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The policy directions for Japan Export Control Reform

The issuance of the Interim Report by METI Subcommittee on Security Export Control Policy

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1. Introduction

In April 2024, the Subcommittee on Security Export Control Policy under the Trade Committee of the Industrial Structure Council¹ (“**Subcommittee**”) released an interim report (“**Interim Report**”). The Interim Report, which followed the clarification of Deemed Export Controls in May 2022 and the tightening of export regulations on advanced semiconductor manufacturing equipment in May 2023, synthesized discussions on export control issues arising from changes in the security environment since the prior June 2021 interim report.

The Interim Report outlines recommendations on future policy directions to address the challenges of security export control system faced by the international community and Japan, and reports on discussions regarding medium-to-long-term policy making issues that should be considered, including the implementation of new forms of export control, in response to the significant changes currently underway in the international security trade environment, such as the re-emergence of some state actors of security concerns, the growing importance of dual-use technologies, and the rise of countries with strong technological expertise that do not participate in multilateral export control regimes.

In this newsletter, we explain the proposed policy recommendations in the Interim Report which are expected to have a significant impact on the private sector if legislated. The newsletter is structured as follows: (i) amendment to the catch-all control (*Section 2*), (ii) discussion on the establishment of a new dialogue framework for technology transfer between public and private sectors (*Section 3*), and (iii) discussion on the streamlining and prioritizing of export control systems and operations in accordance with the levels of security concerns (*Section 4*).

2. Amendment to the catch-all control

Under the Foreign Exchange and Foreign Trade Act (“**FEFTA**”), Japan enforces two types of export control: list control and catch-all control. Both require an exporter to obtain a license from METI before exporting or transferring (a) listed items² (*List Control*), and/or (b) non-listed items that could potentially be used for the development, manufacture, or use (collectively “**development, etc.**”) of weapons of mass destruction (“**WMD**”).

¹ Established within the Ministry of Economy, Trade and Industry (“**METI**”).

² Sensitive goods and technologies with a high potential for military use, specified in Items 1 to 15 of Attachment List No.1 to the Export Trade Control Order and Items 1 to 15 of the Attachment List to the Foreign Exchange Order.

or conventional weapons (*Catch-all Control*).

The catch-all control requires exporters to obtain the license to export WMD and conventional weapons in certain situations. Exports to so-called Group A countries³ are not subject to the catch-all control by all means, whether related to WMD or conventional weapons.

- For exports related to WMD, exporters shall apply for the license when METI orders them to do so (“**informed condition**”), or when exporters are aware that the transaction of exported items falls under either of the conditions provided objectively by the statutes (“**objective condition**”), which currently consists of (a) end-use condition, assessing whether the exported item could be used for the development, etc. of WMD, and (b) end-user condition, assessing whether the end-user has been engaging, or previously engaged, in the development, etc. of WMD.
- For exports related to conventional weapons, the aforementioned requirements to obtain the license differs based on the destination countries or regions, which are categorized into (i) “Group A” countries such as the United States and United Kingdom, (ii) UN arms embargo countries such as Iran and North Korea⁴, and (iii) other countries including China and Russia (“**General Countries**”). As mentioned above, exports to (i) Group A countries are not subject to the catch-all control. Exports to (ii) UN arms embargo countries are subject to both the informed condition and the end-use condition. Exports to (iii) General Countries are subject to only the informed condition.

◆Current catch-all control on WMD

Destinations	License requirements		
	Informed condition	Objective condition	
		End-use	End-user
All countries except for Group A countries	○	○	○

◆Current catch-all control on conventional weapons

Destinations	License requirements		
	Informed condition	Objective condition	
		End-use	End-user
UN arms embargo countries	○	○	—
General Countries	○	—	—

Created based on information on METI’s homepage⁵

(1) License requirement for conventional weapons exports to General Countries

Under the current catch-all control, as shown in the chart above, exports related to conventional weapons to General Countries do not need a license unless METI orders so (i.e. the informed condition is met). However, the Interim Report notes that as other countries and regions such as the United States and European Union have been tightening export controls related to conventional weapons in recent years by focusing on end-use and end-users

³ Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, South Korea, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

⁴ Afghanistan, Central African Republic, Democratic Republic of the Congo, Iraq, Lebanon, Libya, North Korea, Somalia, South Sudan, Sudan.

⁵ <https://www.meti.go.jp/policy/ampo/ampo03.html#yotokakunin>

and requiring licenses for exports to General Countries with additional conditions beyond the informed condition, Japan should also engage in and align with such international cooperation efforts.

The Interim Report proposes that exports or transactions to General Countries where exporters identify the exported items have high security risk and are likely to be used for the development, etc. of conventional weapons should also be subject to the objective condition. The Interim Report further suggests the scope of such transactions of concern that is subject to regulation should be determined based on the (i) items to be exported, (ii) end users, and (iii) terms and conditions and circumstances of the transaction. It also highlights the importance of considering (iv) Japan's relationship with the destination countries to avoid excessive regulation, especially in the context of supply chain cooperation with allies and friendly countries⁶. The Interim Report proposed the following recommendations for identifying high-risk transactions:

(i)	Identify target items by limiting them to: <ul style="list-style-type: none"> ✓ Items of high security concern <i>(e.g., technologies related to precision-guided munitions, technologies related to the sophistication of military chain of command, and game-changing technologies)</i> ✓ Items for which the exporters can verify the purposes of use and users <i>(e.g., items jointly developed with the user, designed items manufactured at the request of the user or incorporated into specific products, equipment that requires on-site installation and maintenance by the exporter, etc.)</i>
(ii)	Provide information on end-users of concern: <ul style="list-style-type: none"> ✓ The government should provide exporters with information on users of concern who may have developed certain conventional weapons. ✓ The government may provide the above information through public announcement and dissemination similar to what has been done in the U.S., non-public and individual information sharing like what has been done in the U.K. and South Korea, or a combination of these two methods.
(iii)	Provide criteria for transactions of concern (“Red Flags”): <ul style="list-style-type: none"> ✓ Since the exporter should apply for the license only if it is determined that there is a risk that the exported items are likely to “be used” for the development, etc. of conventional weapons, the exporter may find it difficult to determine whether there is a risk or not in the case that the exporters have suspected that the user used to or plans to perform the development, etc. of conventional weapons while the user explains that the items subject to the export will not be used for any activities relating to conventional weapons. ✓ In order to facilitate exporters to determine the potential risk of items “being used” for the development, etc. of conventional weapons, the government should publish criteria for identifying such transactions of concern (<i>Concerning Transaction Red Flags</i>) based on the conditions and circumstances of the transactions. When the transactions meet the criteria, the exporters should be subject to the license requirement.
(iv)	Rationalize export control procedures based on the relationship with destination countries: <ul style="list-style-type: none"> ✓ While it is necessary to verify the risk of items "being used" for the development, etc. of conventional weapons for all General Countries, the rationalization of procedures should be considered for exports to allies and friendly countries, on the premise of appropriate export management conducted by exporters.

(2) License requirement for exports to Group A countries

Under the FEFTA, exports to Group A countries are currently not subject to catch-all control at all for both WMD and conventional weapons (i.e. neither the informed condition nor the objective condition is applicable), as export control regulations in these countries are considered appropriate. However, the Interim Report noted that concerns of circumvention via Group A countries have arisen due to increasingly complex and sophisticated procurement activities by the countries of concern.

The Interim Report therefore suggests that the Japanese government implement closer enforcement cooperation with export control authorities of Group A countries, such as sharing information of concern, and requiring exports to Group A countries to be also subject to the informed condition so that METI can inform exporters and require a license based on the shared information of concern⁷.

⁶ The Interim Report P.6-8.

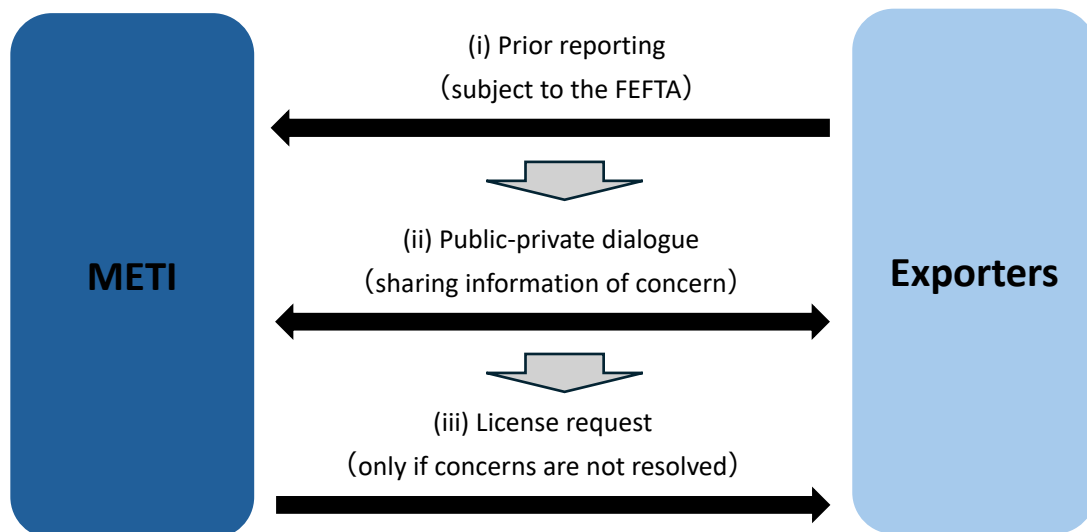
⁷ The Interim Report P.8.

3. New public-private dialogue framework on technology transfer

The Interim Report notes that the fierce competition for technological superiority increases the risk for technology leakage. Especially with the blurry distinction between military and civilian technologies in recent years, there is a higher concern that technologies initially intended for civilian use at the time of the transactions may be diverted into military use over time in terms of their users and uses.

In response to the growing risk of technology leakage and diversion to military use, the Interim Report proposes strengthening the current transaction review system for those transactions that may fall under neither the list control nor the catch-all control. Meanwhile, the Interim Report also suggests reasonably narrowing down the scope of such transactions to be regulated to only those with a high risk of technology leakage, by filtering them through both technology type and transaction type. For the technology type transactions to be regulated, factors such as versatility, ease of acquisition by other countries, potential for independent development, and Japan's superiority and indispensability shall be considered. For the transaction type transactions to be regulated, the risk of technology leakage and impact on business activities shall be taken into account.

When identifying transactions with a high risk of technology leakage and military use, the Interim Report further recommends introducing a new dialogue framework on technology transfer between the public and private sectors through a step-by-step approach rather than imposing the license obligation directly⁸. Under this dialogue framework, METI will (i) require a report from exporters prior to the commencement of the relevant transactions, (ii) engage in dialogue and consultation with the exporters including sharing information of concern and providing advice, and (iii) inform and request the application of the license only if the concerns are not resolved.



Created based on Chart 4 of the Interim Report

Regarding the implementation of (i) prior reporting, the Interim Report points out that it should be combined with and obliged pursuant to the current FEFTA such as Article 55-8 (*Other Reporting*), so that if the prior reporting obligation is imposed as proposed in the Interim Report, the exporter will manage their transactions relating to technology transfer during their daily business in a more careful manner, and report to and consult with METI as necessary prior to such transactions in order to avoid potential consequences for violations of the FEFTA.

Regarding the time of the prior report, the Interim Report suggests that it should be prior to the execution of the transaction agreements so that the exporter will not breach the transaction agreement if it needs to cease the technology transfer after consultation with METI. Additionally, the Interim Report specifically notes that even in the phase of agreement negotiation, METI should support the exporter to obtain a good understanding of the counterparty to the transaction and request the exporter to obtain a license under the informed condition if

⁸ The Interim Report P.10.

necessary, when METI considers the technology transfer should be ceased.

4. Streamlining and prioritizing of export control systems according to the levels of security concerns

The Interim Report also emphasizes the need for a more efficient export control system and points out that rationalization of procedures is possible in the following areas⁹.

- (1) Certain parts used in semiconductor manufacturing:
 - ✓ Pressure gauges and parts of crossflow filtration equipment for semiconductor manufacturing under certain conditions should be subject to a special general comprehensive license, including destination countries that are not members of the international export control regime.
- (2) Machine tools:
 - ✓ Strengthening the management of exporters of used machine tools including issuing warnings.
 - ✓ Machine tools exports to India and certain ASEAN countries should be subject to a special general comprehensive license if the machine tool is equipped with a relocation detection device and it can be verified that the exporter has implemented appropriate export control management.
 - ✓ When transferring machine tool-related technologies from Japan to overseas, strict control over the capital ratio and sales destination should be mandatory under the license obligation, and sales should be encouraged to equip with relocation detection devices.
- (3) Weapons-related equipment:
 - ✓ Simplifying procedures for the export of defense equipment brought to Japan by allied countries for joint training between the Self-Defense Forces and allied countries forces.
 - ✓ Simplifying procedures for returning defense equipment procured by the Ministry of Defense through Foreign Military Sales to suppliers for repair.
 - ✓ Explosives for airbags that are not categorized as "defense equipment" under the Three Principles for the Transfer of Defense Equipment should be subject to a special general comprehensive license.
- (4) Investigation of compliance with the FEFTA:
 - ✓ Future on-site inspections should focus on exporters which are expected to be at high risk, taking into account the exporters' internal control systems, the sensitive technologies they possess and their export performance, in order to reduce the burden on exporters who are less of a concern.

5. Conclusion

The policy recommendations proposed in the Interim Report, if legislated, are expected to have a considerable impact on the practice of exporting goods and technologies in Japan. Given that the current export control system under the FEFTA might not adequately address policy needs such as the prior reporting system for technology transfer and effective screening of exports to General Countries of high-risk items potentially used for the development, etc. of conventional weapons, it is necessary to consider changes and reforms to the export control system.

At present, the specific scope of these proposed regulations has not been clarified, but there are reports that revisions to current regulations will proceed as early as this summer. We recommend companies engaging in the export of goods and technologies to pay close attention to future policy-making trends, assess the impact of these proposed regulations on their business operation or transaction timeline, and take necessary measures and response in a timely manner.

⁹ The Interim Report P.13-15.

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