

Security Export Control System in Japan

Ministry of Economy, Trade and Industry, Japan

<http://www.meti.go.jp/policy/anpo/index.html>

2009

1-1 Legislation-List Control and Catch-all Control

- The Foreign Exchange and Foreign Trade Law provides export controls
→ METI's license is required for the export/ transfer of certain items/ technology.
- Japan's control list matches the NSG (nuclear), AG (biological and chemical), MTCR (missile) and WA (conventional weapons) control lists.
- Japan also implements the “WMD Catch-all Control”

List Control

- A wide range of dual-use items are listed, which are based on international export control regimes
- An export license is required for the export of a listed item

Catch-all Control

- Exporters have to apply for an export license in cases where the item or technology is not on the control lists but could conceivably contribute to WMD proliferation programs

1-2 Legislation-List Control by Japan's Legislation

(1) Foreign Exchange and Foreign Trade Act
- Basic frameworks and thoughts.

(2) Cabinet Orders

Export Control Order

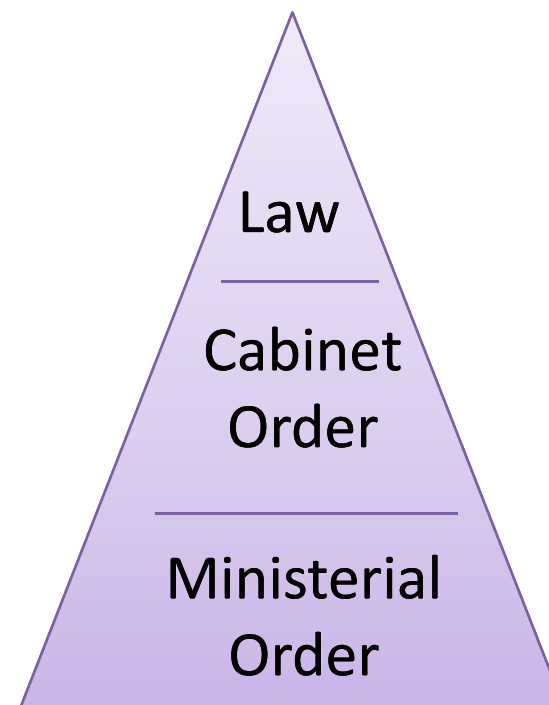
- List of items

Foreign Exchange Order

- List of technologies

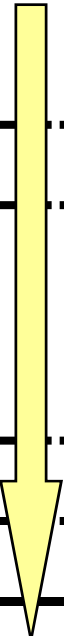
(3) Ministerial Orders

- Detail and interpretations
of listed items, etc.



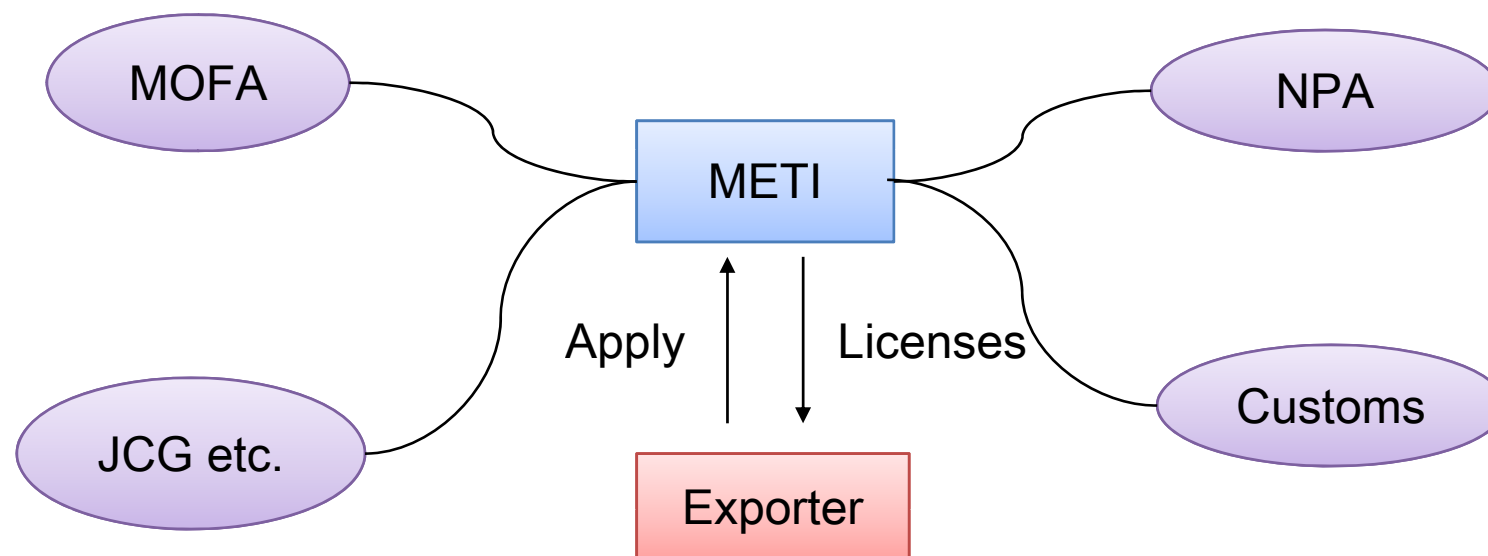
1-3 Legislation-Structure of Japan's Control List

item		Multi-lateral Export Control Regime's list
1	Weapons	WA/ML
2	Dual-use items	NSG
3		AG
3-2		
4		MTCR
5 ~ 13		WA/BL・SL
14		WA/ML (excluding item 1)
15		WA/VSL
16	WMD catch-all	



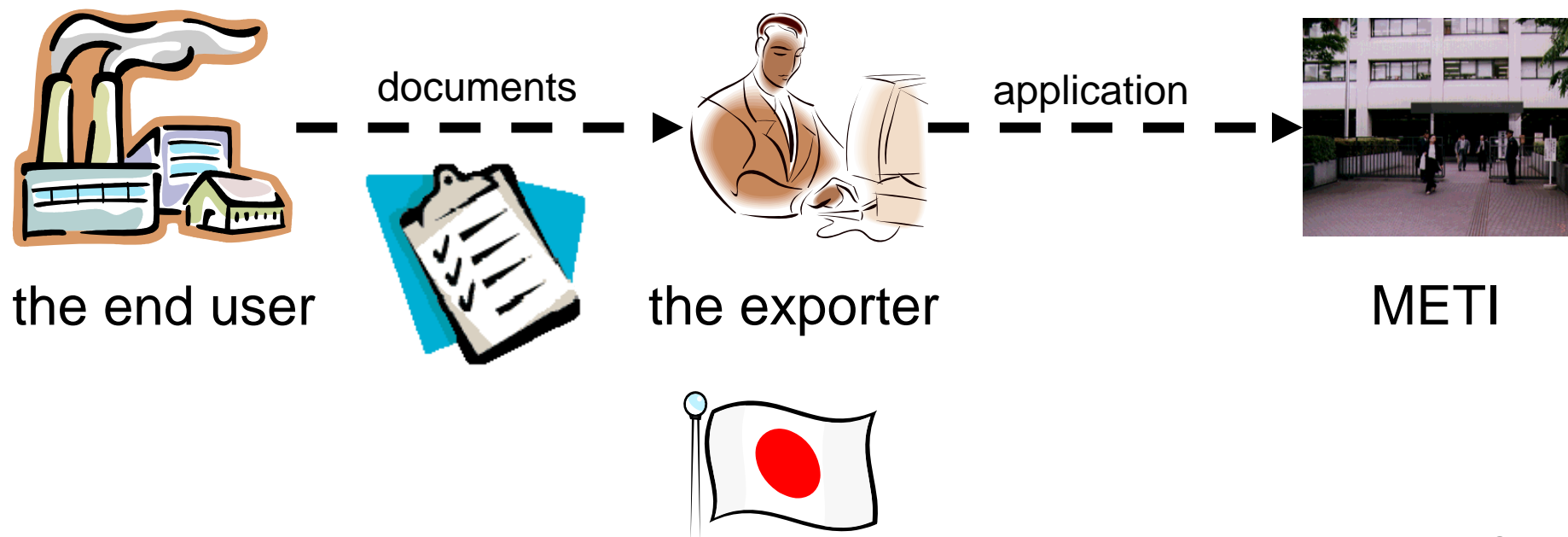
2 Organizations

- Ministry of Economy, Trade and Industry (METI) is in charge of export control
- METI cooperates with other related government agencies to enforce export control
 - Customs
 - National Police Agency (NPA)
 - Ministry of Foreign Affairs (MOFA)
 - Japan Coast Guard (JCG) etc.



3-1 Licensing

- An exporter applies to METI **headquarters** or its regional branches for an export license.
- An exporter is required to attach documents including those provided by an end user, such as the “Letter of Assurance”.
- METI will examine the application referring to the criteria to issue an export license.



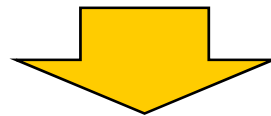
3 -2 Licensing-Basic Stance and Required Documents

- Basic stance for licensing;
 - WMD: license denied
 - Conventional weapons: restricted by “the Three Principles on Arms Export”
 - Dual-Use Items: depends on “the risk” (end-use, etc.)

- Required Documents for Licensing
 - Application Form
 - Contract (agreement, purchase, order, etc.)
 - Technical document featuring specs of the item
 - Profile of the end-user or buyer
 - End-use certificate (the Letter of Assurance)
 - Supplementary papers, etc.

3-3 Licensing-Examination of the Application

- As basic processing practice, METI reviews the application and checks;
 - whether the commodity will actually reach the stated end-user,
 - whether the stated end-user will really use the commodity,
 - whether the commodity will not be used for purposes that may cause concern
 - whether the use of the commodity will be managed by the stated end-user.



- To determine the possibility of;
 - diversion to WMD/missiles/military end use,
 - circumvention, and
 - re-export to nations/entities of concern.

4-2. Foreign End User List (adopted in 2002)

- The FEUL is a list of foreign entities that may have some relationship to the development, production, manufacturing and/or storage of WMD and/or missiles. The List is published on the website;
http://www.meti.go.jp/english/policy/external_economy/trade_control/index.html
- 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.

Number of the Entities

Israel	2
Iran	80
India	26
North Korea	82
Syria	10
Taiwan	1
China	17
Pakistan	27
Afghanistan	2
Total	247

Example of the entities on the FEUL

	Company or Organization	Also Known As	Type of WMD
North Korea	General Bureau of Atomic Energy (GBAE)	• General Department of Atomic Energy (GDAE)	N
North Korea	Hwanghai Steel Union Co., Ltd.	• Hwanghai Iron Works	B,C,M,N
North Korea	Kim Chaek Iron Works	• Kim Chaek Steel Union Corp. • Kim Chaek Iron and Steel Complex	B,C,M,N
North Korea	Undok Chemical Factory		C

5. Enforcement –METI Security Export Control Offices

- The Ministry of Economy, Trade and Industry (METI) is in charge of export control.
- Security export control divisions in METI Headquarters control and examine the trade of sensitive items
- Twelve local branches deal with less sensitive trades

METI Trade and Economic Cooperation Bureau

Export Control Department.

Security Export Control Policy Division

- Manages export control regulations
- Joins discussions in export control related regimes
- Organizes International outreach activities (meetings, seminars)

Security Export Inspection Office

- Makes inspections of exporters
- Domestic outreach activities
- Gives instructions and guidance to exporters

Security Export Licensing Division

- Examines export license applications
- Issues/rejects export licenses

12 Local Branches for Licensing and Inspection

Sapporo, Sendai, Saitama, Tokyo, Yokohama, Nagoya, Osaka, Kobe, Hiroshima, Takamatsu, Fukuoka and Okinawa 11

6-1. Recent Revisions- Revision of the Foreign Exchange and Foreign Trade Act

Three pillars of the amendment of the FETA in April 2009 (enacted in November 2009)

● Stricter criminal penalties for illegal exports

Under previous controls, a person who exported controlled items without a license could be imprisoned for a term of up to 5 years.

- ✓ To prevent illegal violations, Japan will strengthen penalties by introducing longer prison terms.
 - WMD related items 10 years
 - Other items 7 years
- ✓ A person who acquired an export license by illicit means could be imprisoned for up to 3 years or fined.
- ✓ Regulation for the adjustment of the prescription period will be introduced. This will extend the maximum prescription period for corporations from 3 years to 7 years.

● Tighter control of technology transfers

Under previous controls, only the transactions between “residents” – “non-residents” are regulated

- ✓ To prevent technology transfers, Japan will regulate any transfer of sensitive technologies across the border
- ✓ between any persons (either Japanese or foreigners)/any forms (hand luggage, e-mail, USB, etc.)

● Introduction of legal frameworks to establish ICP

Under previous controls, companies have to establish an internal compliance program (ICP) if they want to obtain a bulk license, but otherwise ICP is not mandatory.

- ✓ We will introduce a legal framework for urging companies that have certain sensitive technologies to establish ICP.
- ✓ METI will publish a guideline that will provide the actions that exporters will have to take in terms of internal export controls.
- ✓ When companies do not follow the guidelines, METI will be able to formally request the company to do so based on the legal framework. The company may be punished if it does not take appropriate actions for export control.

6-2. Recent Revisions- Revision of Catch-All Control

- In view of the agreement in Wassenaar Arrangement, Japan has revised the catch-all control so as to include dual-use items that could be diverted to military end-use. The revision came into effect on November 1, 2008.
- After the revision, not only WMD-related items but also items which can be used for conventional weapons is controlled.

After the revision

Before the revision

- In case there are concerns that the item or technology in question could contribute to WMD proliferation programs
- Exporters have to apply for export license

Any items except food, etc.

- In case there are concerns that the item or technology in question could contribute to military end-use
- Exporters have to apply for an export license

Countries under a UN arms embargo = any items except food, etc.
Other countries = 32 designated sensitive items other than listed items

* Catch-All control will not be applied to exports destined for Australia, France, Germany, United Kingdom, and United States... etc, total 26 countries

**32 sensitive items are non-listed conventional weapons; e.g., transmitter / receivers for such as IED and GPS, radar etc.