

Japan's Export Control System Update and Three Principles on Transfer of Defense Equipment and Technology

February 2015

Jun Kazeki

Director, Security Export Control Policy Division
Ministry of Economy, Trade and Industry (METI), JAPAN

Japan's Export Control System Update

Organization for Security Export Control in METI

- METI is in charge of export control with about 80 staff concerning the security field.
- An export license is issued only by METI under Foreign Exchange and Foreign Trade Act.
- Security export control divisions in the Headquarter of METI control and examine trade of sensitive items while twelve local branches deal with less sensitive items.

METI Trade and Economic Cooperation Bureau

Export Control Department

Security Export Control Policy Division

- Manages export control regulations (including Three Principles)
- Analyzes information related to export control
- Joins discussions in export control related regimes
- Organizes International outreach activities (meetings, seminars)

Office of Research and Control on Security Technology

Office of Research and Planning for Export Control

International Affairs Office

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

Legislation and Regulations

Foreign Exchange and Foreign Trade Act provides the framework, followed by the cabinet orders which specify list control items for both goods and technologies. The Act also sets forth catch-all control for items which could contribute to WMD related or military end-use activities.

Foreign Exchange and Foreign Trade Act	Cabinet Order	List Control	Catch-all control of WMD	Catch-all control of Conventional Weapons
Article 48	Export Control Order	Item 1-15 List of Goods	Item 16 List of Goods	
Article 25	Foreign Exchange Order	Item 1-15 List of Technologies	Item 16 List of Technologies	
		<u>Regulated Items</u> •weapons •listed dual use items related to WMD and conventional weapons	<u>Regulated Items</u> All items or technologies that could contribute to WMD related or military end-use activities	
		<u>Regulated Destination</u> All countries	<u>Regulated Destination</u> All countries except for White 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

Correspondence between Japan's List and Regime Lists: consistently reflected.

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

A yellow rounded rectangle highlights items 1 through 15. A yellow arrow points from the 'Dual-use items' label in item 2 down to the 'Dual-use items' label in item 15. A green rounded rectangle highlights item 16, with a label 'Catch-all control' pointing to it. A yellow rounded rectangle labeled 'List control' is positioned above the table.

An export license from METI is required for exports of listed items

- A wide range of dual-use items are listed based on international export control regimes.
- Items and their control conditions are specified in the cabinet orders and the ministerial orders under Foreign Exchange and Foreign Trade Act.
- An export license is required even if items are exported for own companies/factories in foreign countries.
- All listed items both weapons/arms and dual-use goods/technologies are examined based on following standards:
 - (1) The item will be undoubtedly delivered to the end user.
 - (2) The item will be undoubtedly used by the end user. (The credibility of the end user)
 - (3) The transfer will not threaten the maintenance of international peace and security.
 - (4) The item will be controlled in an appropriate manner by the end user.

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.)

Conditions

The Commodity Watch List [40 +12* items]

(*only for Syria, as of 15 Oct. 2013)

(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.

Commodity Watch List (for Catch-all of WMD)

- List of items that could possibly be used for WMD-

- | | |
|--|---|
| (1) Tributyl phosphate (TBP) (N) | (21) TIG welding units, electron beam welding units (N, M) |
| (2) Carbon/Glass/Aramid fiber (N, M) | (22) Radiation monitoring and detection equipment (N) |
| (3) Titanium alloys (N, M) | (23) Mill for fine powder (M) |
| (4) Maraging steel (N, M) | (24) Karl Fischer moisture equipment (M) |
| (5) Aluminum alloys tubes with a diameter of more than 75 mm (N) | (25) Equipment designed for producing prepregs (M) |
| (6) Flow-forming machines (N, M) | (26) Artificial graphite (N, M) |
| (7) N/C Machine tools (N, M) | (27) Gyroscopes (M) |
| (8) Isostatic presses (N, M) | (28) Rotary encoders (M) |
| (9) Filament winding machines (N, M) | (29) Trucks (Tractors, Trailers, Dump trucks) (M) |
| (10) Frequency changers (N) | (30) Crane trucks (M) |
| (11) Mass spectrometers and ion sources (N) | (31) Chambers for fermentation (B) |
| (12) Vibration test systems (N, M) | (32) Centrifugal separators (B) |
| (13) Centrifugal multiplane balancing machines (N, M) | (33) Freeze dryers (B) |
| (14) Pressure transducers (N, M) | (34) Reactors (C) |
| (15) Non-destructive inspection equipment (N, M) | (35) Agitators (C) |
| (16) Oscilloscope or waveform digitizers and transient recorders (N) | (36) Heat exchangers or condensers (C) |
| (17) High power/voltage DC power supplies (N) | (37) Distillation or absorption columns (C) |
| (18) Generators (N) | (38) Filling equipment (C) |
| (19) Vacuum pumps (N) | (39) Unmanned air vehicles that are specially designed for incorporating spray machines (M, B, C) |
| (20) Radiation-hardened robots (N) | (40) Spray machines that are specially designed for installing in unmanned air vehicles (M, B, C) |

- 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. The List is published on the website; http://www.meti.go.jp/policy/ampo/law_document/tutatu/140917kaisei/eibun.pdf (updated on 17 Sep.2014)
- 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 on Foreign End User List

Iran	295
North Korea	121
Pakistan	33
China	28
Syria	13
India	4
UAE	6
Afghanistan	3
Taiwan	3
Israel	2
Hong Kong	2
Total	510

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.

As from 15 Oct. 2013

Region	Countries under UN arms embargo	Non-white Countries except for UN Arms embargo countries
Items	Any Items which are not on the list (except for food, etc.) <div style="border: 2px dotted red; padding: 5px; display: inline-block; margin-left: 100px;"> The Commodity Watch List [34 items] </div>	
Conditions	(1) <u>Exporter's Initiative</u> = 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.

Commodity Watch List (for Catch-all of Conventional Arms)

- 1 Ni or Ti alloy
- 2 Sintered magnets
- 3 Equipment for the manufacture of the item listed in (2) above or components therefor
- 4 Hydraulic fluids containing phosphate/cresol ester, tris(dimethylphenyl)phosphate, or trinormalbutyl phosphate
- 5 Organic fiber, carbon fiber, or inorganic fiber
- 6 Bearings or components therefor
- 7 Machine tools listed below, or components therefor
 - (1) Numerically controlled machine tools
 - (2) Machine tools for generating optical quality surfaces (excluding numerically controlled machine tools)
 - (3) Dimensional inspection or measuring system (including machine tools having such capabilities)
- 8 Secondary cells
- 9 Waveform digitizers and transient recorders
- 10 Electronic parts mounting robots
- 11 Electronic computers or components therefor
- 12 Telecommunication transmission equipment
- 13 Phased array antennas
- 14 Telecommunication jamming equipment or components therefor
- 15 Position detecting equipment using electromagnetic interference observation technology without sending out electromagnetic waves such as radio waves
- 16 Optical detectors, coolers therefore, or equipment using optical detectors
- 17 Optical sensing fibers
- 18 Laser oscillators or components therefor
- 19 Magnetometers, underwater electromagnetic field sensors, magnetic gradiometers, or components therefor
- 20 Gravity meters
- 21 Radars or components therefor
- 22 Accelerators or components therefor
- 23 Gyroscopes or components therefor
- 24 Inertial navigation systems, other equipment using inertial forces, or components therefor
- 25 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
- 26 Underwater cameras or components therefor
- 27 Air-independent power systems
- 28 Self-contained diving equipment (open-circuit types) or components therefor
- 29 Gas turbine engines or components therefor
- 30 Rocket propulsion systems or components therefor
- 31 Equipment for the manufacture of the items listed in (29) or (30) above or components therefor
- 32 Air vehicles or components therefor
- 33 Vibration testing equipment, wind tunnels, environmental testing equipment for the development or testing of rockets or air vehicles, or components therefor
- 34 Flash X-ray machines

- 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 (row 1)

- – no conditions

2. Items other than conventional weapons (row 2 – 16) **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.

- 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

Items

Any items (except for food, etc.)

Conditions

1. Conventional arms (row 1)

- no conditions

2. Items other than conventional weapons (row 2 – 16) **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.

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

<Iran>

- Weapons and the items listed on NSG (pt1&pt2) and MTCR are prohibited to export complying with UNSCR 1737, 1747, 1803, 1929 etc.
- The items listed on AG and WA are under stringent export control.

<North Korea>

- No items can now be exported to or imported from North Korea.

<Syria>

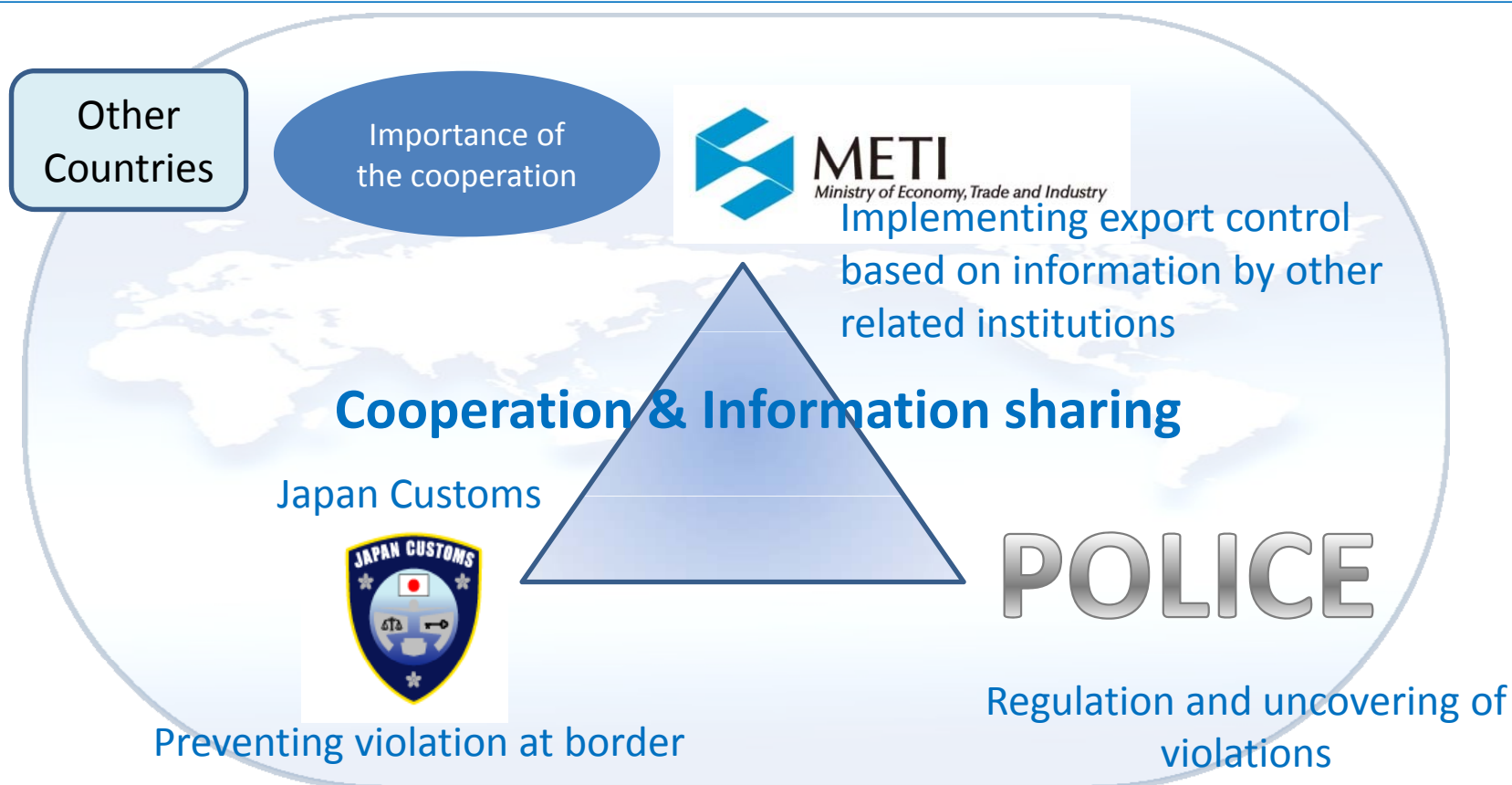
- 12 additional items of concern for exports to Syria are specified in the Commodity Watch List (since 15 Oct. 2013).

<Others>

- Non Applicable Destination of the Bulk License; Iran, Iraq, Libya, North Korea, etc.

Cooperation for Effective Export Control

- In Japan, METI is responsible for export control. (Only METI issues an export license.)
- Recently, there are many cases where countries of concern attempt to procure sensitive WMD-related items through third countries (circumvention).
- METI is now promoting more effective inter-agency cooperation with customs and police authorities for more effective enforcement.
- In order to strengthen countermeasures against circumvention, international cooperation is essential.



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 goods

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

Three Principles on Transfer of Defense Equipment and Technology

Brief History of Policy Guidelines on Overseas Transfer of Defense Equipment and Technology

1967 Three Principles on Arms Exports (by Sato Administration)

“arms” exports to the following countries or regions shall not be permitted:

- (1) communist bloc countries
- (2) countries subject to “arms” export embargo under the UNS’s resolutions
- (3) countries involved in or likely to be involved in international conflicts

1976 Collateral policy guidelines of the Principles (by Miki Administration)

“arms” exports to the other areas not included in the Three Principles will be also restrained.

1980’s - The Government has repeatedly taken exemption measures for individual necessities

- (e.g.) - Transfer of military technology to the United States (1983)
- Assistance for activities to remove antipersonnel landmines (1997)
 - Cooperative research on Ballistic Missile (1999)
 - Transfer of Patrol Vessels to Indonesia (2006)

2011 Guidelines for Overseas Transfer of Defense Equipment etc. (Statement by Chief Cab. Sec.)

- (e.g.) - Transfer of armored construction equipment to Haiti (2013)
- Japan-Philippines Exchange of Note for patrol vessel (2013)
 - Japan-UK Arms and Military Technologies Transfer Agreement (2013)

2013 Dec. National Security Strategy provided a mandate for new principles. (Cabinet Decision)

2014 April Three Principles on Transfer of Defense Equipment and Technology (Cabinet Decision)

- Japan-Australia Defense Equipment etc. Transfer Agreement (2014)
- Japan-France Defense Equipment etc. Transfer Agreement (under negotiation)

Defense Equipment and Technology Cooperation (Extract from NSS)

In cases that contribute to peace and international cooperation, there are increasing opportunities to cooperate in a more effective manner, including through the utilization and provision of heavy machinery and other defense equipment carried to disaster-stricken countries and sites by the SDF. Moreover, internationally, it has become mainstream to participate in international joint development and production projects in order to improve the performance of defense equipment, while dealing with the rising costs of defense equipment. In this context, from the perspective of “Proactive Contribution to Peace” based on the principle of international cooperation, Japan is required to contribute more proactively to peace and international cooperation including through utilizing defense equipment, and to participate in joint development and production of defense equipment and other related items.

Against this backdrop, while giving due consideration to the roles that the Three Principles on Arms Exports and their related policy guidelines have played so far, the Government of Japan will set out clear principles on the overseas transfer of arms and military technology, which fit the new security environment. In this context, considerations will be made with regard to defining cases where transfers are prohibited; limiting cases where transfers could be allowed with strict examination; and ensuring appropriate control over transfers in terms of unauthorized use and third party transfer.

Three Principles on Transfer of Defense Equipment and Technology (1 April 2014 Cabinet Decision)

Japan will continue to adhere to the course it has taken to date as a peace-loving country.

Principle 1: Clarification of cases where transfers are prohibited

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**
(ex. CWC, Convention on Cluster Munitions, the Ottawa Treaty, provisions of ATT.)
- ② **it violates obligations under UNSC resolutions**
(such as those that decides to prevent arms transfers to sanctioned countries including UNSCR1718(North Korea) and UNSCR1929(Iran))
- ③ **it is destined for a country party to a conflict**
(country party to a conflict: a country against which the United Nations Security Council is taking measures to maintain or restore international peace and security in the event of an armed attack)

Principle 2: Limitation to cases where transfers may be permitted to the followings, conducting strict examination while ensuring transparency

- ① **transfer which contributes to active promotion of peace contribution and international cooperation**
 - ② **transfer which contributes to Japan's security**
 - **Implementing international joint development and production projects with its ally and partners**
 - **Enhancing security and defense cooperation with its ally and partners**
 - **Supporting SDF activities including maintenance of its equipment, ensuring the safety of Japanese nationals**
- * Conduct strict examination on the appropriateness of destination, the sensitivity of the type of weapons etc. Ensure transparency on the system, procedure and guideline for the examination.

Principle 3: Limitation to cases where appropriate control regarding extra-purpose use and transfer to third party is ensured

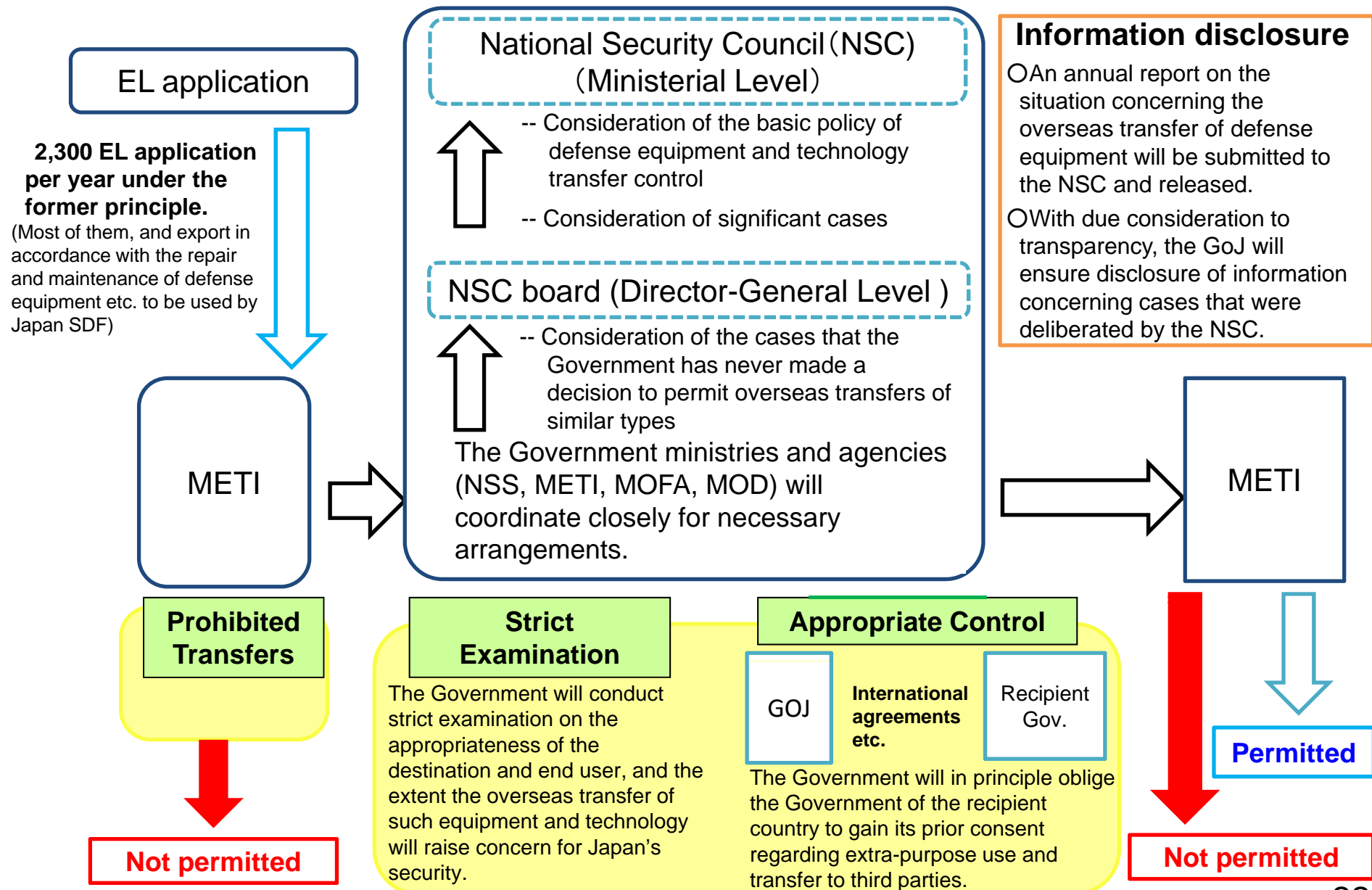
In principle, oblige the Government of the recipient country to gain prior consent of the GoJ regarding extra-purpose use and transfer to third party.

(Appropriate control may be ensured with the confirmation of control system at the destination in such cases as those where the transfer is judged to be appropriate for active promotion of peace contribution and international cooperation, when the transfer involves participation in an international system for sharing parts etc.)

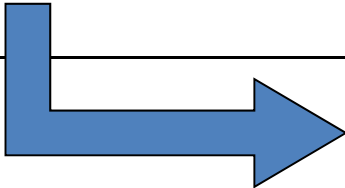
Information disclosure





- **An annual report on the situation concerning the overseas transfer of defense equipment will be submitted from METI to the NSC and released.**
- **With due consideration to transparency, the GoJ will ensure disclosure of information concerning cases that were deliberated by the NSC.**






Strengthening of the examination system: the flow of the procedure of Three Principles on Transfer of Defense Equipment and Technology (as from 1 April 2014)



The Outline of New Three Principles (Before & After) (As from 1 April 2014)

	Former Three Principles	New Three Principles
Name	Three principles on Arms Exports The comprehensive exception measures (Guidelines for Overseas Transfer of Defense Equipment etc.)	Three Principles on Transfer of Defense Equipment and Technology
Prohibited Transfers	Arms exports to the following countries or regions shall not be permitted: (1) communist bloc countries, (2) countries subject to "arms" exports embargo under the United Nations Security Council's resolutions, and (3) countries involved in or likely to be involved in international conflicts.	Principle 1: Defining cases where transfers are prohibited (1) it violates obligations under treaties and other international agreements that Japan has concluded (2) it violates obligations under UNSC resolutions (3) it is destined for a country party to a conflict (country party to a conflict: a country against which the United Nations Security Council is taking measures to maintain or restore international peace and security in the event of an armed attack)
Conditions to be Permitted	21 Exceptions by statements of chief cabinet secretary Example: <ul style="list-style-type: none"> •Peace contribution and international cooperation •International joint development and production •Cooperation for the United Nations Mission in the Republic of South Sudan •Transfer based on Acquisition and Cross-Servicing Agreement <p>* It is transferable by exemption measures. No rules for the exemption measures .</p> 	Principle 2: Limitation to cases where transfers may be permitted to the followings, conducting strict examination while ensuring transparency <ol style="list-style-type: none"> ①transfer which contributes to active promotion of peace contribution and international cooperation ②transfer which contributes to Japan's security <ul style="list-style-type: none"> - Implementing international joint development and production projects with its ally and partners - Enhancing security and defense cooperation with its ally and partners - Supporting SDF activities including maintenance of its equipment, ensuring the safety of Japanese nationals <p>Principle 3: Limitation to cases where appropriate control regarding extra-purpose use and transfer to third party is ensured</p> <ul style="list-style-type: none"> •No exemption measures •NSC adopt the Implementation guidelines, that clarify the examination system, the procedure, examination criteria. •Transparency by annual report and info. disclosure

<p>Statements of Chief Cabinet Secretary /Memorandum of understanding of the relevant ministries and agencies</p>	<p>Examples of transferred defense equipment</p>
<ul style="list-style-type: none"> ○United Nations PKO, etc. (1991) ○ JDR team dispatch (1991) ○ Special anti-terrorism law (2001) ○ Act on Special Measures concerning Humanitarian and Reconstruction Assistance in Iraq (2003) ○ Guidelines for Overseas Transfer of Defense Equipment etc. (2011) 	<div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <p>Hydraulic shovel</p>  </div> <div style="text-align: center;"> <p>Medium-sized Bulldozer</p>  </div> <div style="text-align: center;"> <p>Packet loader</p>  </div> </div>
<ul style="list-style-type: none"> ○Removal of antipersonnel landmines(1997) 	<p style="text-align: center;">Mine detector</p> 

<p>Statements of Chief Cabinet Secretary /Memorandum of understanding of the relevant ministries and agencies</p>	<p>Examples of transferred defense equipment</p>		
<p>○Abandoned chemical weapon Disposal in China(2000)</p>	<p>Gas mask & chemical protective clothing</p> 	<p>Chemical agent detector</p> 	
<p>○Indonesia Support (ODA)(2006) ○anti-piracy law (2009)</p>	<p>Patrol Boat</p> 	<p>Night vision device</p> 	<p>Bulletproof vest</p> 

- Transfer of Patriot PAC-2 parts (seeker gyroscopes) to the United States (July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)

- Transfer of Seeker Related Technology Information for the Joint Research with the United Kingdom (July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)

Transfer of Patriot PAC-2 parts (seeker gyroscopes) to the United States (July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)



1. Today, transfer of seeker gyroscopes which are parts of Patriot PAC-2 missiles produced under license in Japan (hereinafter referred to as “gyroscopes”), from Japan to the licensor in the United States (hereinafter referred to as “the overseas transfer”) was deliberated at the National Security Council (NSC) in accordance with the “Three Principles on Transfer of Defense Equipment and Technology” (Adopted by the Cabinet on April 1, 2014) and the “Implementation Guidelines for the Three Principles on Transfer of Defense Equipment and Technology” (Adopted by the NSC on April 1, 2014), and it was affirmed that this overseas transfer falls under the case which may be permitted.
2. While the U.S. Department of Defense plans mass production of Patriot PAC-2 missiles, the gyroscopes are no longer produced in the United States and therefore there is no production line there. Under such circumstances, the U.S. Government is interested in such overseas transfer which will contribute to producing and maintaining the Patriot PAC-2 missiles. Therefore, the overseas transfer contributes to enhancing security and defense cooperation with the United States, and it has positive meaning from the viewpoint of Japan’s security. As Japanese industries are to manufacture the parts for this overseas transfer, this will contribute to maintaining and enhancing Japan’s defense production and technological bases, thereby contributing to Japan’s enhancement of its defense capability. Furthermore, as the destination of the overseas transfer will be the United States, and the end user will be the licensor which manufactures the Patriot PAC-2 missiles, appropriate control of the transferred parts will be reliably assured. In addition, taking into account such facts as that the gyroscope is one of the parts of the Patriot PAC-2 missile, and is a product of licensed production with requirement specifications shared by the United States, it is deemed that this overseas transfer would raise no concern over the security of Japan.

Transfer of Patriot PAC-2 parts (seeker gyroscopes) to the United States (July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)



3. Since this overseas transfer is a delivery of the parts to the licensor, it is possible to ensure appropriate control of the parts by confirming the control system at the destination. Accordingly, the Government of Japan confirms the control system of the gyroscopes from the U.S. manufacturer, which is the end user. In addition, the Patriot PAC-2 missiles equipped with the gyroscopes may be transferred to the third parties other than the United States. Therefore, the Government of Japan confirms the control system of the U.S. Department of Defense which controls the Patriot PAC-2 missiles in a centralized manner, including strict control on transfer to entities other than PAC-2 users. Thus, it is deemed that the gyroscopes would be controlled appropriately after the transfer to United States.
4. The Ministry of Economy, Trade and Industry, based on the above mentioned result of deliberation at the NSC, is to give proper response in conformity with the Foreign Exchange and Foreign Trade Act (Law No.228 of 1949) should there be application for permission regarding the overseas transfer.

Transfer of Seeker Related Technology Information for the Joint Research with the United Kingdom

(July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)



1. Today, transfer of seeker related technology information from Japan to the UK(hereinafter referred to as “the overseas transfer”) for the joint research concerning the enhancement of missile guidance capability(hereinafter referred to as “the joint project”) which Japan is in coordination with the UK to begin, was deliberated at the National Security Council(NSC) in accordance with the “Three Principles on Transfer of Defense Equipment and Technology” (Adopted by the Cabinet on April 1, 2014) and “Implementation Guidelines for the Three Principles on Transfer of Defense Equipment and Technology” (Adopted by the NSC on April 1, 2014), and the NSC was affirmed that this overseas transfer falls under the case which may be permitted.
2. The joint research, through simulations, includes assessment on performance where Japanese seeker technology is utilized with the UK missile related technology. This has positive meaning from the viewpoint of Japan’s security as it may contribute to enhancing capability of future Japan Self Defense Forces as well as to enhancing security and defense cooperation between Japan and the UK. Furthermore, as the destination of the overseas transfer will be directed to the UK and the end user will be UK Ministry of Defence and its contractor, appropriate control of the transfer will be reliably assured. In addition, the transfer would raise no concern over the security of Japan as the appropriate control concerning the overseas transfer, including that of the foreground information, will be ensured as is stated in paragraph 3. below, while seeker is one of the key components that determine the capability of missiles.

Transfer of Seeker Related Technology Information for the Joint Research with the United Kingdom

(July 17, 2014, Joint Press Release by NSS, MOFA, METI and MOD)



3. The transfer of the seeker related technology information would be controlled appropriately after it is transferred to the UK as “the Agreement between the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the transfer of arms and military technologies necessary to implement joint research, development and production of defence equipment and other related items (hereinafter referred to as “the Agreement”)” obliges the Government of the UK to gain the Government of Japan’s prior consent for extra-purpose use and transfer to third parties.
4. The Government of Japan will officially commence the procedure in accordance with the Agreement. Ministry of Economy, Trade and Industry, based on the above mentioned result of deliberation at the NSC, is to give proper response in conformity with the Foreign Exchange and Foreign Trade Act (Law No.228 of 1949) should there be application for permission regarding the overseas transfer.

● **Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014, Cabinet Decision)**

http://www.meti.go.jp/english/press/2014/pdf/0401_03a.pdf

● **Implementation Guidelines for the Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014 adopted by the National Security Council)**

http://www.meti.go.jp/english/press/2014/pdf/0401_03b.pdf

Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014, Cabinet Decision) (1/4)

The Government has made it its basic policy to deal with overseas transfer of defense equipment and technology in a careful manner in accordance with Prime Minister Eisaku Sato's remarks at the Diet in 1967 (hereinafter referred to as "the Three Principles on Arms Exports") and the collateral policy guideline by the Miki administration in 1976. These policy guidelines have played a certain role as Japan has been following the path of a peace-loving nation. On the other hand, these policy guidelines including the non-permission of arms exports to communist bloc countries have increasingly proved unsuitable for the current situation. Also, the Government has repeatedly taken exemption measures depending on the individual necessity of each case since arms exports to substantially all areas were not permitted, as a result of not promoting arms exports regardless of the destinations.

Japan has consistently followed the path of a peace-loving nation since the end of World War II. Japan has adhered to a basic policy of maintaining an exclusively national defense-oriented policy, not becoming a military power that poses a threat to other countries, and observing the Three Non-Nuclear Principles. At the same time, surrounded by an increasingly severe security environment and confronted by complex and grave national security challenges, it has become essential for Japan to make more proactive efforts in line with the principle of international cooperation. Japan cannot secure its own peace and security by itself, and the international community expects Japan to play a more proactive role for peace and stability in the world commensurate with its national capabilities. Against this backdrop, under the evolving security environment, Japan will continue to adhere to the course that it has taken to date as a peace-loving nation, and as a major player in world politics and the world economy, contribute even more proactively in securing peace, stability and prosperity of the international community, while achieving its own security as well as peace and stability in the Asia-Pacific region, as a "Proactive Contributor to Peace" based on the principle of international cooperation.

Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014, Cabinet Decision) (2/4)

From the view point of achieving the fundamental principle of national security by implementing concrete policies, the Government, in accordance with the National Security Strategy adopted on December 17, 2013, decided to review the Government's existing policy guidelines on overseas transfer of defense equipment and technology, and set out clear principles which fit the new security environment while giving due consideration to the roles that the existing policy guidelines have played so far and by consolidating the policy guidelines comprehensively with consideration on the past exemption measures.

An appropriate overseas transfer of defense equipment and technology contributes to further active promotion of the maintenance of international peace and security through timely and effective implementation of contribution to peace and international cooperation such as international peace cooperation, international disaster relief, humanitarian assistance, responses to international terrorism and piracy, and capacity building of developing countries (hereinafter referred to as "peace contribution and international cooperation"). Such transfer also contributes to strengthening security and defense cooperation with Japan's ally, the United States as well as other countries. Furthermore, it contributes to maintaining and enhancing Japan's defense production and technological bases, thereby contributing to Japan's enhancement of defense capability, given that international joint development and production projects have become the international mainstream in order to improve the performance of defense equipment and to deal with their rising costs.

On the other hand, since the distribution of defense equipment and technology has significant security, social, economic and humanitarian impact on the international community, the need for each government to control the transfer of defense equipment and technology in a responsible manner while taking various factors into account is recognized.

In light of the above, while maintaining its basic philosophy as a peace-loving nation that conforms to the Charter of the United Nations and the course it has taken as a peace-loving nation, Japan will control the overseas transfer of defense equipment and technology based on the following three principles. The overseas transfer of facilities related to arms production will continue to be treated in the same manner as defense equipment and technology.

Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014, Cabinet Decision) (3/4)

1. Clarification of cases where transfers are prohibited

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

- 1) the transfer violates obligations under treaties and other international agreements that Japan has concluded,
- 2) the transfer violates obligations under United Nations Security Council resolutions, or
- 3) the defense equipment and technology is destined for a country party to a conflict (a country against which the United Nations Security Council is taking measures to maintain or restore international peace and security in the event of an armed attack).

2. Limitation to cases where transfers may be permitted as well as strict examination and information disclosure

In cases not within 1. above, cases where transfers may be permitted will be limited to the following cases. Those cases will be examined strictly while ensuring transparency. More specifically, overseas transfer of defense equipment and technology may be permitted in such cases as the transfer contributes

to active promotion of peace contribution and international cooperation, or
to Japan's security from the viewpoint of

- implementing international joint development and production projects with countries cooperating with Japan in security area including its ally, the U.S. (hereinafter referred to as "the ally and partners"),
- enhancing security and defense cooperation with the ally and partners, as well as
- supporting the activities of the Self-Defense Forces including the maintenance of its equipment and ensuring the safety of Japanese nationals.

The Government will conduct strict examination on the appropriateness of the destination and end user, and the extent the overseas transfer of such equipment and technology will raise concern for Japan's security. Then the Government will make a comprehensive judgment in light of the existing guidelines of the international export control regime and based on the information available at the time of export examinations.

Significant cases that require especially careful consideration from the viewpoint of Japan's security will be examined at the National Security Council (NSC). As for the cases that were deliberated at the NSC, the Government will disclose their information in accordance with the Act on Access to Information Held by Administrative Organs (Law No. 42 of 1999).

Three Principles on Transfer of Defense Equipment and Technology (April 1, 2014, Cabinet Decision) (4/4)

3.Ensuring appropriate control regarding extra-purpose use or transfer to third parties

In cases satisfying 2. above, overseas transfer of defense equipment and technology will be permitted only in cases where appropriate control is ensured. More concretely, the Government will in principle oblige the Government of the recipient country to gain its prior consent regarding extra-purpose use and transfer to third parties. However, appropriate control may be ensured with the confirmation of control system at the destination in such cases as those where the transfer is judged to be appropriate for active promotion of peace contribution and international cooperation, when the transfer involves participation in an international system for sharing parts etc., and when the transfer involves delivery of parts etc. to a licensor.

Implementation guidelines for the policy described above will be decided by the NSC. The Minister of Economy, Trade and Industry will implement the Foreign Exchange and Foreign Trade Act (Law No.228 of 1949) appropriately in accordance with the decision.

For the purpose of this policy, “defense equipment and technology” refers to “arms and military technologies”; “arms” refers to items listed in Section 1, Annexed List 1 of the Export Trade Control Order (Cabinet Order No. 378 of 1949), and are to be used by military forces and directly employed in combat; and “military technologies” refers to technologies for the design, production or use of arms.

The Government will contribute actively to the peace and stability of the international community as a “Proactive Contributor to Peace” based on the principle of international cooperation. Under such policy, it will play a proactive role in the area of controlling defense equipment and technology as well as sensitive dual-use goods and technologies to achieve the early entry into force of the Arms Trade Treaty and further strengthen the international export control regimes.

In accordance with the Three Principles on Transfer of Defense Equipment and Technology (hereinafter referred to as “the Three Principles”, which was adopted by the Cabinet on April 1, 2014), the Implementation Guidelines for the Three Principles (hereinafter referred to as “the Implementation Guidelines”) is decided as follows:

Note: Definitions of terms in addition to those in the Three Principles are described in 6. below.

1.Cases in which Overseas Transfer of Defense Equipment and Technology may be Permitted

Cases in which overseas transfers of defense equipment and technology may be permitted are as follows:

- 1) Overseas transfers that contribute to active promotion of peace contribution and international cooperation, only if the transfers have positive meaning from the viewpoint of peace contribution and international cooperation, and when:
 - A. the recipient is a foreign government, or
 - B. the recipient is the United Nations (UN) System or organizations conducting the activities based on a UN resolution.

- 2) Overseas transfers that contribute to Japan’s security, only if the transfers have positive meaning from the viewpoint of Japan’s security, and that:
 - A. are related to international joint development and production with countries cooperating with Japan in security area including the U.S.,
 - B. contribute to enhancing security and defense cooperation with countries cooperating with Japan in security area including the U.S., and of the following:
 - (a) defense equipment and technology included in the provision of supplies and services in accordance with an agreement concerning reciprocal provision of logistic support, supplies and services (ACSA),
 - (b) provision of military technology as a part of mutual exchange of technology with the U.S.,
 - (c) provision of parts or services related to a licensed product of the U.S. or provision of repair services etc. to the U.S. armed forces, or
 - (d) defense equipment and technology related to cooperation concerning rescue, transportation, vigilance, surveillance or minesweeping with countries cooperating with Japan in security area, or

- C. are necessary for supporting activities of the governmental agencies including the Self-Defense Forces (hereinafter referred to as “the SDF etc.”), which include the activities of foreign governments or private entities etc. related to the activities of the SDF etc., or for ensuring the safety of Japanese nationals, and that are:
- (a) temporary export of equipment, return of purchased equipment or provision of technical information related to the activities of the SDF etc. including replacements of items which need repairing with non-defective items,
 - (b) export of equipment for the protection or self-protection of public officials, or
 - (c) export of equipment for the self-protection of Japanese nationals operating in danger areas.
- 3) Overseas transfers whose impact from the viewpoint of Japan’s security is judged to be very small such as return of misdelivered items, export of samples to be returned later and re-export of equipment that was brought into Japan by police officers of a foreign governmental agency.

2. Focuses of the Strict Examination of Overseas Transfers

Prior to granting an export authorization for an individual case that is judged as a case in which overseas transfer of defense equipment and technology may be permitted as referred to in 1. above, the Government will conduct strict examination on desirability of the transfer, taking into consideration the following two focuses in a composite manner:

Appropriateness of the destination and end user

Extent the overseas transfer of the defense equipment and technology may raise concern for Japan's security

More specifically, as for the appropriateness of the destination, the Government will consider it taking into account such factors as what impact the country or region of destination is posing to the international peace and security as well as Japan's security. As for the appropriateness of the end user, the Government will consider it taking into account such factors as the use of defense equipment and technology by the end user and the certainty of appropriate control.

As for the extent of the security concern, the Government will consider it taking into account such factors as nature, technical sensitivity, use (purpose), quantity and form (whether finished products or parts, goods or technology, etc.) of the defense equipment and technology to be transferred, as well as the possibilities of extra-purpose use or transfer to third parties.

From the focuses including those described above, the Government will make a comprehensive judgment when deciding whether it will finally approve or disapprove each transfer in light of the existing guidelines of the international export control regimes and based on the information available at the time of the overseas transfers.

3. Ensuring Appropriate Control

Prior to overseas transfer of defense equipment and technology, the Government will in principle oblige the Government of the recipient country to gain its prior consent regarding extra-purpose use and transfer to third parties in order to ensure appropriate control of the defense equipment and technology after the overseas transfer. However, appropriate control may be ensured with the confirmation of a control system at the destination when:

- 1)the transfer is judged to be appropriate for active promotion of peace contribution and international cooperation, and when:
 - A. the transfer is in urgent need or highly important from humanitarian perspective,
 - B. the recipient is the UN System or organizations conducting the activities based on a UN resolution.
 - C. the transfer is for the provision of technical information or specimens which are necessary for participating in an international tendering.
 - D. the defense equipment to be transferred is small in price and quantity and thus deems to have small security concern.
- 2)the transfer involves participation in an international system for sharing parts etc. ,
- 3)the transfer involves delivery of parts etc. to a licensor,
- 4)the contribution of parts or technology to be transferred to the recipient country is judged to be considerably small,
- 5)the overseas transfer is necessary for the activities of the SDF etc. or for ensuring the safety of Japanese nationals, or
- 6)the transfer is judged to have very small impact from the viewpoint of Japan's security such as return of misdelivered items, export of samples to be returned later and temporary landing of goods.

When confirming the control system at the destination, the Government will conduct the confirmation, in so far as reasonable, through a document such as a certification issued by the recipient government or other person responsible for the control of the defense equipment and technology to be transferred. In addition, the Government will confirm the circumstances surrounding the control of defense equipment and technology at the destination, the reliability of the organization controlling defense equipment and technology, the export control system and the circumstances surrounding its implementation in the country or region of destination, based on the information available at the time of the transfer.

If it is found that the defense equipment and technology is not appropriately controlled after its overseas transfer, the Government will take strict measures against the person etc. who transferred the defense equipment and technology, including imposing penalties in accordance with the Foreign Exchange and Foreign Trade Act (Law No. 228 of 1949, hereinafter referred to as “the Foreign Exchange Act”).

4. Procedures upon the Deliberations

1) Deliberations at the NSC

Overseas transfers of defense equipment and technology will be deliberated at the NSC in the following cases. When judging the possibility of approving the overseas transfer of defense equipment and technology falls under B or C below in accordance with the Foreign Exchange Act, the Minister of Economy, Trade and Industry will give due consideration to the deliberation.

- A. when the basic policy is considered,
- B. when especially careful consideration is required as for the application of the conditions for approving the transfers,
- C. when especially careful consideration is required as for the appropriateness of the destination and the extent of security concerns, etc. with particular care, or
- D. when the status of overseas transfers of defense equipment and technology is reported.

2) Deliberations at the NSC board

Overseas transfers of defense equipment and technology will be deliberated at the NSC board in the following cases. The Minister of Economy, Trade and Industry will make a decision based on such deliberations when deciding whether or not to approve overseas transfers of defense equipment and technology that refer to B below in accordance with the Foreign Exchange Act.

- A. when the basic policy is considered,
- B. when the Government has never made a decision to permit overseas transfers of similar types, or
- C. when the status of overseas transfers of defense equipment and technology is reported

3) Cooperation among the Government ministries and agencies concerned

Given that a comprehensive judgment is required for deciding whether or not to approve overseas transfers of defense equipment and technology, the Government ministries and agencies concerned will coordinate closely for necessary arrangements and what appropriate control for such overseas transfers should be. The following department or division will serve as a point of contact for each ministry or agency. However, other department or division may also serve as such a point of contact as necessary for each transfer.

- A. National Security Secretariat, Cabinet Secretariat (NSS)
- B. National Security Policy Division, Foreign Policy Bureau, Ministry of Foreign Affairs (MOFA)
- C. Security Export Control Policy Division, Trade Control Department, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry (METI)
- D. Equipment Policy Division, Bureau of Finance & Equipment, Ministry of Defense (MOD)

5. Regular Reporting and Information Disclosure

1) Regular reporting

The Minister of Economy, Trade and Industry will prepare an annual report on the status of the approval of overseas transfers of defense equipment and technology, submit it to the NSC, and publish it.

2) Information disclosure

For transfers that were deliberated at the NSC pursuant to 4 (1) above, the Government will disclose relevant information in accordance with the Act on Access to Information Held by Administrative Organs (Law No. 42 of 1999). The Government will pay due consideration to information disclosure so that it does not lack transparency compared to the cases where the Government has taken exemption measures on a case-by-case basis.

6. Miscellaneous Items

1) Definition

“International joint development and production” refers to international joint development including international joint research or international joint production in which the Government or Japanese companies participate and includes:

- A. International joint development between the Government and a foreign government
- B. Participation by a Japanese company in the development of defense equipment and technology by a foreign government,
- C. Production licensed from a foreign country that is carried out by a Japanese company in partnership with a foreign counterpart,
- D. Development or production that is carried out by a Japanese company using Japanese and foreign technologies in partnership with a foreign company,
- E. Participation in an international system for sharing parts etc., and
- F. Provision of technical information or specimens for a feasibility study regarding international joint development or international joint production.

2) Relationship with the previous Three Principles on Arms Exports and the collateral policy guidelines

Since the Three Principles is a guideline newly adopted upon reviewing the previous Three Principles on Arms Exports and the collateral policy guidelines, future overseas transfers of defense equipment and technology will be examined in accordance with the Foreign Exchange Act based on the Three Principles. The exemption measures that were taken under the previous Three Principles on Arms Exports and the collateral policy guidelines prior to the adoption of the Three Principles will be examined as the cases that may be permitted to transfer overseas under the Three Principles.

3) Date of enforcement

The Implementation Guidelines is enforced on April 1, 2014.

4) Revision

Given that the Three Principles is an implementation standard for the Foreign Exchange Act, the Implementation Guidelines may be revised when a draft is prepared by METI in consultation with NSS, MOFA and MOD and is adopted by the NSC.

(End)

References

Security Export Control in general:

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

Three Principles on Transfer of Defense Equipment and Technology:

http://www.meti.go.jp/english/press/2014/0401_03.html

Thank you

kazeki-jun@meti.go.jp