

Japan's Export Control System

Office of International Affairs for Security Export
Control, Trade and Economic Cooperation Bureau,
Ministry of Economy, Trade and Industry (METI)

Contents

- 1.Introduction
- 2.Japan's Export Control System
- 3.The case study of Violations

1. Introduction



Terrorist attacks and WMD-related activities

Terrorist attacks

- 9/11 attacks (September 2001)
- Bali bombings (October 2002, October 2005)
- Madrid train bombings (March 2004)
- London bombings (July 2005)
- Mumbai train bombings (July 2006)
- Moscow subway bombings (February 2010)

WMD-related activities

- A.Q. Khan Network (2004)
- North Korean missile tests (July 2006, April and July 2009)
- North Korean announcement on nuclear tests (October 2006, May 2009)
- Iranian issues

- There is a high level of terrorist activities, resulting in serious harm to people's lives.
- Recently, terrorism has increased in Asia.

Terrorist activities (reported in 2007)

- Number of incidents: 14,000
- Number of dead: 22,000

Main areas of terrorist activities

- Iraq, African countries, Afghanistan and Pakistan
- Recently we see increased terrorist activity in Asia.

- WMD (weapons of mass destruction) proliferation is occurring in countries of concern and with terrorists.
- The United Nations has requested the introduction of export control systems.

United Nations awaken international tackling with WMDs and also adapted some resolutions

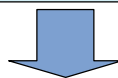
UNSCR 1540

- Proliferation of WMD and their means of delivery poses a threat to international peace and security
- Attempts to prevent WMD and related materials from falling into the hands of non-state actors that are of concern with regard to proliferation
- All States are to establish relevant domestic controls

North Korea and Iran

Growing concerns over WMD-related activities by North Korea and clandestine nuclear development by Iran require a coordinated response from the international community

- North Korea: Missile launches (July 2006, April and July 2009)
Announced nuclear tests (October 2006, May 2009)
- Iran: Enrichment-related activities that create suspicion in the international community



UNSCRs

- North Korea : UNSCR 1695, 1718 and 1874
- Iran : UNSCR 1696, 1737, 1747, 1803, 1835 and 1929

Terrorism causes not only serious personal injury, but also damages the economy and industry in affected countries/regions.

Example: 2002 Bali bombings

- Tourist industry is 5% of GDP
- Right after the bombings, hotel occupancy rates decreased from 70% to single digits
- The number of tourists declined by 0.8 million, to 4.3 million

Asian countries developing tourism and industry are seriously damaged by terrorism

What are export controls?

Who?

Exporters

What?

Goods or technologies

What use?

- Military use

- Civilian use with potential military use ("dual use")

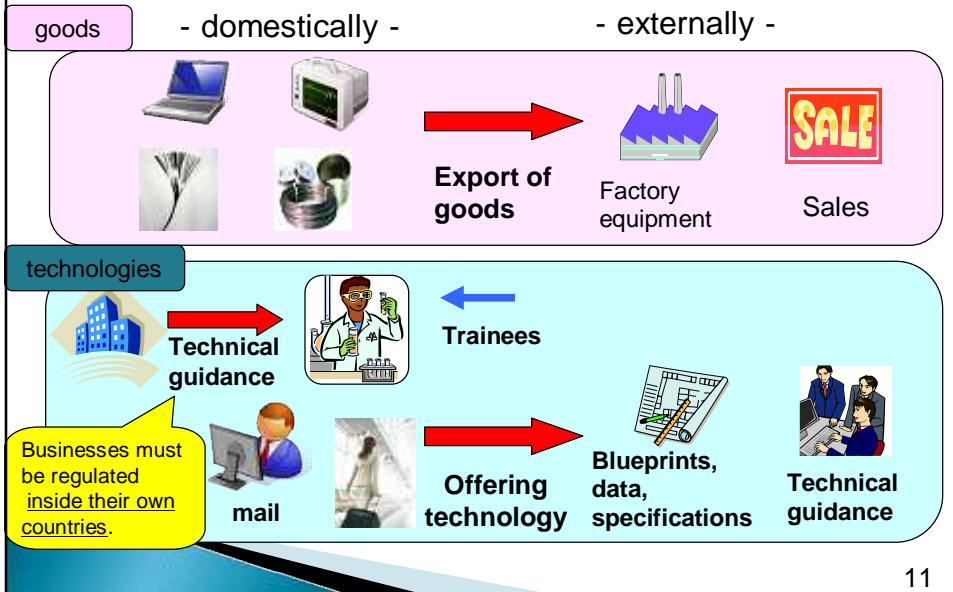
To whom?

To terrorists or countries which threaten peace

Why?

Promote peace and stimulation of trade

Both technologies and goods must be controlled



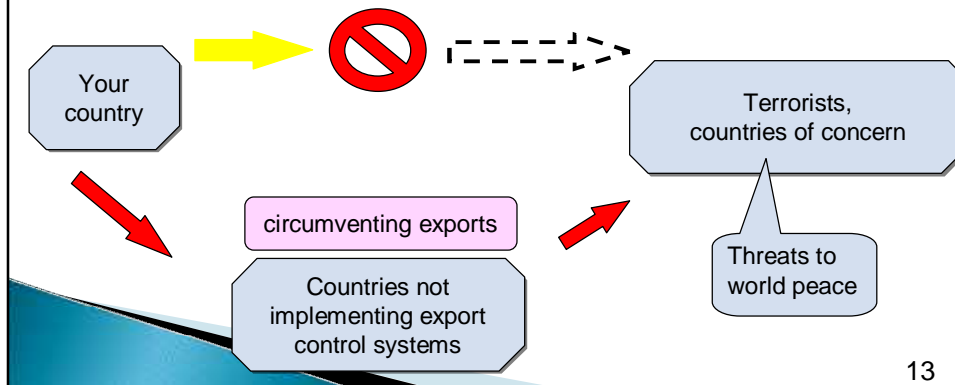
Some exports can be used for military purposes and are called "dual use" items.

To avoid criminal involvement, exporter must confirm whether or not your export item is dual-use.

		Military Use	Civilian Use
Titanium alloy		Gas centrifuge for uranium enrichment	Watches, eyeglass frames
Carbon fiber		Missile components	Golf club shafts, fishing rods
Triethanolamine		Chemical weapons	Shampoo
Freeze-drying equipment		Biological weapons	Instant coffee

Terrorists or countries of concern can procure items through countries that do not implement export control systems.

In order to avoid the issue of circumventing exports, exporters have to identify countries of transit and end-users.



Why must companies have export controls?

Why must companies have export controls?

- Compliance
- Reduces cost of export procedures
Companies can simplify export control procedures in accordance with their own export systems.
- Social responsibility
Companies are punished if exported goods are used in terrorist activities or countries of concern, regardless of regulations.
- Enhanced evaluation by investors and customers
Companies with export controls are more highly evaluated because they pose lower investment risks.

Introduction of export controls
enhances corporate value

15

2. Japan's Export Control System

16

Weapons are regulated in conventions and dual use items are regulated in regimes.

Convention

Regulations for WMDs

Regime

Regulations for Conventional weapons and Dual use items

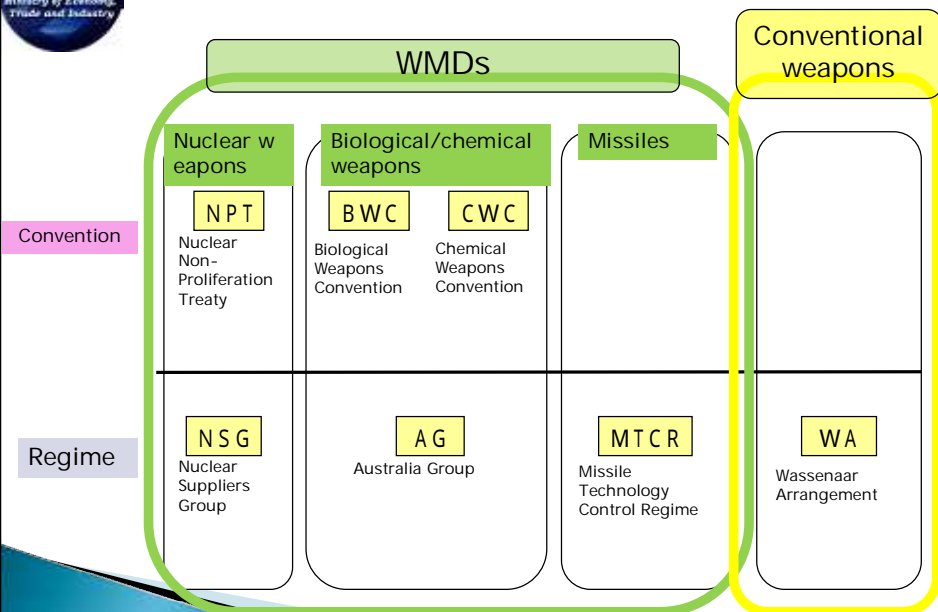
Weapons are classified into WMDs (weapons of mass destruction) and conventional weapons.

WMDs

Weapons which have wide effectiveness, such as nuclear and chemical weapons and missiles.

Conventional weapons

Weapons except for WMDs

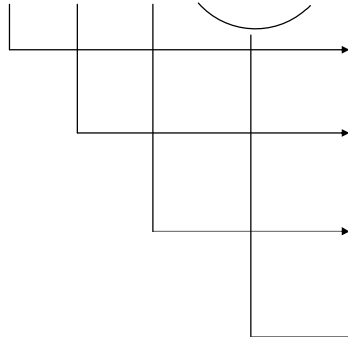


Composition of EU-List

reference



Ex) 2B001 machine tools



First digit : categories

Second digit : groups

Third digit : Convention
and regime

Forth and fifth digit : number
in sequence

19

The relationship between EU-list, Convention and Regime

reference

EU List contains 5-digit numbers

First digit covers these categories :	Second digit covers these groups	Third digit : Convention and regime
0 Nuclear Materials, Facilities and equipment	A Systems, Equipment and Components	0 category 0 : NSG category 1-9 : WA
1 Special Materials and related equipment	B Test, Inspection and Production Equipment	1 MTCR
2 Materials Processing	C Materials	2 NSG
3 Electronics	D Software	3 AG
4 Computers	E Technology	4 CWC
5 Telecommunications and Information Security		
6 Sensors and Lasers		
7 Navigation and Avionics		
8 Marine		
9 Aerospace and Propulsion		

Ex) 2B001 machine tools

20

Outline of Japan's Export Control System

- The Foreign Exchange and Foreign Trade Act provides the legal basis for export controls in Japan.
- There are two main types of control: the List Control and the End-use Control.
- These controls are based on the internationally harmonized control list.
- Japan also implements "End-use Control" to supplement the List Control.

List Control

- Exporters should obtain a license when exporting items on the Control List.
- The Control List is harmonized internationally by the export control regimes.

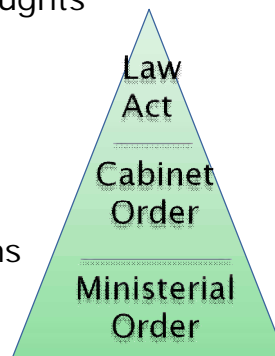
End-use Control (Catch-all control)

Exporters should obtain a license in case where they are aware or informed by METI that the item may contribute to WMDs programs.

21

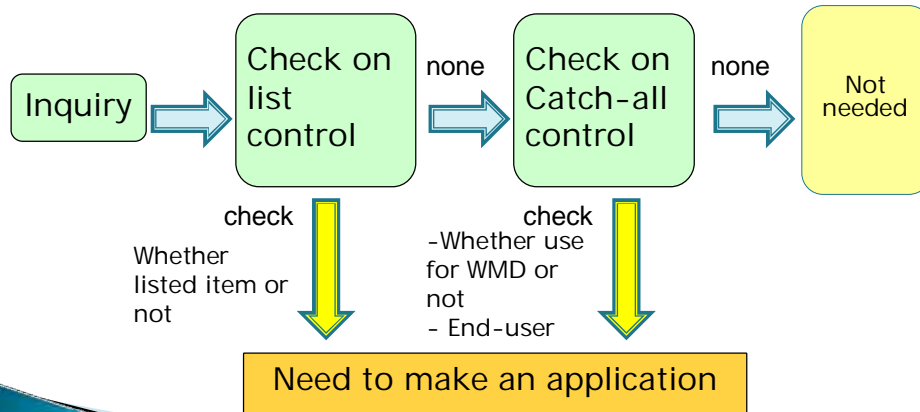
The legal structure in Japan

- (1) Law or Act
 - Foreign Exchange and Foreign Trade Act
 - Basic frameworks and thoughts
- (2) Cabinet Orders
 - Export Control Order
 - List of goods
 - Foreign Exchange Order
 - List of technologies
- (3) Ministerial Orders
 - Details and interpretations of listed items, etc.



22

A Flowchart of the classification procedure in companies



reference

2B001 Machine tools and any combination thereof, for removing (or cutting) [W] metals, ceramics or "composites", which, according to the manufacturer's technical specification, can be equipped with electronic devices for "numerical control", and specially designed components as follows:

...

[N1B2a*] a. Machine tools for turning having all of the following:

1. Positioning accuracy with "all compensations available" equal to or less (better) than 6 μ m according to ISO 230/2 (1988) 1 or national equivalents along any linear axis; and
2. Two or more axes which can be coordinated simultaneously for "contouring control";

[N1B2b*] b. Machine tools for milling having any of the following:

1. Having all of the following:
 - a. Positioning accuracy with "all compensations available" equal to or less (better) than 6 μ m according to ISO 230/2 (1988) 1 or national equivalents along any linear axis; and
 - b. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";
2. Five or more axes which can be coordinated simultaneously for "contouring control";

...

*Extraction from Annex I to Council Regulation (EC) No. 42
8/2009, as amended [EU Dual-Use List], UK STRATEGIC
EXPORT CONTROL LISTS*

List control

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

- A wide range of dual-use items are listed, which are based on international export control regimes.
- Not only items, but specifications are shown in cabinet and ministerial orders.
- An export license is required even if items are exported for own company/factory in a foreign country.

Limitations of List Control

- All items related to WMD cannot be covered by regimes' lists
- It takes time to revise lists in regimes, but technologies continue to advance

It's difficult to implement sufficient export controls by list control only!



Unlisted control, Catch-all control is necessary for effective export control

End Use Control – Catch-all Control (WMDs)

Subject All items except which do not clearly contribute to WMDs proliferation programs

Licensing Conditions

- (1) Judgment by exporters
 - End-use: whether the exporters are aware that the items are used for the development of WMDs.
 - End-user: whether the exporters are aware that the end-user use items for development of WMDs.
- (2) Informed by METI
 - Exporters are informed of the need for licensing by METI

Assistance Tools for Effective Enforcement

- a. Preliminary Consultation
- b. Risk Information of end-use
- c. Risk Information of end-user

27

a. Preliminary Consultation

b. Risk Information of end-use

Commodity Watch List - *Not a controlled list*

Examples of 40 items with high risk of diversion for development of WMDs.

28

c. Risk Information of end-user

Foreign End-user List - *Not an embargo list*

331 entities on which there are concerns for development of WMDs.

If the end-user is the listed end-user, exporter has to check carefully using *the guideline provided by METI.

If end-use has clearly **not a concern** with WMDs

License not needed

If end-use has a **minor concern** *or* a **clear concern** with WMDs

License needed

*The guideline to clear the concern

There are 17 items to confirm whether there is a concern or not, such as:

- The customer's need for the items is reasonable for their business and their technological capabilities.
- The requirements for spare parts are not excessive.
- The shipping route is reasonable for export items and destination.

29

Foreign End-user list (Sep. 2010 ver.)

Foreign End user list (extraction)

No.	国名、地域名 Country or Region	企業名、組織名 Company or Organization	別名 Also Known As	懸念区分 Type of WMD
1	イスラエル Israel	Ben-Gurion University (of the Negev)		核 N
2	イスラエル Israel	Nuclear Research Center Negev (RCN)		核 N
3	イラン Iran	7th of Tir	7th of Tir Industries Complex Mojtamea Sanate Haftome Tir Sanaye Haftome Tir 7th of Tir Industries of Isfahan/Esfahan 7th of Tir Complex Esfahan/ Isfahan Haftome Tir Industries	核 N
4	イラン Iran	Bazar Boresh Kaveh Co.	BK Co.	核 N
5	イラン Iran	Aerospace Industries Organisation (IO)	Aerospace Industries Organization Sazemane Sanaye Hava and Faza (SSHF) Bazargani Hava and Faza	ミサイル M
6	イラン Iran	MMA Industrial Co.		核 N

Country	Number
Israel	2
Iran	1 4 5
India	1 9
North Korea	1 0 6
Syria	1 1
Chinese Taipei	2
China	1 5
Pakistan	2 9
Afghanistan	2
Total	3 3 1

http://www.meti.go.jp/policy/anpo/hp/law_document/tutatu/t08kaisei/100903EUL/t08kaisei_userlist_kohyo.pdf

30

Licensing Procedure

- An exporter needs to apply the Ministry of Economy, Trade and Industry (METI) or its regional branches for the export license.
- An exporter is required to attach documents including the documents 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.



31

Exporters are required to submit documents as follows;

- Application Form (available at METI website)
- Supplementary Details regarding the Application
 - Name of manufacturer
 - Quantity and Value
 - Outline of end use etc.
- Back Ground Documents (e.g. a written contract)
 - Back ground documents are required to check whether the transaction meets the Export Licensing Criteria.
- Other Documents
 - Commodity in Detail (e.g. catalogue)
 - End User in Detail (e.g. leaflet)
 - The Letter of Assurance by the End User
 - Any other documents requested by METI

32

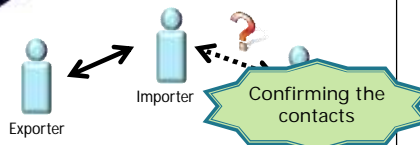
Key points of examiners in licensing

- Will items actually reach the stated end-user?
- Will the stated end-user really use the item?
- Will the *actual* use exactly match the *stated* end-use?
- Will the stated end-user strictly control the item?

Japan's licensing requirements are all to be confirmed on key points by Japanese examiners.

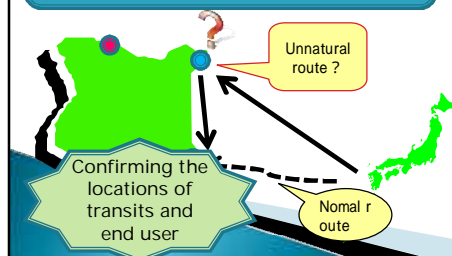
The requirements are different according to items or destinations.

Will items actually reach the stated end-user?

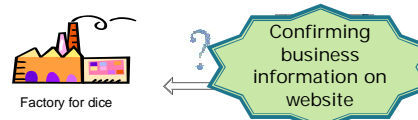


Are there consistent contacts from the exporter to the end-user through the importer?

Are there any unnatural route from exporter to end-user?

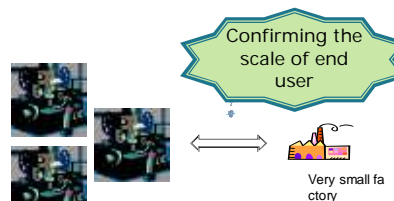


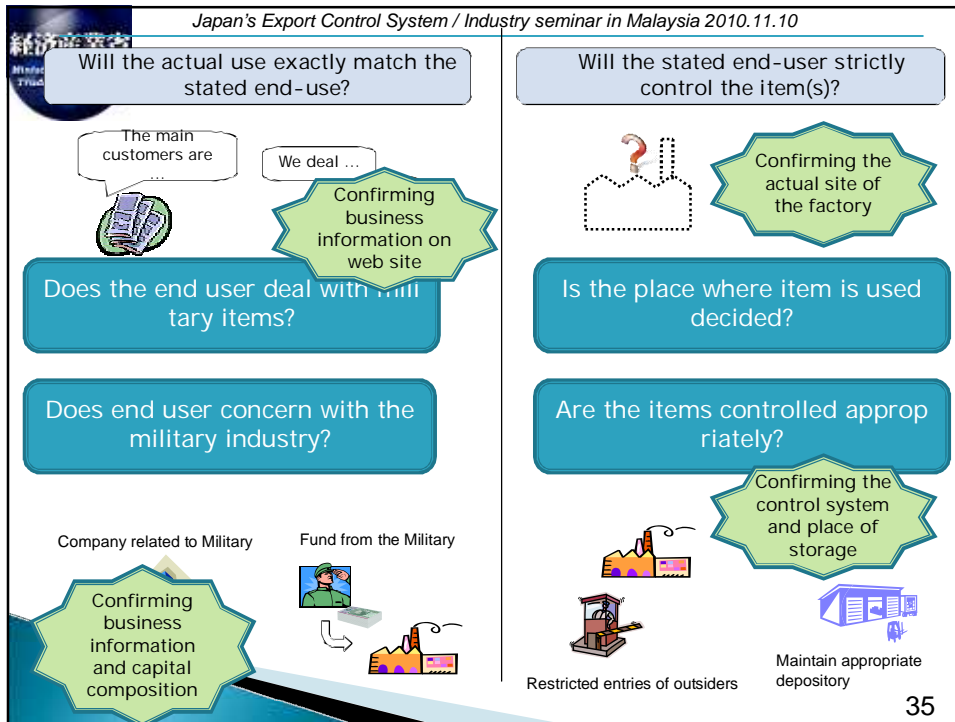
Will the stated end-user really use the item?



Is the business of the end-user consistent with the uses of the items?

Is the number of items consistent with the scale of business?





経済産業省
Ministry of Economy, Trade and Industry

Enforcement

Cooperation with relevant organizations

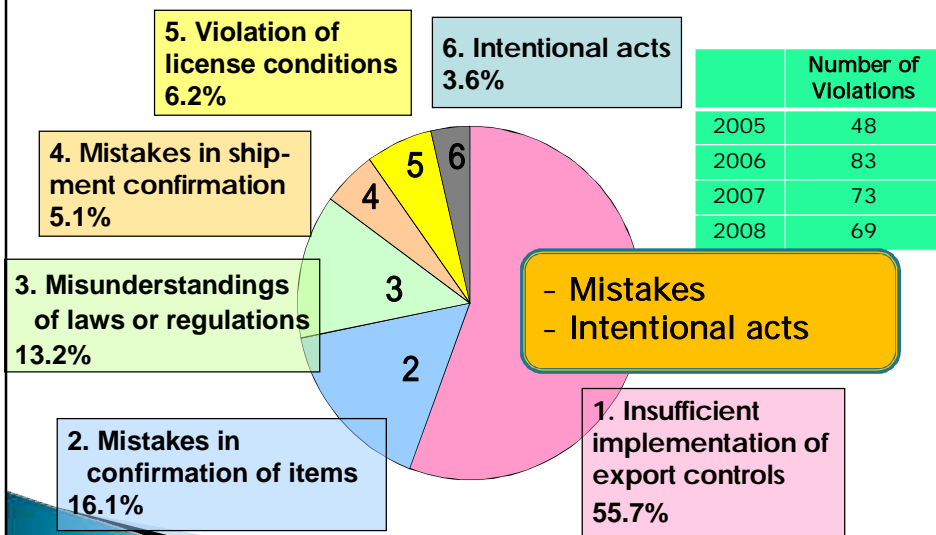
- METI cooperates with other related government agencies to enforce export control
 - Customs
 - National Police Agency (NPA)
 - Ministry of Foreign Affairs (MOFA)
 - Japan Coast Guard (JCG), etc.

Cooperation with private companies and universities

- METI encourages exporting companies and universities to strengthen their export control, and provides them with a variety of support.
 - Measures for promoting ICP
 - Guidance for the control of sensitive technologies (ITT)
 - Outreach seminar, etc.

3. The case study of Violations

Analysis of Violations in Japan (2005-2008)



Types of Violations – Mistake

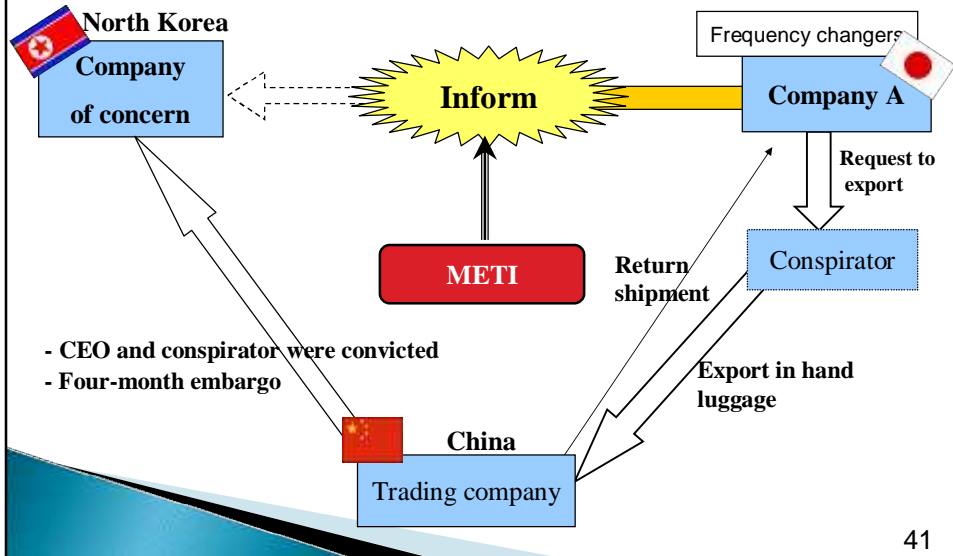
- Lacking recognition of Control System
 - Lacking knowledge of related laws
 - Insufficient implementation of classification procedure
- Insufficient implementation of classification procedure
 - lose sight of classification procedure of technology
 - excess dependence on manufactures
 - lose sight of review of controlled list
- Mistake in confirmation of shipment
 - Mistake of instruction of shipment
- Non-compliance with license condition
 - non-performance of licensing conditions

Types of Violations – Intentional

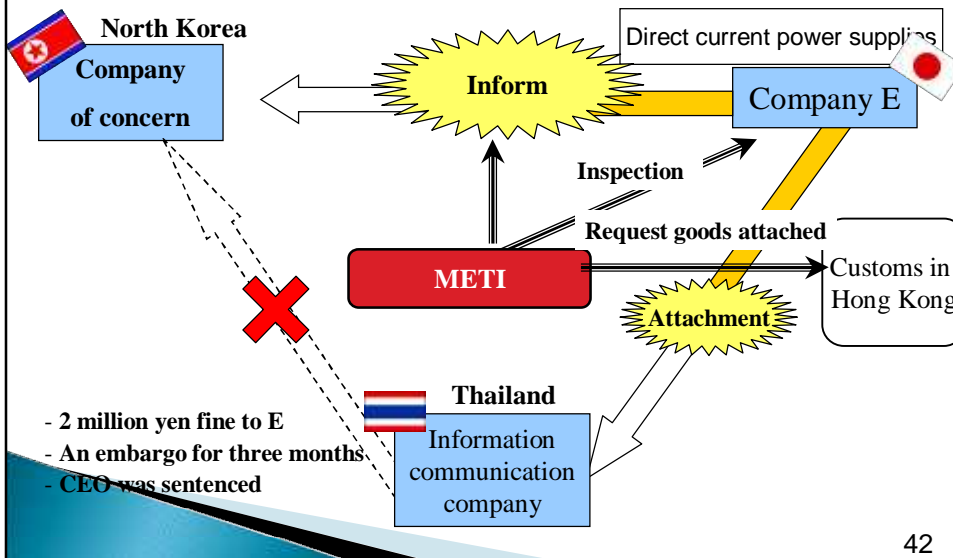
- i. Hand luggage
Transport of goods abroad as hand luggage without necessary licenses.
- ii. Masking
Export of items pretending they aren't controlled items.
- iii. Circumventing
Export of items via an intermediate country from which they are permitted to be exported.



Example of hand luggage: export of frequency changers via China



Example of Circumventing 1: export of direct current power supplies via Thailand





Thank you for your attention

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