conditions set out by METI.

A bulk export license may not be used, however, for exports to or via Iran, Iraq, North Korea,

and the countries subject to UN arms embargoes. Moreover, any bulk export license granted to an exporter may be revoked if he/she has committed any violation, or if METI considers it necessary in view of maintaining international peace and security.

#### 5-3-2-2. General Bulk License

##### (1) General Bulk Export License

With this license, exporters can make multiple exports of controlled but less sensitive items to the following 27 countries: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the U.K., and the U.S.A.

The license is valid for three years from the date of issue, but can be extended for another three years when applied for. The validity is nullified for a specific export transaction, however, if the exporter knows that the items involved will be used for the development, manufacture, use, or storage of WMD, in which case the exporter must apply for an individual export license.

Note that an exporter must apply for this license only electronically through a network system provided for by the government. But having established an ICP is not a must for obtaining this license.

#### 5-3-2-3. Special Bulk License

##### (1) Special General Bulk Export License

The concept of this license is basically the same as the general bulk export license described in the preceding paragraph, but is eligible not only to the said 27 countries, but to all destinations except for the countries of concern listed in the last paragraph of Article 5-3-2-1.

##### (2) Special Bulk Export License

This license allows exporters to make exports of specific items repeatedly to a specific customer with whom the exporter has maintained a continued trading partnership (this condition does not apply, however, if it is for an infrastructure plant project). The validity is three years from the date of issue, but can be extended for another three years when applied for. A person exporting under this license must report export records to METI once a year.

### (3) Special Bulk Export License for Repair or Replacement

This license is issued to allow re-exports of category 1 items (arms and arms-related items) for a return to the country of origin for repair or replacement. The eligible destinations are limited to specific countries. The validity is three years from the date of issue, but can be extended for another three years when applied for. A person exporting under this license must submit export records to METI every three months.

### (4) Special Bulk Export License for Overseas Subsidiaries

This license allows a company to make repeated exports of specific items to its overseas subsidiary of which the company has the majority share. The validity is three years from the date of issue, but can be extended for another three years when applied for. A person exporting under this license must report export records to METI once a year.

### (5) Special conditions

When obtaining any of the above special bulk licenses, exporters are required:

- (a) to establish an appropriate internal control system based on an ICP, which must be submitted to METI, and implement the controls in strict compliance with the ICP,
- (b) to report once a year their compliance status by answering the questions asked by METI in an export control compliance check list, and
- (c) to receive an on-site inspection by METI.

## 5-4. License Exemptions

In certain limited cases, an export of controlled goods or a transfer of controlled technology is exempt from license requirements, if it meets required conditions. The following are some of the license exemptions currently available.

### 5-4-1. Low value goods

A license is not required for an export of controlled goods if the value is equal to or less than one million yen, or 50,000 yen, depending on the sensitiveness of the item and the destination. However, this exemption may not be used for exports subject to licensing under WMD catch-all control, military catch-all control, brokering control and transshipment control, nor for exports to Iran, Iraq and North Korea.

#### 5-4-2. Re-export of goods imported for repair

A license is not required for a re-export of controlled goods after repair, provided that they were originally exported from and returned to Japan for that purpose, and provided that the import and further re-export transactions are not conducted on a selling and buying basis. This exemption may not be used, however, for exports to North Korea.

#### 5-4-3. Technology or software in the public domain or basic scientific research

No license is required for a transfer of technology if it is in the public domain, or if it is related to a basic scientific research. Technologies in the public domain are those:

- (1) already disclosed to the general public via leaflets, books, magazines, newspapers, etc.,
- (2) provided in the form of academic journals, public patent information or open symposium's minutes that are accessible to the general public,
- (3) accessible or audible to the general public through factory tours, lecture presentations, exhibitions, etc.,
- (4) provided as programs of which the source code is already disclosed, and
- (5) provided for public access, such as manuscripts for conferences, documents delivered at exhibitions, articles printed in magazines, and so on.

#### 5-4-4. Technology transfer in association with an export of goods

A transfer of controlled technology in association with an export of controlled goods does not require a license if the technology is transferred to the buyer, consignee or end-user of the goods and is within the scope minimum required for installation, operation, maintenance or repair of the goods. This exemption may not be used, however, for the transfer of software.

#### 5-4-5. Technology in association with an export of a program

A transfer of controlled technology in association with an export of a controlled program does not require a license if the technology is for the use of the program and is a minimum requirement for its installation or repair.

#### 5-4-6. A controlled item incorporated into an end product as a part or a component

A controlled item incorporated into an end product as a part or a component is exempt from license requirements, if it is not a principal element making up no more than 10 per cent in value, or if it cannot be removed.

## **VI. Enforcement**

### 6-1. Inter-Agency Cooperation

Strict enforcement through inter-agency cooperation is necessary for export controls. METI in this regard maintains close and cooperative relationships with Japan Customs and other agencies, such as the Ministry of Foreign Affairs, the National Police Agency and the Japan Coast Guard.

### 6-2. Japan Customs

Japan Customs, a part of the Ministry of Finance, is in charge of border control and checks the legitimacy of imports and exports of goods. When customs notices any suspicious export related to catch-all control, for example, they report the fact to METI, who then examine the export and determines if a license is required or not. When needed, METI instructs the exporter to apply for an export license. See Appendix 1, Export Procedures in Brief.

### 6-3. Post-shipment Inspection by METI

METI conducts post-shipment inspections to check if export shipments have been lawfully conducted. Such an inspection is carried out by requesting exporters to submit reports on export shipments, and by conducting an on-the-spot inspections.

### 6-4. Penalties and Sanctions

#### 6-4-1. Overview

Violators are subject to penalties or sanctions, which may vary depending on the case. When the violation is not so serious, only an administrative disposition may be imposed on the violator. The penalties were greatly increased in April 2009.

#### 6-4-2. Penalties

(1) If a person conducted an export or brokerage of controlled goods or technologies related to WMD without a license:

The person shall be imprisoned for not more than ten years or shall pay a fine not more than ten million yen, or both. If five times the value of the items involved exceeds ten million yen, however, the fine shall be up to five times the value of the items.

(2) If a person conducted an export or brokerage of controlled goods or technology related to conventional arms without a license:

The person shall be imprisoned for not more than seven years or shall pay a fine not more than seven million yen, or both. If five times the value of the items involved exceeds seven million yen, however, the fine shall be up to five times the value of the items.

(3) If a person made a transfer without a license of controlled technology in other form of transaction that is subject to license:

The person shall be imprisoned for not more than five years or shall pay a fine not more than five million yen, or both. If five times the value of the items involved exceeds five million yen, however, the fine shall be up to five times the value of the items.

(4) If a person failed to subscribe to an admonition issued by the Minister of Economy, Trade and Industry in regard to his/her incompliance with the Exporters' Compliance Standard (see Article 7-2):

The person shall be imprisoned for not more than six months or shall pay a fine not more than 500,000 yen.

In addition to the above, lighter penalties are specified for other types of violations. Also, an attempted violation, or a violation occurring before the actual export, is also subject to penalties.

#### 6-4-3. Administrative Sanctions

Willful violators are subject to administrative sanctions, under which they are prohibited to conduct exports for not more than three years. Please refer to the violation cases described in Article 6-5.

#### 6-4-4. Warning

Instead of imposing penalties and sanctions, METI may issue a warning to violators if the authority considers it appropriate. The warning is publicly announced.

#### 6-5. Violation Cases

##### Case A (Toshiba Machinery Case)

The so-called Toshiba Machinery Incident disclosed by the U.S. in 1987 is a symbolic case that triggered drastic changes in Japan's export controls. From 1982 to 1984, the Toshiba Machinery Corporation, a subsidiary of a well-known electronics giant, exported to the Soviet Union nine-axis computer controlled milling machines, applying for a license describing them falsely as less sophisticated products. It was illegal and a COCOM violation as well because in those days exports of such high-performance machines to the communist bloc countries were prohibited by the multilateral agreement. These high-tech machine tools were delivered and installed at the country's Baltic Naval Shipyard with software packages developed and supplied by a Norwegian company.

This incident created an international uproar because the sophisticated machine tools enabled the Soviets to produce much quieter propellers, making their submarines much harder to detect in deep water, according to the U.S. Department of Defense, and culminated in the resignation of both president and chairman of the parent company, as well as in the imposition of severe penalties on the subsidiary.

#### Case B

In August 2006, four top executives of a company, including the president, were arrested on suspicion that in October and November 2001 they willfully exported without a license two units of three-dimensional high-precision measuring equipment it manufactured to a company called SCOPE in Malaysia through its affiliated company in the country.

High-precision measuring equipment can be used for nuclear development and requires a license for export. Reportedly, the company SCOPE had a connection with Dr. A.Q. Kahn's global nuclear network. In fact, one of the two units had been re-shipped to Libya, which was discovered at the end of 2003 through the inspection carried out by the IAEA. It was also reported that they had made an illegal export of the equipment to Iran through a front company in Tokyo.

Worse, it was discovered that the company had developed special software that enabled the products to electronically mask the measurement data, thus the highly accurate measuring instrument ostensibly became less accurate. The company had been exporting such products to various other countries without a license.

In the end, the four executives were sentenced to 2 to 3 years' imprisonments with suspensions of 4 to 5 years, and the company itself was fined 45 million yen. In addition, METI imposed an administrative sanction against the manufacturer, prohibiting exports of all products for an initial 6 months, and prohibiting exports of the measuring equipment in question for 2 years and 6 months after that.

### Case C

In January 2006, a joint team of police and Japan Customs raided the headquarters of a manufacturing company on suspicion that they had attempted to export unmanned helicopters to China without a license.

This raid was driven by a criminal complaint against the company by METI, who had conducted on-site inspections of the organization. The unmanned helicopter they were about to export was equipped with a computer control system, which allegedly enabled it to fly on its own. This type of air vehicle is controlled under category 4, missiles (MTCR items), of the control list since it can be used for military applications such as spraying chemical or biological agents.

After the investigation, the company was prosecuted and fined one million yen by summary trial. In addition, METI prohibited it from exporting unmanned helicopters for 9 months.

### Case D

In August 2006, a former president of a Tokyo-based trading company was arrested for a non-licensed export of a freeze dryer to North Korea via Taiwan, which was made in September 2002. The police discovered the fact after questioning waste recycling agents in March 2005 for allegedly trying to export bicycles to North Korea.

During the interrogation, the former president admitted that he had known the fact that the freeze dryer could be used in a military-linked research institution in North Korea. This type of equipment, which is used mainly for food processing, is subject to catch-all control since it can be used also for developing biological weapons.

After the police investigation, the man was prosecuted and fined one million yen by summary trial. In addition, METI prohibited the company from exporting any products for 8 months.

### Case E

At the end of July 2008, police stormed the headquarters of a machine tool manufacturer in Hiroshima, western Japan, on suspicion that in 2004 it exported a few units of highly accurate machining center to South Korea without a license. The machine tool can be used for manufacturing equipment that is used for nuclear-related development, and requires a license for export. Newspapers reported that the company had allegedly exported the

products repeatedly to other countries including European ones, the U.S., and China without a license, misleading Japan Customs.

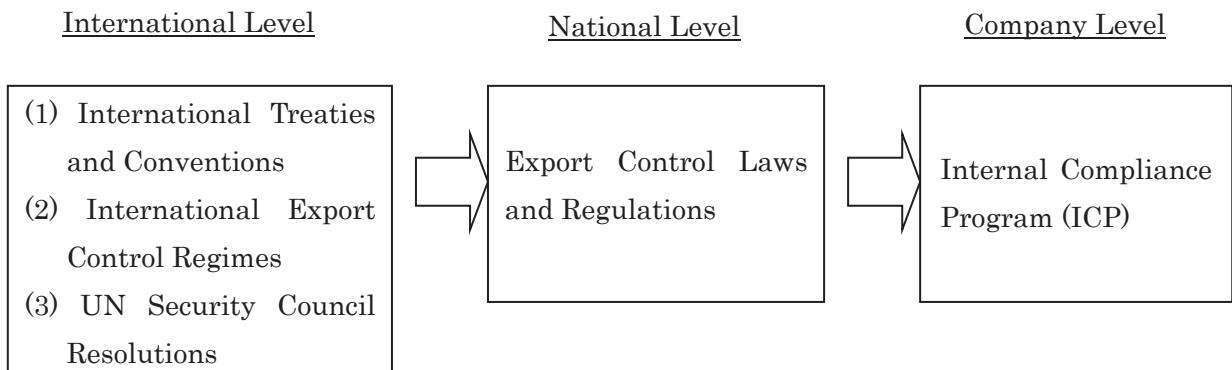
#### Case F

In September 2008, a Tokyo-based company doing agency business for exports and imports attempted to export self-recording magnetic flux meters to Myanmar without a license, but failed because the Minister of Economy, Trade and Industry, under catch-all control, requested the company to apply for a license. Then in January of the next year, the company, conspiring with another company that manufactured the products and with a third company doing North Korean business, tried to export the same products to Myanmar, again without a license, but this time in the manufacturer's name declaring Malaysia as the destination country. The products in question were seized before shipment. In June of the same year, the presidents of the three companies were arrested upon METI's criminal complaint. Three years later in February 2012, the company was fined 3 million yen, and its president was sentenced to 12 months in prison (suspended for three years). Further, in June, METI imposed an administrative sanction on the company to prohibit exports for two months. The self-recording magnetic flux meters can be used for missile or nuclear development.

## **VII. Export Controls of Private Companies**

### **7-1. Roles of Individual Companies**

From the perspective of exporters, the export control system as a whole can be described as a three-layer structure, in which the roles played by individual companies are significant, as the companies are burdened deeply with a duty of compliance through day-to-day business operations.



In Japan, ever since 1987 when the government drastically strengthened export controls, most exporters, under the government's instructions and guidance, have been strenuously implementing export controls establishing an ICP-based system in which a corporate executive representing the company is designated as the person ultimately responsible for the export controls in the organization.

### **7-2. Exporters' Compliance Standard**

In April 2009, in order to reinforce the Japanese system further, METI introduced a new legal framework called Exporters' Compliance Standard, which came into effect on April 1, 2010. In this framework, every single person—an individual, a company, or a university—that is engaged in exports of goods or transfers of technology is obliged to establish an internal control system of certain sort. In particular, any person handling controlled items must establish a compliance system that includes at least the following elements.

- (1) Ultimate responsibility for export controls is assigned to a person who represents the organization,
- (2) A proper export control organization,
- (3) Proper product classification procedures,
- (4) Proper transaction screening procedures,

- (5) Proper shipping control procedures,
- (6) Proper procedures for auditing and conduct audits accordingly,
- (7) Proper export control training for all members concerned in the organization,
- (8) Export control documents are kept properly for an appropriate period, and
- (9) All violations are reported to the Minister of Economy, Trade and Industry without delay, and remedial measures are taken.

### 7-3. Internal Compliance Program (ICP)

The legal framework of the Exporters' Compliance Standard described above was in fact introduced to urge companies handling sensitive goods and technologies to establish an ICP. In this regard, METI also introduced a system of ICP registration. Under this system, a company who so wishes submits its ICP to METI, who then checks and registers it if it is considered satisfying the guideline the authority set. Further, METI publishes on its website the name of the companies who have registered an ICP and have accepted the publication. In 2013, about 1,500 ICPs were registered, and some 600 company names were published as of April 2015.

Exporters are required to include the following key elements in their ICPs.

- (1) Organization
  - (a) Corporate export control organization
  - (b) Role and responsibility of each unit
- (2) Control procedures
  - (a) Item classification
  - (b) Transaction screening
  - (c) Shipment control
- (3) Operation and maintenance
  - (a) Internal audit
  - (b) Training and education
  - (c) Documents control
  - (d) Instruction and guidance to subsidiaries
  - (e) Incident reports and prevention of recurrence

Further, METI issues each year a compliance check list to the companies who have their ICPs registered with the authority. Answering some 40 questions raised in the list, each company can self-check its export control compliance status. Note that registration of their ICPs and submission to METI of this check list with their answers filled in are one of the conditions for obtaining a special bulk license.

## 7-4. Control Procedures

### 7-4-1. Classification

According to METI, the majority of violations in recent years are related to classification, namely, misclassification and even non-classification. As a result, the authority is placing much weight on this procedure; it even requires exporters to designate in their organizations a person responsible specifically for this procedure.

Accordingly, Japanese exporters are always trying to do it correctly referring to the control lists and adopting a two-step procedure in which the classification first conducted by an engineer is checked and verified by another person with sufficient knowledge of the regulations. Usually, classification is conducted using a special form called "Parameter Sheet" or *Komoku-betsu Taihi Hyo* (classification check sheet). See Appendix 7 for details.

Probably, Japan is a country where exporters are conducting item classification most rigorously. This is true in a sense that Japanese exporters are conducting it all by themselves in the situation that no official service for this procedure is available, while the authorities of some advanced countries are providing such a service officially, employing necessary engineers. (Note, however, that the situation in Japan is being improved as mentioned in Article 9-5)

### 7-4-2. Transaction Screening

For each export transaction, exporters conduct a screening with a system designed for their unique business operations. As the initial step, a sales person concerned checks for each enquiry the product classification, the end-use, the end-user, the destination country and so forth, then subjects it to further screening, if necessary, according to the criteria set forth internally. Again, a double-check system is required for transaction screening. For this process, METI draws exporters' attention to the following points.

- (1) Transaction screening shall be conducted using the prescribed screening form, or preprinted transaction screening sheet.
- (2) The responsibilities of the person who approves the transaction screening, as well as of the person who conducts the screening, shall be defined clearly.
- (3) A person who is responsible for making the company's final judgment on order acceptance shall be designated.
- (4) Any domestic transaction shall be treated as an export if it is known in advance that the products involved will be exported in the end through the customer or other related parties.

### 7-4-3. Shipment Control

Shipment control is the last resort of a company's export control. It is therefore required for exporters to establish an appropriate system of shipment control. When making each shipment, the exporter must check if the shipping items are identical with those designated on the shipping documents, or on the license if those are controlled. No items should be shipped out unless the required screening has been completed.

## **VIII. Communication between METI, CISTEC and Exporters**

### **8-1. Overview**

For promoting export control awareness among exporters, METI provides multiple channels that enable it, considering that keeping close communication with export control communities is essential. What is outstanding in this regard is the existence of CISTEC, an organization that functions as a linkage between the authority, industries and academia.

### **8-2. METI**

#### **8-2-1. Information Service**

Through its website, METI provides for the public a wide variety of information such as regulatory documents, a brief explanation about the regulations, guidance, Q & A, and so forth, which are vital for exporters.

METI can be accessed at the following URLs.

- (1) Japanese version: <http://www.meti.go.jp/policy/anpo/index.html>
- (2) English version: <http://www.meti.go.jp/policy/anpo/englishpage.html>

#### **8-2-2. Consulting Service**

Exporters can visit METI for face-to-face consultation on various matters related to specific transactions and others.

#### **8-2-3. Seminars**

In coordination and cooperation with CISTEC, METI holds various seminars so that as many people can learn export control as possible. Two types of seminars are available for Japanese exporters: one that is held periodically for awareness promotion and the other held when necessary due, for example, to major regulatory amendments METI has made.

In addition, METI holds various other seminars inside and outside of Japan as part of its outreach activities. The most important one is the Asian Export Control Seminar which is held annually in Tokyo in cooperation with CISTEC. The 22<sup>nd</sup> such seminar was held in February 2015 and attended by about 160 persons from 24 countries and regions.

#### 8-2-4. Audits and Inspections

METI's Security Export Inspection Office conducts audits or on-site inspections on companies, small and large, who are engaged in export business. Its audit teams visit companies, mainly special bulk license holders, with one or two weeks' notice and carry out one-day audits. METI conducts this for over 100 companies each year and deepen its communication with exporters.

#### 8-3. CISTEC

##### 8-3-1. About CISTEC

CISTEC, the Center for Information on Security Trade Control, was founded in April 1989, shortly after Japan's export controls were drastically strengthened, as a non-profit and non-government organization. It is a joint creation of the government and industries; its operation is maintained by 40 staff members and is supported financially and operationally by more than 400 associate members, including major exporting companies and research institutes (as of April 2015).

As mentioned, CISTEC's mission is to function as a linkage between the authority, industry and academia and help them create an efficient and effective system of export controls in Japan, and thereby contribute to the promotion of the peace and security of the world. In order to achieve the goal, CISTEC plays the roles to:

- (1) Collect experts' knowledge and wisdom and apply it for the betterment of the Japanese system,
- (2) Support Japanese companies and others for their establishment of appropriate internal export control systems,
- (3) Develop advanced online systems for the provision of necessary information for exporters, and
- (4) Promote international cooperation mainly with Asian countries to increase export control awareness and harmonization.

CISTEC can be accessed at the following URLs.

- (1) Japanese version: <http://www.cistec.or.jp/>
- (2) English version: <http://www.cistec.or.jp/english/index.html>

##### 8-3-2. Main Activities

The main activities of CISTEC are as described below.

(1) Research and analysis, and proposal to METI

- (a) To collect basic information about sensitive goods and technologies and carry out related research and analysis.
- (b) To carry out research and analysis on legal systems-Japan and abroad.
- (c) To study methods and tools for realizing efficient and effective export controls.
- (d) To gather industry opinions through various committees related to the above and compile them into a proposal to METI.

(2) Company support

- (a) To provide face-to-face consultation services related to various issues.
- (b) To assist companies in their establishment of an ICP.
- (c) To provide export control tools such as parameter sheets, guidance books and so on.
- (d) To maintain export control certification programs.

(3) Information provision

- (a) To provide an online database service related to various parties of concern.
- (b) To publish the CISTEC Journal, which is a bimonthly magazine specialized in export controls.

(4) International cooperation

- (a) To hold the Asian Export Control Seminar in Tokyo
- (b) To send experts abroad to various international seminars and forums.

8-3-3. Export Control Research Committee

What characterizes CISTEC most is its committee activities. Under the heading of the Export Control Research Committee, CISTEC has two research boards: the Policy, Rules and Procedures Board; and the Goods and Materials Board. These boards have various subcommittees established for specific research themes as mentioned below. Through these activities, CISTEC gathers industry opinions and consolidates them into public comments and proposals to the government.

It should be noted in this regard that members of each committee are all from private companies and that CISTEC's activities are, in fact, sustained by those active members from companies.

(1) Policy, Rules and Procedures Board

- (a) Export Control Policy Committee
- (b) Export Control Systems Committee
- (c) International Research and Relations Committee

(2) Goods and Materials Board

- (a) Committee on Dual-use Equipment for WMD
- (b) Advanced Materials Committee
- (c) Material Processing Committee
- (d) Electronics Committee
- (e) Information Technologies Committee
- (f) Sensors, Lasers, Navigations and Avionics Committee

8-3-4. Certification Program

Another important activity of CISTEC is its certification program. CISTEC maintains a program to grant certificates to people who have been qualified for having certain levels of knowledge about export controls. The levels of the qualification are set in three categories: STC Associate, STC Advanced and STC Expert. Encouraging people to challenge the examinations, CISTEC aims to promote their professional skills and motivate them to play a leading role as an expert in each company. Also, CISTEC expects that companies consider it as a merit of their job performance.

This program was started more than ten years ago in June 2004 with the examination for STC Associate. As of March 2015, the total numbers of persons who have challenged the examinations are 32,649 for STC Associate, 449 for STC Advanced and 4,390 for STC Expert. Of those, 22,913 persons have been qualified for STC Associate, 248 for STC Advanced and 584 for STC Expert. Note that the numbers related to STC Advanced are small because the program of this category was started just in 2015.

8-3-5. CISTEC Model

Thanks to its long-lasting activities as mentioned above, the name "CISTEC" is internationally recognized as a distinguished organization dedicated to export controls. Rooted deeply in Japan, it now receives a growing number of contacts from foreign authorities and institutions, who are asking it to explain its roles and functions, to mutually discuss specific subjects, and even to send its members for presentations. Its unique existence—partly as the authority, partly as an industry association, and partly as a law firm—has been drawing overseas attention as an interesting model, or rather "CISTEC Model" or "Japan Model" as called now in international export control communities. In this model, CISTEC stands in a well-balanced position between the authority and exporters, and functions as a kind of go-between, bringing multiple benefits to both sides. Even corporate members themselves write regulatory guidance of various countries of the world including Japan like this one, which is also part of the CISTEC Model.

## **IX. Challenges**

### **9-1. Overview**

It was more than 60 years ago when Japan's export control system was founded. With the passage of time, the system itself has become dilapidated and ineffective. The biggest issue is that the legal system has worn out and now become a rag rug, or a labyrinthine maze of the law, cabinet orders, ministerial ordinances, notices, and notifications, on which the authority has added amendments upon amendments over the decades. And this creates a lot of problems which exporters, or even the authority, are facing with. Therefore, over the last few years, Japanese industries, through CISTEC, as well as through other organizations, have been strongly requesting METI to reform the Japanese system.

### **9-2. The Four-Point Reform Request**

In October 2010, the Export Control Policy Committee of CISTEC representing Japanese industries submitted a letter to METI titled, "Request for a Comprehensive Review of Japan's Security Export Control Legal System." In the letter, the committee made a four-point reform request, saying that Japanese exporters were still over-burdened by the complicated, hard-to-understand control system and were left behind in the highly competitive global market. Actually, the committee requested METI to:

- (1) Make the legal system easier to understand and easier to comply with by:
  - (a) introducing a new Export Control Act to replace the current Foreign Exchange and Foreign Trade Act,
  - (b) laying down the basic control requirements in the Act in a clear manner,
  - (c) streamlining and rationalizing the complicated, multi-layer legal structure, and
  - (d) simplifying other hard-to-understand regulations.
- (2) Secure a level-playing field for international competition by:
  - (a) providing a system under which regime-based amendments of the control lists can be done speedily (this requires a shift of the legal delegation from the present cabinet order to ministerial ordinance or lower level statutes),
  - (b) rearranging the current control lists so that each item can be identified also with the European numbering system,
  - (c) continuing the research on foreign availability so that the controlled items can be reviewed effectively, and
  - (d) harmonizing export control provisions with those set forth by the international export control regimes.

(3) Ease restrictions according to the destination countries' security status and to the exporters' compliance status by:

- (a) streamlining export control procedures in line with the international trends,
- (b) simplifying the procedures related to the exports to allied countries,
- (c) reviewing the system of the special bulk export license for overseas subsidiaries, and
- (d) introducing a system of preferential treatment for exporters of excellent compliance records.

(4) Reduce procedural burdens on exporters by:

- (a) ensuring consistency in legal interpretations by the authority and providing venues for mutual discussions between METI and exporters,
- (b) reducing the time for examining license applications,
- (c) reducing the burden of laborious product classification procedures,
- (d) introducing an effective electronic license application system,
- (e) reducing the documents required for a license application,
- (f) introducing other types of preferential treatment,
- (g) rationalizing overall control implementations, and
- (h) improving and expanding administrative services.

In response to the above, METI has been taking necessary steps, and the situation has been improving step by step. But major challenges still remain as follows.

### 9-3. Internationalization of Classification Numbering System

One big challenge METI is currently taking up is internationalization of Japan's classification numbering system. As already mentioned, the controlled items in Japan are identified by the classification numbers that are specific to Japan, not in accordance with the EU numbering system which is accepted widely in the world. This has been an obstacle for Japanese companies to expand their operations globally.

At the time of this writing in April 2015, METI, together with CISTEC, is working hard to rearrange the Japanese classification numbers based on the EU system. The expected merits of this action are as follows.

- (1) For each controlled item, it will become easier to conduct one-on-one classification comparison between the Japanese list and the EU list.
- (2) Japanese exporters can easily share products' classification information with overseas companies on the same basis of understanding.

(3) It will become easier to check the differences of the control lists between Japan and other countries and also between Japan and the international export control regimes.

(4) Classification of imported goods will become easier.

#### 9-4. Introduction of a Provision of Voluntary Self-Disclosure

Industries expect that METI will introduce a provision of voluntary self-disclosure in which a penalty for a violation self-disclosed by the violator can be mitigated with certain conditions. In fact, the authority is already implementing it in part as a trial.

#### 9-5. Support for Small and Medium-sized Companies and Universities

The Japanese economy is sustained by a large number of small and medium-sized companies covering a broad area, including foreign trade. However, those companies in most cases do not have legal or export control departments, and their knowledge base in this field is very narrow though what is actually required is not small. And this is also true of universities, which play key roles in scientific and technological research and development.

Therefore, it is an important challenge for CISTEC to support such companies and universities for awareness promotion and capacity building. In fact, CISTEC is already providing them with such services as information provision, item classification, audit assistance and seminars, but it considers them still not sufficient and intends to expand its services to fulfill their specific needs.

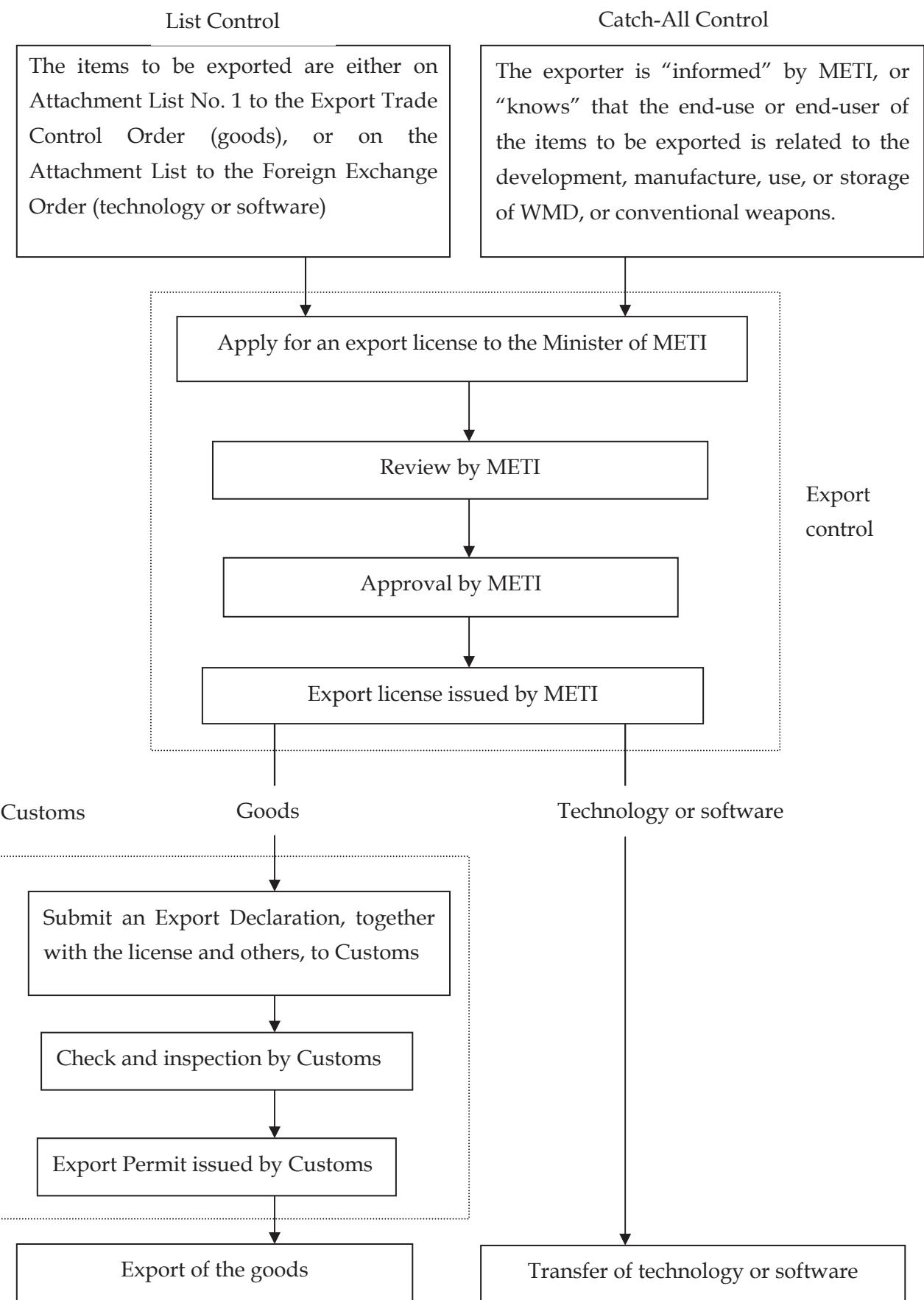
#### 9-6. Introduction of a New Export Control Act and Regulations

As indicated at the beginning, the biggest challenge for METI, or the ultimate goal of Japanese industries, is to establish, as a single set, a new export control act and regulations, breaking away from the current system built under the Foreign Exchange and Foreign Trade Act. With the new act and regulations, the control system shall be streamlined completely so that clarity and predictability of the controls are fully ensured.

The road ahead to the goal seems long and difficult, but the authority is indeed expected to take up this challenge as soon as possible.

## Appendix 1

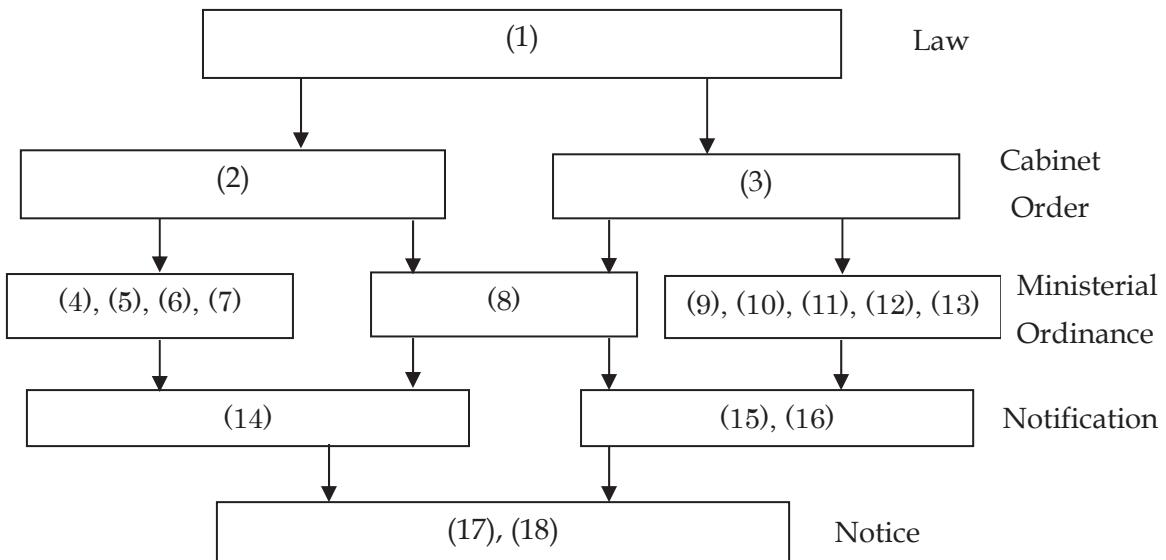
### Export Control Procedures in Brief



## Appendix 2

### Legal Structure

(The main part of the Japanese export control law and regulations)



Law	
(1)	Foreign Exchange and Foreign Trade Act
Cabinet Orders	
(2)	Export Trade Control Order
(3)	Foreign Exchange Order
Ministerial Ordinances	
(4)	Ministerial Ordinance stipulating export control regulations
(5)	Ministerial Ordinance stipulating the cases where temporarily unloaded goods must be considered WMD-related
(6)	Ministerial Ordinance stipulating the cases where goods to be exported must be considered WMD-related
(7)	Ministerial Ordinance stipulating the cases where goods to be exported must be considered conventional weapons-related
(8)	Ministerial Ordinance stipulating goods, technologies and software pursuant to provisions of Attachment List No. 1 to the Export Trade Control Order and the Attachment List to the Foreign Exchange Order
(9)	Ministerial Ordinance on external trade other than export of goods
(10)	Ministerial Ordinance stipulating the cases where a technology transfer must be considered WMD-related
(11)	Ministerial Ordinance stipulating the cases where a technology transfer must be considered conventional weapons-related

(12)	Ministerial Ordinance stipulating the cases where goods subject to brokering must be considered WMD-related
(13)	Ministerial Ordinance stipulating the cases where technologies subject to brokering must be considered WMD-related
(14)	Notification on the implementation of the Export Trade Control Order
Notifications	
(15)	Notification on licensed technology transfer conducted in conformity with the provisions of Article 25-1 of the Foreign Exchange and Foreign Trade Act and Article 17-2 of the Foreign Exchange Order
(16)	Notification on licensed brokering service of goods conducted in conformity with the provisions of Article 25-4 of the Foreign Exchange and Foreign Trade Act
Notices	
(17)	Notice on required documents and others related to the submission of license applications for the exports of goods, transfers of technology and exports of specific recorded media
(18)	Notice on export procedures concerning catch-all control related WMD and conventional weapons

Note that English translations of Japanese laws and orders, including the Act and two cabinet orders are available at the "Japanese Law Translation" website (<http://www.japaneselawtranslation.go.jp/?re=02>) which is operated by the Ministry of Justice.

Appendix 3

The Controlled Items

(Attachment List No. 1 to the Export Trade Control Order)

Category 1. Arms			
(1)	Firearms, ammunitions	(10)	Anti-submarine and torpedo nets
(2)	Explosives, explosive dispensers	(11)	Armor plates, military helmets, body armors
(3)	Propellants, military fuels	(12)	Military search lights
(4)	Stabilizers for explosives and propellants	(13)	Military bacterial agents, chemical warfare agents, radioactive materials, etc.
(5)	Directed energy weapons	(13-2)	Chemical mixtures for decontamination of the above materials
(6)	Kinetic energy weapons and projectiles	(14)	Biopolymers for chemical agents, etc.
(7)	Military vehicles, bridges, etc.	(15)	Equipment and devices for the production and testing of military propellants
(8)	Military vessels, etc.	(16)	Equipment for the production and testing of weapons
(9)	Military aircraft, etc.	(17)	Military satellites
Category 2. Nuclear weapons			
(1)	Nuclear fuel and nuclear source materials	(27)	Electrolytic cells for fluorine production
(2)	Nuclear reactors, generating equipment	(28)	Equipment for the production of gas centrifuge rotors
(3)	Deuterium and deuterium compounds	(29)	Centrifugal balancing machines
(4)	Artificial graphite	(30)	Filament winding machines
(5)	Equipment for the separation of nuclear fuel and nuclear fuel materials	(31)	Gas laser oscillators, etc.
(6)	Equipment for the separation of lithium isotopes, etc.	(32)	Mass spectrometers or ion sources
(7)	Equipment for the separation of uranium (or plutonium) isotopes	(33)	Pressure gauges or bellows valves
(8)	Frequency chargers	(34)	Superconducting solenoid electromagnets

(9)	Nickel powders	(35)	Vacuum pumps
(10)	Equipment for the production of deuterium or deuterium compounds	(35-2)	Scroll-type compressors and vacuum pumps
(10-2)	Equipment for the production of uranium, plutonium (compounds), etc.	(36)	Direct current power units
(11)	Flow forming machines	(37)	Electron accelerators or flash X-ray generators
(12)	1) Numerically controlled machine tools 2) Measuring equipment	(38)	Impact testing machines
(13)	Induction furnaces, arc furnaces, plasma melting furnaces	(39)	Mechanical or electronic streak cameras
(14)	Isostatic presses	(40)	Interferometers, pressure gauges, pressure transducers
(15)	Robots	(41)	Goods for the detonation or testing of nuclear weapons
(16)	Vibration test equipment	(42)	Photomultiplier tubes
(17)	Structural materials for gas centrifuge rotors	(43)	Neutron generators
(18)	Beryllium	(44)	Remote manipulators
(19)	Substances used as alpha sources for the detonation of nuclear weapons	(45)	Radiation shielding windows, frames
(20)	Boron-10	(46)	Radiation hardened TV cameras, lenses
(21)	Substances used as reducing or oxidizing agents for the production of nuclear fuel materials	(47)	Tritium, alloys and compounds
(22)	Crucibles made with materials which are corrosion resistant against actinide	(48)	Equipment for the production, collection, or preservation of tritium
(23)	Hafnium, hafnium alloys and compounds	(49)	Platinized catalysts for the collection of tritium
(24)	Lithium, lithium alloys and compounds	(50)	Helium-3
(25)	Tungsten, alloys and compounds	(51)	Rhenium, alloys and alloys of rhenium and tungsten
(26)	Zirconium alloys and compounds	(52)	High explosive containment

<b>Category 3. Chemical weapons</b>			
(1)	Substances for raw materials of CW agents, or substances having equivalent toxic ability with CW agents or raw materials	(2)	Equipment for the production of CW agents
<b>Category 3-2. Biological weapons</b>			
(1)	Organisms, toxins, subunits, etc. used as raw materials for military bacterial agents	(2)	Equipment for the production of military bacterial agents
<b>Category 4. Missiles</b>			
(1)	Rockets, production and testing equipment	(15)	Structural materials for rockets or unmanned aerial vehicles
(1-2)	Unmanned aerial vehicles, production and testing equipment	(16)	Accelerometers, gyroscopes, navigation equipment for rockets and production equipment therefor
(2)	Rocket guidance systems, production and testing equipment	(17)	Flight controllers, attitude controller, and testing equipment, proofreading machinery
(3)	Propulsion units, production and testing equipment	(18)	Avionics equipment for rockets
(4)	Flow-forming machines	(18-2)	Heat batteries for rockets
(5)	Servo valves, pumps usable for propellant controllers, or bearing usable therefor	(19)	Gravity meters gravity gradiometers for aircraft or vessels
(6)	Propellants, raw materials therefor	(20)	Lunch pads and supporting equipment for rockets
(7)	Equipment for the production and testing of propellants and raw materials	(21)	Radio telemetry equipment, radio telecontrol equipment for rockets
(8)	Power mixers	(22)	Electronic computers on board rockets
(9)	Jet mills, equipment for the production of metal powders	(23)	A/D converters for rockets
(10)	Equipment for the production of composite materials, fibers, prepreg and preform	(24)	Vibration test equipment, wind tunnels, etc.
(11)	Nozzles	(24-2)	Electronic computers for designing rockets
(12)	Equipment for the production of nozzles and re-entry vehicle nose tips	(25)	Materials or equipment for reducing acoustic waves, electromagnetic waves, or light

(13)	Isostatic presses	(26)	Microcircuits, detectors and radomes for rockets
(14)	Furnaces for the densification of carbon-carbon composite		
<b>Category 5. Advanced materials</b>			
(1)	Products of fluorine compounds	(11)	Vibration control liquid
(2)	Copolymers of vinylidene fluoride, etc.	(12)	Refrigerant liquid
(3)	Aromatic polyimide products	(13)	Titanium boride, semi-finished ceramic products
(4)	Tools for the superplastic forming of Ti, Al alloys	(14)	Ceramic composites
(5)	Alloys of Ni, Ti, Mg, etc.	(15)	Polydiorganosilane, polysilazane, etc.
(6)	Metallic magnetic materials	(16)	Polymerizable non-fluorinated compounds and non-fluorinated polymer (bismaleimides, aromatic polyamide-imides, polyetherimide, etc.)
(7)	Uranium-titanium alloys, tungsten alloys	(17)	Copolymers of vinylidene fluoride, etc.
(8)	Superconductive materials	(18)	Fibrous, prepregs, performers, etc.
(9)	Hydraulic fluids, etc.	(19)	Boron, boron mixtures, boron alloys, guanidine nitrate, nitroguanidine
(10)	Lubricating materials		
<b>Category 6. Material processing</b>			
(1)	Bearings	(6)	Measuring equipment
(2)	Numerically-controlled machine tools	(7)	Robots
(3)	Gear producing machine tools	(8)	Feedback equipment, etc.
(4)	Isostatic presses	(9)	Spin-forming machine
(5)	Coating equipment		
<b>Category 7. Electronics</b>			
(1)	Integrated circuits	(12)	Signal generators
(2)	Microwave equipment, components of millimeter wave equipment, etc.	(13)	Frequency signal analyzers
(3)	Signal processing equipment	(14)	Network analyzers
(4)	Equipment using superconducting materials	(15)	Atomic frequency standards
(5)	Superconducting electromagnets	(15-2)	Spray cooling thermal management systems

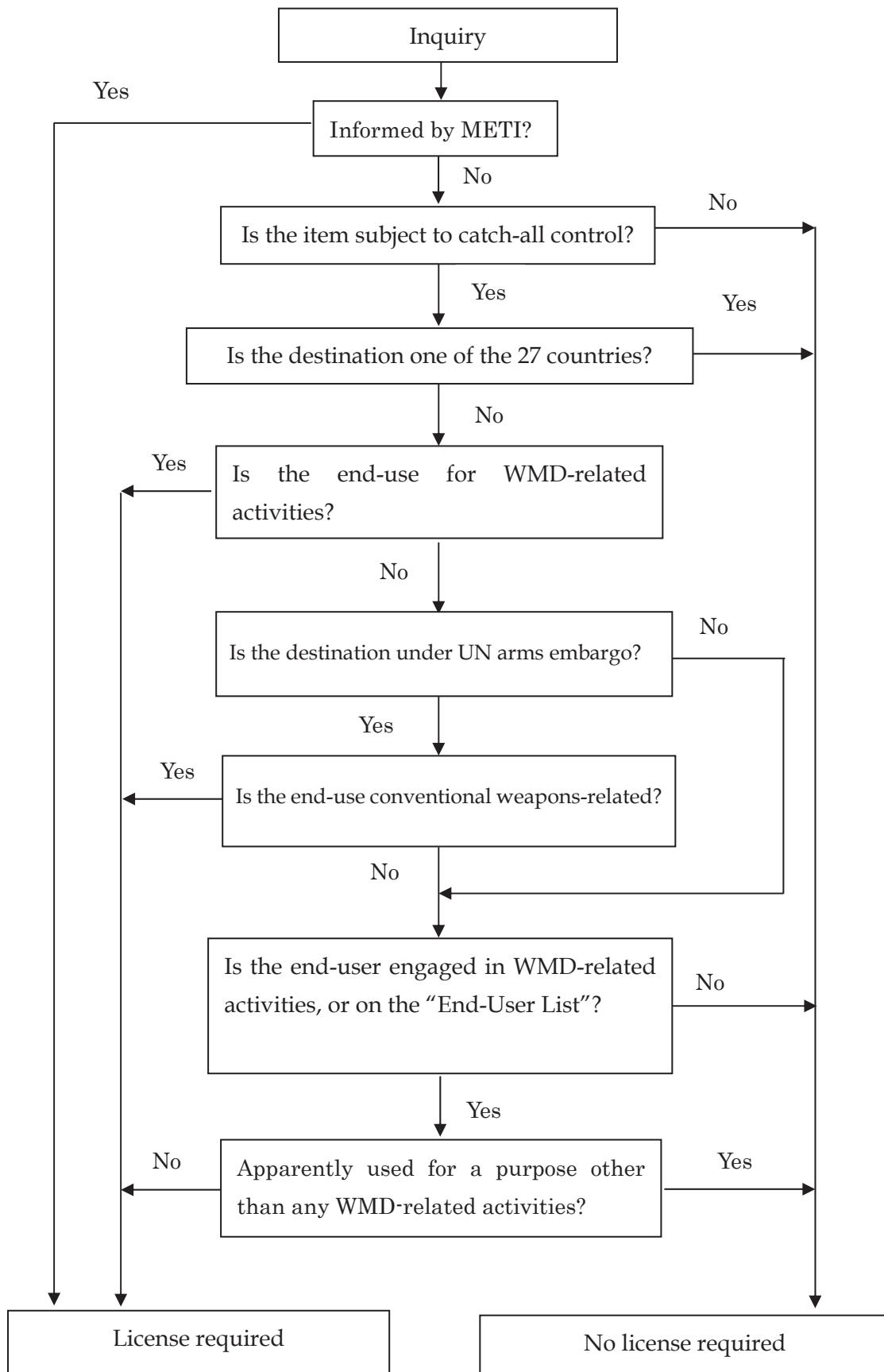
(6)	Battery cells, primary, secondary, and photovoltaic cells	(16)	Equipment for manufacturing semiconductor devices, integrated circuit and materials
(7)	High energy storage capacitors	(17)	Masks or reticles
(8)	Encoders	(18)	Semiconductor substrates
(8-2)	Thyristor device, thyristor module	(19)	Resists
(8-3)	Semiconductor device and module	(20)	Organometallic compounds of Al, Ga, In
(9)	Sampling oscilloscope	(21)	Hydrides of P, As or Sb
(10)	Waveform digitizers, transient recorders	(22)	Silicon carbide wafer, ingot, preform, etc.
(11)	Digital instrumentation recorders		
<b>Category 8. Computers</b>			
(1)	Electronic computers		
<b>Category 9. Telecommunications</b>			
(1)	Telecommunication transmission equipment	(5-5)	Internet protocol network communications surveillance systems or equipment
(2)	Electronic chargers	(6)	Equipment for the design, production, etc. of (1)-(3), (5)-(5-5) above
(3)	Optical fiber communication cables, etc.	(7)	Information security equipment using encryption
(4)	Deleted	(8)	Equipment for preventing the leakage of information transmission signals, etc.
(5)	Phased array antennas	(9)	Same as (7) but without encryption
(5-2)	Radio direction finding equipment	(10)	Communication cable systems for detecting surreptitious intrusion
(5-3)	Telecommunication jamming equipment, parts, therfor	(11)	Equipment for the design, production, etc. of (7)-(10)
(5-4)	Position detecting equipment using electromagnetic interference observation technology		

<b>Category 10. Sensor and lasers</b>			
(1)	Underwater acoustic equipment	(8-2)	Laser microphone
(2)	Optical detectors, coolers	(9)	Magnetometers, magnetic gradiometers, calibration equipment therefor
(3)	Optical sensing fibers	(9-2)	Deep water detector
(4)	High-speed cameras	(10)	Gravity meters, gravity gradiometers
(5)	Reflectors	(11)	Radar
(6)	Optical components of zinc selenide, zinc sulfide or for space use	(12)	Light reflectance measuring apparatus
(7)	Controllers of optical equipment or components	(13)	Equipment for the production of gravity meters
(7-2)	Aspherical optical elements	(14)	Optical detectors, etc.
(8)	Gas laser oscillators, etc.		
<b>Category 11. Navigation and avionics</b>			
(1)	Accelerators	(4)	Gyro-astro compasses, device that derive position or orientation by means of automatically tracking celestial bodies or satellites, electromagnetic wave receivers for global navigation systems, etc.
(2)	Gyroscopes	(4-2)	Underwater sonar navigation systems
(3)	Inertial navigation systems	(5)	Equipment for testing, production, etc. of (1)-(4-2) above
<b>Category 12. Marine</b>			
(1)	Submersible vessels, surface-effect vehicles, etc.	(6)	Air independent power systems
(2)	Components or accessories of vessels	(7)	Water tunnels
(3)	Ocean salvage systems	(8)	Syntactic foam
(4)	Underwater cameras	(9)	Self-contained diving equipment, etc.
(5)	Underwater robots	(10)	Sound generator used in deep water
<b>Category 13. Propulsion</b>			
(1)	Gas turbine engines	(4)	Unmanned aerial vehicles
(2)	Satellite or spacecraft for space development	(5)	Equipment for the testing, measuring, inspection, etc. of (1)-(4) and 15(10)

(3)	Rocket propulsion systems		
<b>Category 14. Miscellaneous</b>			
(1)	Metallic fuel in particle form	(7)	Robots or their controllers
(2)	Additives or precursors of propellant powders, explosives	(8)	Electrically triggered shutters
(3)	Diesel engines	(9)	Tear gases, riot agents, spraying equipment, etc.
(4)	Deleted	(10)	Small explosive devices
(5)	Self-contained diving equipment, etc.	(11)	Explosive detector
(6)	Construction machineries specially designed for aerial transport		
<b>Category 15. Sensitive items</b>			
(1)	Inorganic fibers, etc.	(6)	Optical detectors specially designed for space applications
(2)	Electric wave absorbers and conductive polymeric materials	(7)	Radars and parts therefor
(3)	Nuclear heat source materials	(8)	Submersible vessels that can cruise independently
(4)	Telecommunication transmission equipment	(9)	Soundproofing devices
(4-2)	Radio equipment to control detonation of small explosives	(10)	Ramjet engines, scramjet engines, etc.
(5)	Underwater acoustic equipment		

Appendix 4

Catch-all Control Flowchart  
(WMD Catch-All Control and Military Catch-All Control)



## Appendix 5

### The Commodity Watch List for WMD Catch-All

A list of items that could possibly be used for the development, manufacture, use or storage of WMD (N: Nuclear weapons, M: Missile, B: Biological weapons, C: Chemical weapons)

- (1) Tributyl phosphate (TBP) (N)
- (2) Carbon/Glass/Aramid fiber (N, M)
- (3) Titanium alloys (N, M)
- (4) Maraging steel (N, M)
- (5) Aluminum alloys tubes with a diameter of more than 75 mm (N)
- (6) Flow-forming machines (N, M)
- (7) N/C Machine tools (N, M)
- (8) Isostatic presses (N, M)
- (9) Filament winding machines (N, M)
- (10) Frequency changers (N)
- (11) Mass spectrometers and ion sources (N)
- (12) Vibration test systems (N, M)
- (13) Centrifugal multiplane balancing machines (N, M)
- (14) Pressure transducers (N, M)
- (15) Non-destructive inspection equipment (N, M)
- (16) Oscilloscope or waveform digitizers and transient recorders (N)
- (17) High power/voltage DC power supplies (N)
- (18) Generators (N)
- (19) Vacuum pumps (N)
- (20) Radiation-hardened robots (N)
- (21) TIG welding units, electron beam welding units (N, M)
- (22) Radiation monitoring and detection equipment (N)
- (23) Mill for fine powder (M)
- (24) Karl Fischer moisture equipment (M)
- (25) Equipment designed for producing prepgs (M)
- (26) Artificial graphite (N, M)
- (27) Gyroscopes (M)
- (28) Rotary encoders (M)
- (29) Trucks (Tractors, Trailers, Dump trucks) (M)
- (30) Crane trucks (M)
- (31) Chambers for fermentation (B)
- (32) Centrifugal separators (B)
- (33) Freeze dryers (B)
- (34) Reactors (C, M)

- (35) Agitators (C, M)
- (36) Heat exchangers or condensers (C, M)
- (37) Distillation or absorption columns (C, M)
- (38) Filling equipment (C, M)
- (39) Unmanned air vehicles that are specially designed for incorporating spray machines (M, B, C, M)
- (40) Spray machines that are specially designed for installing in unmanned air vehicles (M, B, C, M)

The 12 items applied specifically to the exports to Syria

- (1) Draft chamber (C)
- (2) Protective equipment for respiration attached to full-face mask (B, C)
- (3) Aluminum chloride (CAS 7446-70-0), dichloromethane (75-09-2), N, N - dimethylaniline (121-69-7), isopropyl bromide (75-26-3), isopropyl ether (108-20-3), mono-isopropylamine (75-31-0), kalium bromide (7758-02-3), pyridine (110-86-1), sodium bromide (7647-15-6), sodium metal (7440-23-5), tributylamine (102-82-9), triethylamine 8121-44-8), trimethylamine (75-50-3) (C)
- (4) Diethylene triamine (111-40-0) (C)
- (5) Butyrycholinesterase, pyridostigmine bromide (101-26-8), obidoxime chloride (114-90-9) (C)
- (6) Bio safety cabinet, globe box (B)
- (7) Batch-type centrifugal machine (B)
- (8) Fermentation tank (B)
- (9) Reactor, agitator, heat exchanger, condenser, pump (excluding item 11 below), valve, container, distiller, absorption tower (C)
- (10) Clean room, fan equipped with HEPA filter (B)
- (11) Vacuum pump or its attachments (C)
- (12) Equipment for analyzing and detecting chemical substances, their parts and attachments(C)

## Appendix 6

### The Guideline for Judging “When Apparent”

This guideline is provided by METI to help exporters make proper judgment if an item to be exported will apparently be used for a purpose other than the WMD-related activities stipulated in the regulations related to catch-all control.

[The items' end-use and specifications]

- (1) The importer, end-user, or their agent has clearly explained about the end-use.
- (2) The customer's need for the items is reasonable for their business and technological capabilities.

[Place of installation]

- (3) The customer has clearly identified the place of the items' installation or use.
- (4) No such information is given that the place of installation or use is inside or vicinity of military facilities or a classified area where only limited persons are allowed to enter, or that the stated end-use is suspicious.
- (5) The customer has made no excessive requirements for security measures for transportation, installation, etc.

[Related facilities and equipment]

- (6) The customer has sufficiently explained about the facilities where the items will be used, and about the raw materials to be brought in to the facilities.
- (7) The combination of the items, the facilities where the items will be used, and the raw materials to be brought in to the facilities is rational, matching each other correctly in view of the end-use of the items.
- (8) The requirements for spare parts are not excessive.
- (9) The customer has demanded equipment reasonably required in association with the items.

[Packing, shipping mark, shipping method, and shipping route]

- (10) The requirements for shipping mark, shipping method, etc. are not extraordinary.
- (11) The shipping route is reasonable for the export items and destination.
- (12) The required packing method and shipping mark match the shipping method or the destination.

[Payment conditions and warranty]

- (13) The amount, conditions, or method of payment is not too favorable.
- (14) The contract is with a reasonable warranty condition.

[Requirements for installation and confidentiality]

- (15) The customer has made a reasonable request for sending supervisors for installation, testing, etc.
- (16) The customer has raised no excessive requirements for keeping secret of the information about the items, ultimate destination, etc.

[Entities on the End User List]

- (17) When exporting any item to any customer that is on the End User List, the exporter must conduct an end-use checking carefully. The WMD symbol (Nuclear weapons, Biological weapons, Chemical weapons, or Missiles) attached to the entity on the list should not match the same that can be attached to the item when checked its characteristics referring, for example, to the Commodity Watch List.

[Others]

- (18) Nothing more is suspicious in relation to the transaction: for example, the customer has never given a clear answer to normal questions raised in the course of common business practice.

## Appendix 7

### Parameter Sheet

Parameter Sheet is a type of product classification form published by CISTEC. It is issued as a series of booklets published separately by category – with a title, Electronics (Category 7), Computer (Category 8), Communications/Information security (Category 9), or the like. A booklet is made of parameter sheets for all the controlled items that come under one particular category, and each parameter sheet consists of a set of technological questions related to one entry of a controlled item defined by a specific classification number set out in the Export Trade Control Order and the Foreign Exchange Order.

Each question is made in consistence with a control parameter stipulated in the said Orders. In the case of an encryption item, for example, some of the questions are related to the parameters of the following elements.

- (1) Identification of the item
- (2) Encryption algorithm
- (3) Key length
- (4) Encryption functionality
- (5) Eligibility to the Cryptography Note

So when a person conducts classification of a product, what must be done first is to identify the classification number pertaining to the item, which is the key to the process; then he/she shall pick up one parameter sheet corresponding to the item, answer the questions (yes or no) printed on the sheet, and determine the classification. The result should be either “controlled with that particular classification number,” or “non-controlled.” As such, product classifications can be completed easily and precisely with a parameter sheet.

CISTEC issues a similar tool but with different format, that is, “*Komoku- betsu Taihi Hyo*” (classification check sheet). Its difference from the Parameter Sheet is the wording of the questions, which is the letter of law – exactly the same as what is stipulated in the Orders. Also, while “*Komoku-betsu Taihi Hyo*” is available for Categories 1 through 15, Parameter Sheet is available only for limited categories including Categories 7 to 10.

Exporters can use either Parameter Sheet or “*Komoku- betsu Taihi Hyo*” at their discretion. Note that it is not mandatory for exporters to use those tools, but they can use them as official documents to verify the correctness of the classification they conducted. Thus the documents are used for the following purposes.

- (1) to attach to a license application to be submitted to the authority when exporting

controlled items

- (2) to submit to Japan Customs as a proof of "No License Required" when exporting non-controlled items
- (3) to submit to a customer to notify the classification
- (4) to keep within the company as an evidence

## Appendix 8

### The Commodity Watch List for Military Catch-All

No.	Goods
1	Ni or Ti alloy
1-2	Sintered magnet
1-3	Equipment to manufacture item 1-2 above, or parts therefor
2	Hydraulic fluids containing phosphate/cresol ester, tris(dimethylphenyl)phosphate, or trinormalbutyl phosphate
3	Organic fiber, carbon fiber, or inorganic fiber
4	Bearings or components therefor
5	Machine tools listed below, or components therefor <ul style="list-style-type: none"> <li>(1) Numerically controlled machine tools</li> <li>(2) Machine tools for generating optical quality surfaces (excluding numerically controlled machine tools)</li> <li>(3) Dimensional inspection or measuring system (including machine tools having such capabilities)</li> </ul>
6	Secondary cells
7	Waveform digitizers and transient recorders
8	Electronic parts mounting robots
9	Electronic computers or components therefor
10	Telecommunication transmission equipment
11	Phased array antennas
12	Telecommunication jamming equipment or components therefor
13	Position detecting equipment using electromagnetic interference observation technology without sending out electromagnetic waves such as radio waves
14	Optical detectors, coolers therefore, or equipment using optical detectors
15	Optical sensing fibers
16	Laser oscillators or components therefor
17	Magnetometers, underwater electromagnetic field sensors, magnetic gradiometers, or components therefor
18	Gravity meters
19	Radars or components therefor
20	Accelerators or components therefor
21	Gyroscopes or components therefor
22	Inertial navigation systems, other equipment using inertial forces, or components therefor

No.	Goods
23	Gyro-astro compasses, devices that derive position or orientation by means of automatically tracking celestial bodies or satellites, electromagnetic wave receivers for global navigation satellite systems, components therefore, or airborne altimeters
24	Underwater cameras or components therefor
25	Air-independent power systems
26	Self-contained diving equipment (open-circuit types) or components therefor
27	Gas turbine engines or components therefor
28	Rocket propulsion systems or components therefor
29	Equipment for the manufacture of the items listed in (27) or (28) above or components therefor
30	Air vehicles or components therefore
31	Vibration testing equipment, wind tunnels, environmental testing equipment for the development or testing of rockets or air vehicles, or components therefor
32	Flash X-ray machines

## Appendix 9

### Notice relating to the End-Use Certificate (EUC)

Ministry of Economy, Trade and Industry

The item (goods, software or technology) that you are going to obtain are regulated to export in accordance with the Foreign Exchange and Foreign Trade Act of Japan based on the agreements of the international export control regimes. The exporter/supplier has to obtain a license from the Ministry of Economy, Trade and Industry (METI) of Japan. For this reason, we ask for your understanding and cooperation about the following things;

1. We ask for your complete understanding and compliance of the contents of the End-Use Certificate specified by METI and this "Notice relating to the End-Use Certificate" (hereinafter referred to as "Notice"). On that basis, place a check mark "☒" and put a representative's or authorized person's signature in the space provided on the End-Use Certificate. Complete two End-Use Certificates, one is for you to keep and the other one is for the exporter.
2. When you transfer ownership and/or right of use of the items obtained this time to a third party, verify that the new end-user is not involved in activities of development and/or manufacture of weapons of mass destruction (including uranium enrichment, nuclear fuel reprocessing, heavy water production, manufacturing of rocket or unmanned aerial vehicles), or activities of development and/or manufacture of arms.
3. When you transfer the ownership and/or right of use of items obtained this time to a domestic third party, owing to unavoidable circumstances, you shall present End-Use Certificate specified by METI with your signature and this Notice to the new end-user and you shall request to obtain from new end-user to complete two End-Use Certificates with the signature in the same way you are going to do this time. One of the Certificates is for the new end-user to keep and the other one is for your preservation.
4. When you re-export the items you obtained this time, owing to unavoidable circumstances, you shall obtain a prior written consent from the exporter/supplier who is obliged by METI to do so. When doing so, you need to submit objective documents such as business register book of the new end-user, corporate brochures, etc. to explain and prove the existence of the new end-user and their business activities. Furthermore, you need to submit End-Use Certificate specified by METI with the signature of the new end-user (Complete two certificates, one is to the new end-user and the other one is to submit to METI through the original exporter/supplier). If the exporter/supplier does not exist, please ask METI.

5. When METI finds it necessary in the future, it may ask directly or through exporter/supplier about the status of use and storage of the items and who is holding the ownership and/or right of use of the item you obtained this time. At that time, we ask you to provide all the cooperation possible.
6. Any false statements or concealment of any fact in connection with this statement may result in giving any negative effect toward METI's licensing policy in the future.

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