Japan’s Security Export Control System and Internal Compliance Programs (ICPs)

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History of Japan’s Security Export Control System

- **1949**  
The Foreign Exchange and Foreign Trade Control Act (FEFTA) was enacted

- **1952**  
Japan acceded to COCOM (Coordinating Committee for Multilateral Export Controls)  
\[\downarrow\]  
Implementation of export control based on FEFTA

- **1987**  
**Japanese Company Incident**  
(Export of machine tools from Japan to the Soviet Union)  
- Strong anti-Japan feeling in the US
  - Loss of Japan’s credibility
  - Replacement of the executives of the firm which exported machine tool
  - Shareholder lawsuit

(1987 Mainichi Shimbun, Evening paper)
Action after the incident

After the incident, the Government of Japan and Japanese industries improved export control.

Government

✓ Expanded capacity of export control organization
✓ Strengthened penalties
✓ Extended the prosecution prescription for illegal export
✓ Introduced Internal Compliance Program (ICP)

Industries

✓ Introduced and implemented strict export control with ICP
✓ Implemented new way to stop extra-purpose use by end-users. (ex. Relocation Detection Devices)
Importance of Security Export Control

✓ Lose international credibility by only single incident.
  Implementing strict export control promotes foreign direct investments and lead to economic development

✓ A system is not enough, practical implementation is necessary.
  Lack of effective implementation is equivalent to lack of the system.

✓ Human resource development is a key to implement export control (e.g. raising capacity of licensing officers through effective trainings)
1. Japan’s lessons on Security Export Control from our past experiences

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Basic Structure of Legislation and Regulations of Japan

Regulation of goods export

Regulation of technology transfer

Act (FEFTA)

Cabinet order
(Export Trade Control Order)

Cabinet Order
(Foreign Exchange Order)

Ministerial Order

Provide the framework

specify list control items

specify more detail

Ministerial Order
FEFTA also sets forth catch-all control for items which could contribute to WMD related or military end-use activities.

<table>
<thead>
<tr>
<th>FEFTA</th>
<th>Cabinet Order</th>
<th>List Control</th>
<th>Catch-all control of WMD</th>
<th>Catch-all control of Conventional Weapons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 48</td>
<td>Export Control</td>
<td>category 1-15</td>
<td>category 16</td>
<td>List of Goods</td>
</tr>
<tr>
<td>Article 25</td>
<td>Foreign Exchange</td>
<td>category 1-15</td>
<td>category 16</td>
<td>List of Technologies</td>
</tr>
<tr>
<td></td>
<td>Order</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Regulated Items**
- Weapons
- Listed dual use items related to WMD and conventional weapons

**Regulated Destination**
- All countries

**White Countries**: 27 countries which have strict export control systems (Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, UK, USA)

**UN arms embargo countries in the context of catch-all control**: Afghanistan, Central Africa, Democratic Republic of Congo, Eritrea, Cote d’Ivoire, Iraq, Lebanon, Liberia, North Korea, Sierra Leone, Somalia, Sudan
Japan’s control list is fully consistent with the international regime lists.

<table>
<thead>
<tr>
<th>category</th>
<th>List control</th>
<th>International Regime List</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Weapons</td>
<td>WA (Wassenaar Arrangement)／ML (Munitions)</td>
</tr>
<tr>
<td>2</td>
<td>Dual-use items</td>
<td>NSG (Nuclear Suppliers Group)</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>AG (Australia Group) (Biological/Chemical Weapons)</td>
</tr>
<tr>
<td>3-2</td>
<td></td>
<td>MTCR (Missile Technology Control Regime)</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>WA／BL (Basic List)・SL (Sensitive List)</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>WA／ML (excluding item 1)</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>WA／VSL (Very Sensitive List)</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Catch-all control</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>Catch-all control</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>Catch-all control</td>
</tr>
</tbody>
</table>

Japan’s List Control System
The comparative list of Japan’s List and EU list:
[http://www.cistec.or.jp/service/eu_taihi.xls](http://www.cistec.or.jp/service/eu_taihi.xls)
(Center for Information on Security Trade control (CISTEC) HP) (Only in Japanese)
Review process of Export License

- Preliminary Consultation
- Application
- Permission /Denial
- Report from the Applicants

Add some conditions

Less than 90 days
Types of Export License

Individual License
- Transaction-based license

Bulk License
- Valid for multiple transactions for 3 years
- Exporter’s own export control expected

General Bulk License
- Specific items for 27 “white countries”
  Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxemburg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, UK, U.S.A

Special General Bulk License
- Broader scope of items for more countries
- ICPs (Internal Compliance Programs) and prior on site check required

Special Bulk License
- Specific items’ repeated export to specific customers
- ICPs and prior on site check required

Special Bulk License for Overseas Subsidiaries
- Specific items’ export to subsidiaries in foreign countries
- ICPs and prior on site check required
Catch-all Control of WMD

In case there are concerns that the goods or technologies in question could contribute to WMD proliferation program, exporters have to apply for an export license.

**Region**

All regions except for white countries

**Items**

Any items which are not on the list （except for food, etc.）

The Commodity Watch List [40 +12* items]

(*only for Syria, as from 15 April. 2015)

**Conditions**

(1) **Exporter’s Initiative** = The “Know” Condition

- In case exporters have come to know that the items will be used for the development, manufacture, use, storage etc. of WMD
- In case exporters have come to know that the end user is/was involved in WMD-related program through relevant documents such as Foreign End User List, except for the case the item in question will be apparently used for a purpose other than the WMD-related activities

(2) **METI’s Initiative** = The “Informed” Condition

- The “inform” is given when METI considers that the items in question are/may be intended for WMD.
The FEUL is a list of foreign entities that may have some relationship to the development, manufacture, use and/or storage of WMD and/or missiles.

Exporters are required to submit export license applications when they wish to export goods to the entities on the FEUL unless it is obvious that the goods to be exported are not going to be used for WMD and/or missile purposes.

The FEUL is revised annually. (entities are on the list as from March 29, 2016)

### Number of the Entities on Foreign End User List

<table>
<thead>
<tr>
<th>Country or Region</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iran</td>
<td>221</td>
</tr>
<tr>
<td>North Korea</td>
<td>127</td>
</tr>
<tr>
<td>Pakistan</td>
<td>34</td>
</tr>
<tr>
<td>China</td>
<td>44</td>
</tr>
<tr>
<td>Syria</td>
<td>18</td>
</tr>
<tr>
<td>India</td>
<td>4</td>
</tr>
<tr>
<td>UAE</td>
<td>6</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>2</td>
</tr>
<tr>
<td>Taiwan</td>
<td>1</td>
</tr>
<tr>
<td>Israel</td>
<td>2</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>462</strong></td>
</tr>
</tbody>
</table>

### Foreign End User List

<table>
<thead>
<tr>
<th>No .</th>
<th>Country or Region</th>
<th>Company or Organization</th>
<th>Also Known As</th>
<th>Type of WMD</th>
</tr>
</thead>
</table>
| 1    | Islamic Republic of Afghanistan | Al Qa'ida/Islamic Army | • Al Qaeda  
• Islamic Salvation Foundation  
• The Base  
• The Group for the Preservation of the Holy Sites  
• The Islamic Army for the Liberation of Holy Places  
• The World Islamic Front for Jihad against Jews and Crusaders  
• Usama Bin Laden Network  
• Usama Bin Laden Organisation | C |
| 2    | Islamic Republic of Afghanistan  
Islamic Republic of Pakistan | Ummah Tameer E-Nau (UTN) |              | N |

<table>
<thead>
<tr>
<th>Number</th>
<th>Country</th>
<th>Company Name</th>
<th>Additional Names</th>
<th>Type of WMD</th>
</tr>
</thead>
</table>
| 461    | Hong Kong | Leader (Hong Kong) International  
International Trading Limited  
Leader International Trading Limited | B,C,M,N |
| 462    | Hong Kong | Reekay Technology Limited | M,N |

The FEUL is a list of foreign entities that may have some relationship to the development, manufacture, use and/or storage of WMD and/or missiles.

Exporters are required to submit export license applications when they wish to export goods to the entities on the FEUL unless it is obvious that the goods to be exported are not going to be used for WMD and/or missile purposes.

The FEUL is revised annually. (entities are on the list as from March 29, 2016)
# Catch-all Control of Conventional Arms

In case there are concerns that the goods or technologies in question could contribute to military end-use, exporters have to apply for an export license.

<table>
<thead>
<tr>
<th>Region</th>
<th>Countries under UN arms embargo</th>
<th>Non-white Countries except for UN Arms embargo countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Items</td>
<td>Any Items which are not on the list (except for food, etc.)</td>
<td>The Commodity Watch List [34 items]</td>
</tr>
</tbody>
</table>

### Conditions

1. **Exporter’s Initiative**
   - **The “Know” Condition**
     - In case exporters have come to know that the items will be used for the development, manufacture or use of conventional arms in UN embargo Countries

2. **METI’s Initiative** = **The “Informed” Condition**
   - The “inform” is given when METI considers that the items in question are/may be intended for a military end-use.
Intangible Technology Transfer (ITT) is regulated under the FEFTA. “Regulated Technology” is defined as “specific information necessary for the design, production or use of regulated products”. The information takes form of technical data or technical assistance.

Case 1. Technology transfer from Japan to a foreign country
- focus on location of the recipient
Case 2. Technology transfer to a non-resident
• transfer of listed technology by any resident to a non-resident
• focus on whether the recipient is non-resident or not
**Brokering Control**

- **Overseas transaction** in which any goods or technologies 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.

- **A person in Japan must obtain a license** when it enters into a contract, directly or through its overseas subsidiary, of selling/buying, leasing or donating goods or technologies, with foreign companies.

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**Items**

- Any items (except for food, etc.)

**Conditions**

1. **Conventional arms**: no conditions

2. **Items other than conventional weapons** (transacted between Non-white Countries);

   **(1) Exporter’s Initiative** = The “Know” Condition
   
   In case exporters have come to know that the items will be used for the development, manufacture, use, storage etc of WMD

   **(2) METI’s Initiative** = The “Informed” Condition

   The “inform” is given when METI considers that the items in question are/may be intended for WMD.
Transshipment Control

- Transshipment control applied to foreign goods passing through Japan
- “Transshipment” is defined as an act to transship foreign goods at airports or seaports in Japan

**Items**

**Any items** (except for food, etc.)

**Conditions**

1. Conventional arms: no conditions

2. Items other than conventional weapons (destined for a Non-white Country);

   **(1) Exporter’s Initiative** = The “Know” **Condition**
   In case exporters have come to know that the items will be used for the development, manufacture, use, storage etc of WMD

   **(2) METI’s Initiative** = The “Informed” **Condition**
   The “inform” is given when METI considers that the items in question are/may be intended for WMD.
Penalties (FEFTA)

**Criminal Penalty**
- No more than ten years of imprisonment
- No more than ten million yen or no more than five times in value of the items

**Publication**
- METI may issue a warning, which would be made public on the METI website

**Administrative Penalty**
- Prohibition of exports for no more than three years
1. Japan’s lessons on Security Export Control from our past experiences

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ICPs and “Standards for Exporters”

ICP Requirements

Standards for Exporters

Additional Requirements for ICP Holders

Requirements for Exporters dealing with Listed Items

Requirements for All Exporters
• In April 2010, FEFTA was amended and the “standards for exporters” was introduced.

• The “standards of exporters” requires every single individual, company or academic institution that is engaged in exports of goods or transaction of technology to have a system guaranteeing a minimum level of self-management.

• To observe the “standards for exporters” is a legal obligation. A violator of the standards may receive a criminal penalty.
Requirements for Exporters

“Standards for exporters” have a **double-layered** structure.

- The standards require that **all exporters** observe the **two points**.
- The standards also require that **exporters who are engaged in export or transaction of listed items** observe the **nine additional points**.

1. **To appoint a person who represents the organization as the person responsible for export control**
2. **To clarify responsibilities of each section related to export control**
3. **To establish proper procedures for classification**
4. **To establish proper procedures for transaction screening, and conduct them accordingly**
5. **To conduct proper shipment control**
6. **To make all reasonable efforts to establish proper procedures for auditing, and conduct them accordingly**
7. **To make all reasonable efforts to give proper training for all members engaged in export control**
8. **To make all reasonable efforts to keep export control documents for an appropriate period**
9. **To report immediately to METI if exporters commit violations, and take remedial measures**

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**Requirements for Exporters**
- dealing with Listed Items

**Requirements for All Exporters**

1. **To appoint a person responsible for classification**
2. **To give necessary instructions to export control staff so that they observe the latest laws and regulations**
Internal Compliance Programs (ICPs)

• An ICP is an exporter’s internal policy to comply with the export control laws and regulations.

• Having an ICP is not mandatory, but METI has been encouraging exporters in Japan to establish an ICP.

• METI has been encouraging exporters to develop their ICPs voluntarily, and has registered them since 1987.

• METI has also been encouraging overseas subsidiaries to develop ICPs since 2005.

<table>
<thead>
<tr>
<th>Year</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exporters submits ICPs to METI</td>
<td>1,430</td>
<td>1,445</td>
<td>1,463</td>
<td>1,450</td>
<td>1,451</td>
</tr>
</tbody>
</table>
Main Requirements for ICPs

1. Export Control Organization
2. Classification & Screening Procedure
3. Shipment Control
4. Internal Audit
5. Training & Education
6. Documents Control
7. Guidance to Subsidiaries
8. Reports & Prevention of Recurrence
Benefits of ICPs

Exporters

- Can clarify their internal procedures and responsibilities.
- Can minimize the risk of mistake by effective checks.
- Can appeal to the public as a excellent exporter.
- Can apply for a bulk export license.

Governments

- Can reduce the risk of inadvertent illegal exports.
- Can concentrate human resources on crucial matters.

Beneficial for both exporters and governments.
There are two types of de facto audit: Check List and On-site Inspection.
# Example of Check List

<table>
<thead>
<tr>
<th>Check Items</th>
<th>Provisions in the ICP</th>
<th>Implementation Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal Export Control System</td>
<td>Choose the appropriate option</td>
<td>(A) A representative of the organization is appointed in accordance with the ICP (B) A representative is appointed despite not being in accordance with the ICP (C) An individual other than representatives is appointed (D) Nobody is appointed</td>
<td>Provide the name of the ICP and relevant articles Name of ICP: Articles:</td>
</tr>
<tr>
<td>1.1 Is the chief export control officer a person who represents the organization?</td>
<td>(1) Stipulated in the ICP (2) Stipulated in internal rules other than the ICP (3) Not stipulated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2 Is the scope of responsibilities regarding export control clearly defined?</td>
<td>(1) Stipulated in the ICP (2) Stipulated in internal rules other than the ICP (3) Not stipulated</td>
<td>If (1) or (2) was selected (A) Operating in accordance with the ICP (B) Not operating in accordance with the ICP If (3) was selected (C) The scope of responsibilities is clearly defined in practice (D) Not clearly defined</td>
<td>Provide the name of the ICP and relevant articles Name of ICP: Articles:</td>
</tr>
</tbody>
</table>
On-site Inspection

• METI annually conducts **over 100 on-site inspections** of exporters.
• Inspectors go to exporters’ offices to **examine how requirements of “Standard for Exporters” and ICPs are implemented**.
• The results of inspections are placed into three categories:
  ✓ **Guidance** for cases where an exporter has violated the Act or has seriously failed to implement the “Standard for Exporters” requirements or the ICP.
  ✓ **Advice** for cases where an exporter has partially failed to implement the “Standard for Exporters” requirements or the ICP.
  ✓ **No instruction** for cases where an exporter has properly carried out export control in accordance with “Standard for Exporters” or its ICP.
• If a violation of the Act is found by on-site inspections, METI starts **post-shipment inspection**.
1. Japan’s lessons on Security Export Control from our past experiences

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Important Points of Security Export Control

1) Security Export Control System does not hamper the legitimate business activities.

2) One single mistake of security export control may damage its whole business activities.

3) Strict security Export Control will be able to establish partnership more easily with Japanese or other country/regional’s companies.
Thank you for your attention!!