

Japan's Controls on Intangible Transfer of Technology - Updates Near Miss Case Examples -

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Outreach Activities for Academia (ITT)

- The Comprehensive Strategy on Science, Technology and Innovation, a national R&D promotion strategy published in June 2018, states importance of ITT control in academia and strengthening its measures.
- METI has strengthened outreach activities for academia.

METI's Approach (Overview)

Guidance for Academia

- Publicize the Guidance on METI's website (Oct 2017) and send it to all universities through the Ministry of Education
(Ref) http://www.meti.go.jp/policy/anpo/law_document/tutatu/t07sonota/t07sonota_jishukanri03_eng.pdf (English)

E-Learning Contents for Academia, Case Studies

- Release e-learning contents for academia on METI's website (May 2018).
(Ref) http://www.meti.go.jp/policy/anpo/daigaku/el/elindex_e.html (English)
- Case Studies Concerning Security Export Control at Universities and Research Institutions

Establishing Networks

- Seminars targeting administrative staff
- Establish networks not only between government and universities but also among universities in each region
- Establish a network among national research institutes

Dispatch of Expert Advisers

- Dispatch about 20 expert advisers to assist universities in implementing export control management in accordance with the Guidance

On-site consultation services by METI

- METI visits and consults with university leadership. Since July 2016, METI has visited over 130 universities

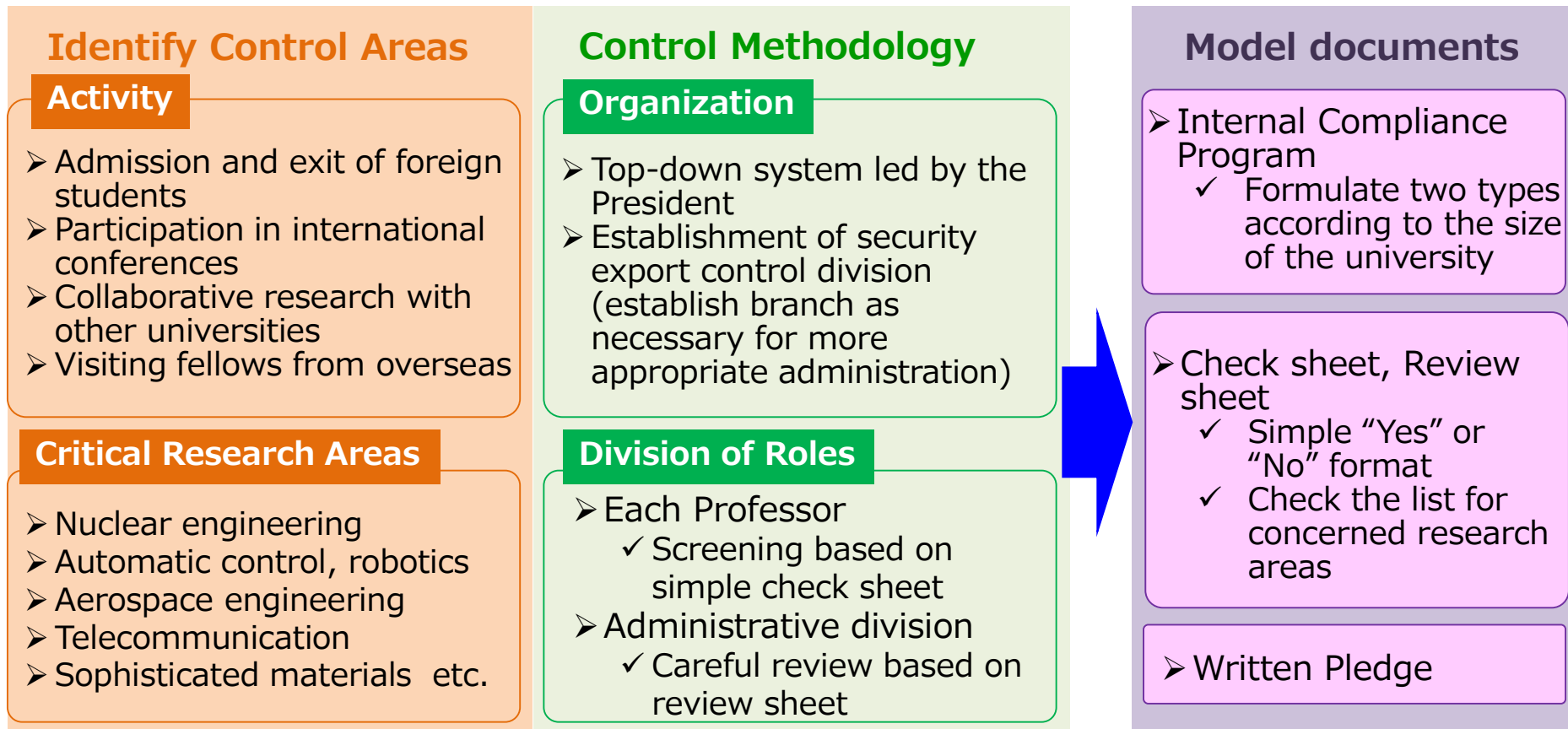
Holistic Approach
↑
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Specific Approach

Publishing the New Guidance for Academia (Oct 2017)

➤ METI's Guidance:

- ✓ Identifies control areas and exemplifies 55 critical research areas that universities should pay particular attention to.
- ✓ Provides model organizational structures in consideration of actual university situations; suggests efficient management methods for researchers and administrators.
- ✓ Provides model documents for ICP, Check sheet and Review sheet.

Key Elements of the Guidance



Further Actions on ITT Control

- Strengthening of ITT Control on Government – funded projects
 - ITT control by Funding Agency (currently applying to NEDO)
→ Further action?
- Awareness raising through compiling “Near Miss Cases” in universities
 - Compiled to cases and included in the guidance document

Near Miss Case Examples Concerning Security Export Control at Universities and Research Institutions

Identification of Goods and Technologies to be Transferred Based on Old Laws and Regulations

Content of Misconduct

Researcher X consulted the section in charge of export control in order to confirm whether the technology to be transferred is subject to export control or not.

Researcher X initially determined that it was “not controlled”, but his/her judgement was made according to old laws that were downloaded in the past.

Action's Taken

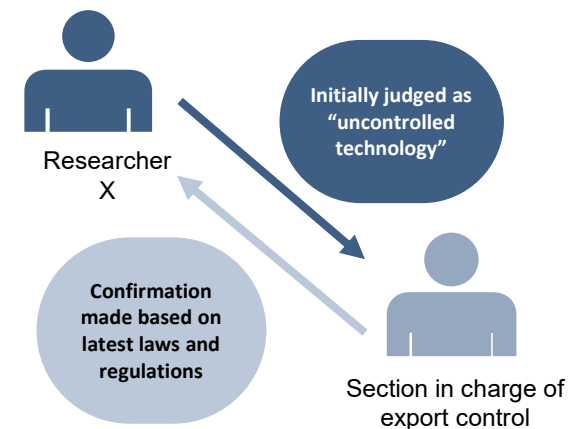
Examination based on the latest laws and regulations were conducted, and accordingly it was determined that the technology was subject to control.

Cause of Misconduct

Judgement based on old laws and regulations.

Classification: Transfer of Technology

Update of Commodity Identification



Measures – Advice

- ✓ To raise awareness of the necessity to download the latest "Cargo and Technology Matrix Table" from the Ministry of Economy, Trade and Industry website when determining the status of goods and technology to be transferred.
- ✓ Information on legal revisions and matrix tables are posted on the Ministry of Economy, Trade and Industry website (<http://www.meti.go.jp/policy/anpo/index.html>).

Requests for Sending Items from Foreign Researchers

Content of Misconduct

Professor X was asked by Professor Y from University α in Country A to obtain a sample of a certain item. According to Professor Y regarding the item, "The item is difficult to purchase in Country A, so I'd like you to buy it from the manufacturer in Japan and send it to me." Professor X and Professor Y had a personal relationship where they originally obtained their degrees from the same laboratory at University β and exchanged research information even after graduation.

Professor X noticed that University α was registered on the "Foreign User List", and contacted the export control section of his/her University.

Action's Taken

The section in charge of export control advised that this was a case that should be strictly checked from the standpoint of Catch-all Control as well as conducting identification whether goods and technologies are controlled by export laws and regulations. Professor X declined the request after receiving this advice.

Cause of Misconduct

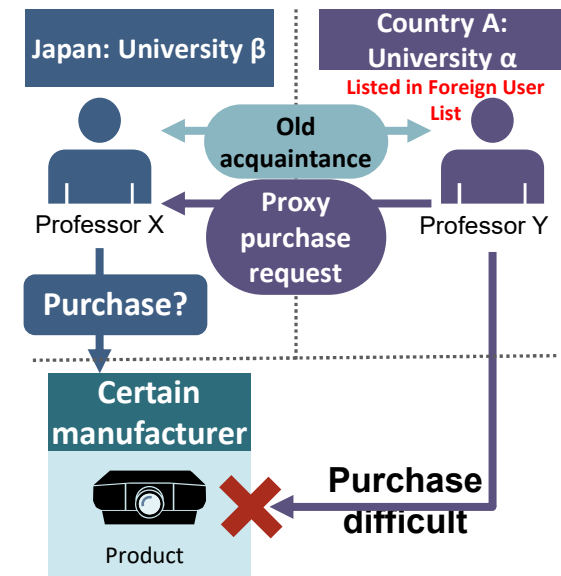
If University α had not been registered on the "Foreign User List", the case could have been overlooked, resulting in unauthorized export.

Measures – Advice

- ✓ Personal relationships after graduation may cause involvement in unintentional unauthorized export.
- ✓ Specifically, awareness raising is necessary that providing samples (export) and exchanging information (transfer of technology) after graduation may be subject to export control laws and regulations.

Classification: **Export of Cargo**

Obtaining Samples of Items



Determination of Degree of Public Domain Regarding International Conferences

Content of Misconduct

A following inquiry from Professor X was informed to the export control section: “My research results will be presented at an international conference held in Country A. Since this presentation will be a ‘Public Release of Technology’, no measures were especially taken, but would this be a right action to take?”. After evaluation of the “Public Release of Technology”, the conditions stated that participants in the international conference were limited to “university faculty researchers” or “industry company researchers”, and the presentation material of Professor X will not be disclosed on web site and these materials were confidential.

Action’s Taken

Based on the fact that confidentiality obligations were imposed, the section in charge of export control determined that it was not a “transaction that provided technology to be made public (public release of technology)”. Additionally, when identification of that material against List Control was conducted, it was found to be a controlled technology.

Cause of Misconduct

Professor X had misunderstood that any presentation was completely regarded as “public release of technology”.

Classification: Transfer of Technology

Lecture at International Conference

Country A

Presentation Description

- Design of specific product
- To which List Control is applicable content



Professor X



Audience

Participants

- University faculty researchers
- Industry company researchers

Only

Measures – Advice

- ✓ Correct understanding is essential regarding to which case the exceptions apply.
- ✓ Even for lectures at international conferences, unless "there is a possibility of an undefined number of people obtaining or attending", then the exception of public domain cannot be applied.
- ✓ Even in special cases where exceptions to public domain are applicable, it is necessary to conduct an appropriate examination by the section in charge of export control and not merely rely on professors’ judgement.
- ✓ Even when it can be said that the presentation itself belongs to the public release of technology, if there is a possibility that discussions exceeding the content of the presentation will be conducted with individual researchers after the presentation, it should be kept in mind of points that the exceptions on public domain cannot be applied.

Personal History of Short Term Study Abroad at Foreign User List Registered Organizations

Content of Misconduct

University α accepted an international Student X from country A.

After acceptance, a staff member of the section in charge of international Students discovered that international Student X had received a three-month training in the past at University β that is registered on the “Foreign User List”, and contacted the section in charge of export control.

The section in charge of export control shared this with Professor Y, who was the supervisor of international Student X.

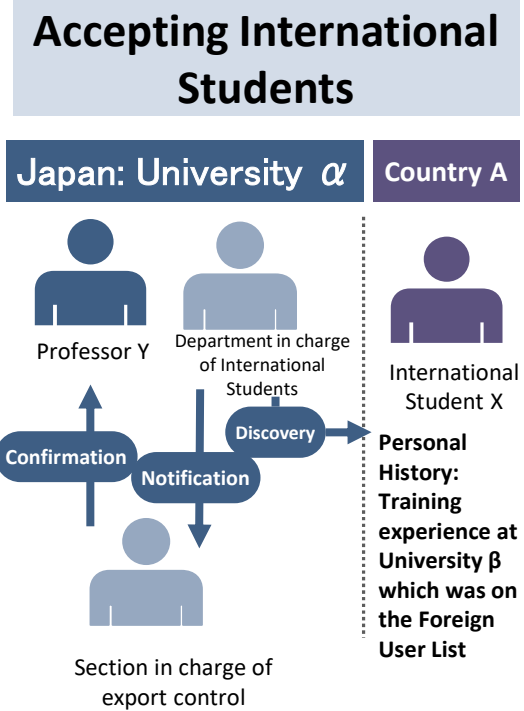
Action’s Taken

Taking into consideration that a) Student X’s training at the University β was merely a short-term training program, b) that the technology provided was not a controlled technology, and did not correspond to the research theme, the University finally judged that there were no particular problems regarding the acceptance of the international student.

Cause of Misconduct

The required examination based on export control at the acceptance stage for International Student X was not conducted.

Classification:
Acceptance of International Students



Measures – Advice

- ✓ It is necessary to review the confirmation system to accept students to enable examination on security export grounds.
- ✓ In the pre-examination stage, confirmation of personal history including records of study abroad was lacking, making it necessary to confirm this.
- ✓ With the cooperation of the section in charge of International Students, it was discovered that a detailed examination was necessary.
- ✓ It is necessary to conduct an appropriate identification of the content of technology provided up until then and in the future.

Joint Research without Joint Research Contracts

Classification: International Agreements and Joint Research

Content of Misconduct

Regarding a joint research project with overseas universities and research institutes, because there was no acceptance of research funds, etc., no joint research contract had been concluded.

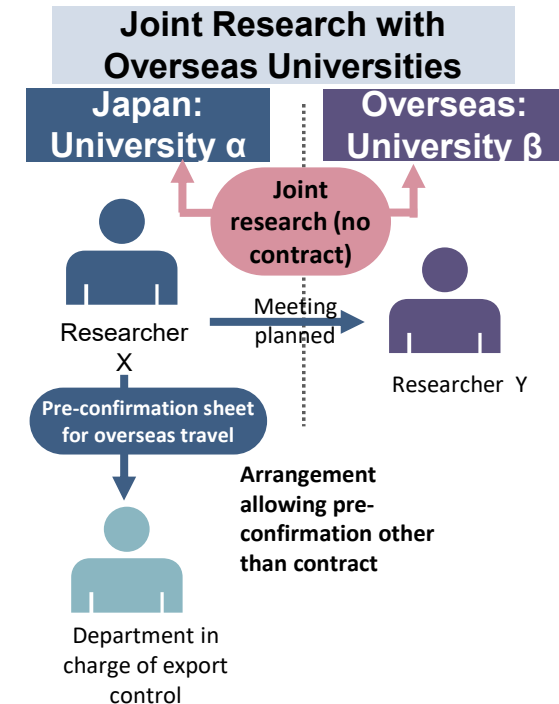
Researcher X, who planned to have a meeting with Researcher Y who was the partner in the joint research after participating in an overseas international conference (where technology in the public domain was provided), submitted a pre-confirmation sheet relating to the overseas travel application.

Action's Taken

The section in charge of export control confirmed not only the appropriateness of the judgement to that the said technology transfer belonged to those of public domain, but also confirmed the joint research from the standpoint of export control, and confirmed that the contents of this meeting and the contents of the joint research were not subject to List Control or Catch-all Control.

Cause of Misconduct

Export control procedures were not implemented at the start of the joint research without a contract.



Measures – Advice

- ✓ In the case of joint research, since the documents are circulated before concluding the contract, universities that has export control systems could not handle such cases.
- ✓ In joint research, it is necessary to design a system so that security can be confirmed at the stage of starting implementation of projects regardless of whether or not there is a contract and increase understanding so that faculty members are sure to make independent confirmations.
- ✓ In this case, the travel application and the pre-confirmation sheet were linked and can be evaluated for allowing understanding.