

## Recent Topics – ITT and ICP

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

### Amendment of Foreign Exchange and Foreign Trade Act in Japan

Date of issue: Apr 30, 2009

Effective: Nov 1, 2009 (partially)

Apr 1, 2010 (in full)

#### Main points of amendment

- Reviewing export controls on technology trade

- Strengthening of penalties

- Establishing the system according to observed  
“Compliance Requirements”

ITT

ICP, Requirements

# 1. Reviewing export controls on technology trade

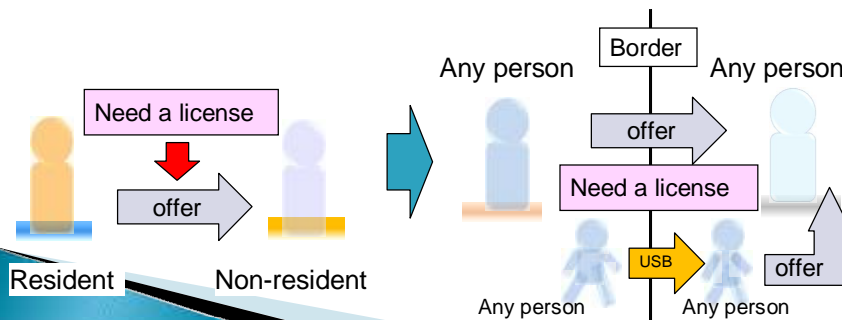
# 1. Reviewing export control on technology transfer

## Before amendment

-Limitation of dealing between residents and non-residents

## After amendment

- Target all persons who offer or tend to offer to foreigners



## Updating guidance for the control of sensitive technologies

- Specialized guidance for technology in universities and research institutions
- Guidance focuses on the risk of dealing in high risk technology and the risk of exchanging sensitive technology with parties from countries and organizations of concern

## Contents of guidance for the control of sensitive technologies

### 1. Purpose of guidance

### 2. Regulated technology transfer

- Examples of regulated technologies
- Kinds of technology offered
- Exceptions to the regulation

### 3. Control procedure for technology

- Examples of the procedure for academic institutions

### 4. Establishing and operating organizational structure

- Development system for academic institutions
- How to implement systems

### 5. References

## 2. Regulated technology transfer

### Examples of regulated technology

- The program to design, produce and use regulated goods
- Technical know-how to synthesize and refine regulated chemicals and high-performance materials

### Kinds of offering technology

- Technology data: blueprint data, numerical formulas, manuals and program documents and electronic data
- Technical support: technical guidance, technical training, consulting services, presentations

### Examples of offering technology

- Technology attached goods (e.g.: installed software programs)
- Immaterial technology data (e.g.: phones, e-mails, common DB)
- Technology offered by individuals (e.g.: closed conferences, plant visits, academic conferences, joint research, training programs)

### Exception to the regulation

- Public knowledge of technology, technology of basic science and application for patents

## 3. Control procedure for technology

### Recognizing sensitive technology control

- To have all researchers observe and understand export control laws

### Confirming end-use/user

- To confirm whether technology is used to develop WMDs and whether end-user to whom the technology is transferred are connected to countries and organizations of concern

### Classification Procedure

- To decide whether license is needed according to the defined procedure in the organization

### Confirming exceptions

- To decide whether exceptions are made
- To clarify if there are no concerns in review of technology transfer (TT)

### Transaction screening

- To be decided by the person responsible for judgment whether technology is transferred or not if license is needed

### Confirming identification

- To transfer technology within license limits

### Record keeping

- To store the documents and electronic media

#### 4. Establishing and operating organizational structure

##### Establishing the structure

- To decide divisions and parties responsible for export control in the organization
- To clarify the systems, role and rules based on actual conditions in the organization

##### Information management

- To control information access of the regulated technologies

##### Staff management

- To check the organizations to be assigned and staff studies when staff is employed
- To draw attention of retired and separated employees not to offer the regulated technology without a license

##### Training and education

- To gather the information about the latest laws and advise staffs

##### Audit and reporting

- To decide systems and procedures for audits and carry them out periodically

## 2. Establishing the system according to observed “Compliance Requirements”

### 3. Establishing the system according to “Compliance Requirements”

- All exporters are requested to observe “Compliance Requirements for Exporters”.
- METI makes instructions, counseling and orders available to exporters by METI in order to observe the requirements.

#### Before amendment

- Just necessary condition for a bulk license is required



#### After amendment

- Law is clearly defined
- All exporters must observe “Compliance Requirements”

### Background of ICP

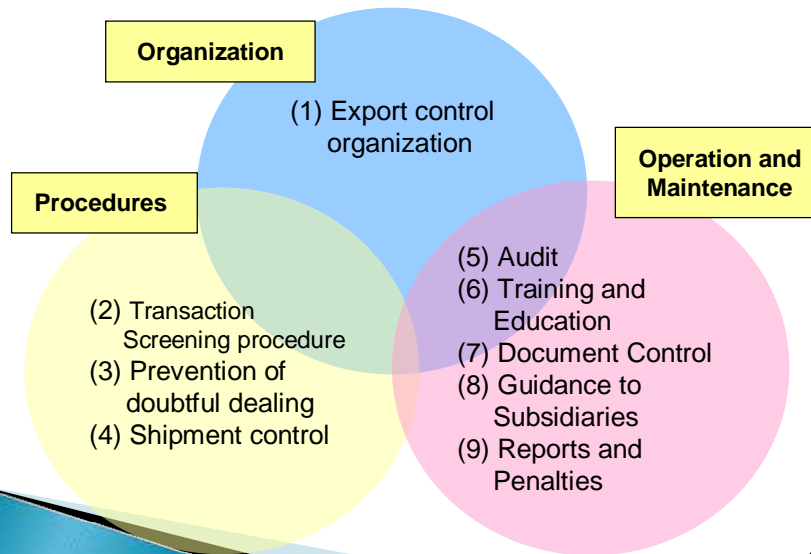
- It is essential for the government to handle items effectively, and to concentrate their resources on more sensitive matters.
- It is important for industry to establish appropriate self-export control systems and procedures in order to reduce the risk of illegal exports.



#### Promotion of Internal Compliance Program (ICP)

- METI has been encouraging exporters to establish their ICPs voluntarily, and has registered them since 1987.
- METI is also encouraging overseas subsidiaries.

## ICP Main Elements



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## (1) Export Control Organization

The organization needs to

- be given enough authority to control
- clarify responsibility entails the authority
- be independent from the business department

### Chapter 3: Organization

#### Article 5 (Chief Export Control Officer)

In order to carry out the export security control related business fairly and smoothly, and in accordance with the basic policies, a representative director or other individual of corresponding status shall be assigned as Chief Export Control Officer (hereinafter referred to as the "CECO") for Security Export Control.

#### Article 6 (Administrative Department for Export Control)

1. An Administrative Department for Export Control (hereinafter referred to as the "Administrative Department") shall be established, where the CECO or the person appointed by the CECO shall take control. ...

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## (2) Transaction screening procedures

## (3) Prevention of doubtful deals

It is necessary to apply screening procedures, when

- goods and technologies are used to develop WMDs
- the end-user is related to a country of concern
- it is not clear or it is doubtful whether the inquiry falls under classification, end-use and end-user verification
- METI inform that a license application is required

The sales department shall not proceed to the transaction without approval.

### Chapter 4: Procedures

#### Article 8 (Classification)

1. In case of exporting Items it shall be determined whether the Items come under the "List control items" or not
2. The Administrative Department shall appoint both the department to classify Items and ...

#### Article 9 (End-Use Verification)

When there is an inquiry to the sales department concerning exports, verification shall be made as to whether the end use of export and provision falls under the following. ...

#### Article 10 (End-User Verification) ...

#### Article 11 (Transaction screening)

1. When the inquiry concerning export and provision falls under the following, the Sales Department shall fill out the "Screening sheet" and apply for an examination of transaction...
  - (1) When the said Items come under the Attachment List No.1 item 1 through 15 ...
  - (2) When the inquiry corresponds to either (1) or (2) concerning the verification of end use given in Article 9.
  - (3) When the inquiry corresponds to either (1) or (2) concerning the verification of end user given in Article 10.
  - (4) When the METI informs that License application is required.
  - (5) When it is not clear or it is doubtful whether the inquiry falls under (1) through (3) of this Article. ...
5. The Sales Department shall not proceed in the said transaction without the approval of [Enter the name of the decision maker of transaction]



## (4) Shipment control

The shipment department shall

- complete the defined procedures
- make sure the description given in the shipment documents is identical
- acquire a license if needed

### Chapter 5: Shipment control

#### Article 13 (Shipment control of goods)

1.1. The [Enter the name of the department in charge of the shipment] shall confirm that the Classification given in Article 8 and the procedures of the transaction screening as given in Article 11 are performed, ...

#### Article 14 (Provision of technologies control)

1. The [Enter the name of the department in charge of providing technologies] shall confirm that the procedures of the classification according to Article 8...

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## (5) Audit

The administrative department will execute a periodic audit and confirm appropriate implementation based on ICP. If the department concerned is requested to improve in audit, the department has to submit an improvement plan.

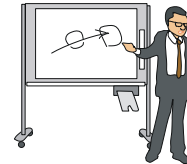
### Article 15 (Audit)

The Administrative Department will execute a periodic audit to confirm that the security export control within the Company is implemented appropriately based on this regulation.

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## (6) Training and education

It is important to conduct systematic and periodical training and education for all employees according to their role such as management, specialized staff and general staff, in order to securely implement export control.

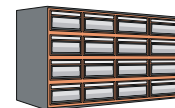


### Chapter 7: Training and education Article 16 (Training and education)

The Administrative Department and the head of export management in the business division will carry out systematic training and education in order to educate the officers and employees the significance of the compliance of the Foreign Exchange Law and related measures, as well as this regulation and of its correct implementation.

## (7) Document control

Documents related to export and its electronic data have to be stored for a defined period for at least seven years, with reference to the limitation under Foreign Exchange and Foreign Trade Act.



### Chapter 8: Document Control

#### Article 17 (Document control or the preservation of the recording medium)

Documents or recording medium concerning export and provision of controlled Items shall be stored for at least 7 years from the date on which the goods have been exported or from when the technologies have been provided.

## (8) Guidance to subsidiaries

Suitable instructions are carried out also to all subsidiaries, both domestic and overseas.

The Administrative Department makes subsidiaries overseas observe countries' laws and also control according to the policy of the parent company.

### **Chapter 9: Guidance to subsidiaries and affiliates**

#### **Article 18 (Guidance to subsidiaries and affiliates)**

The Administrative Department for Export Control and the head of export management in the business division will give instructions conforming to the actual situation to the subsidiaries and affiliates that handle export and provision of controlled Items.

## (9) Report and penalty

Employees must report to the Administrative Department and the CECO, and a report should be made to the administration without delay if they are aware of the fact or chance, of any licensing violations. The CECO should implement the measure to prevent a recurrence.

Strict penalties will be imposed on violators if necessary.

### **Chapter 10: Reports**

#### **Article 19 (Reports)**

1. When the officers or employees are aware of the fact of any violation or any chance of violation of the Foreign Exchange law and relatives or this CP, the officers or employees must make a prompt report to the Administrative Department to that effect.

2. The Administrative Department shall investigate the contents of the report submitted according to the above 1. of this Article, and shall report to the CECO of the Security Export Control when any violation should be confirmed. CECO shall give instructions ...

### **Chapter 11: Penalties**

#### **Article 20 (Penalties)**

A person as well as the interested party who has intentionally or by gross negligence violated this regulation shall be subject to a penalty according to the resolution made by the board of directors and the office regulations....

## Preparing a model ICP

An NGO(CISTEC) has prepared a model ICP in cooperation with industry and METI to promote ICP.

There are 6 types of model ICP, which companies can choose according to needs and requirements.

	Own Goods/Technologies (e.g. manufacturer)	NOT Own Goods/Technologies (e.g. trading company)
Specialized division	Type 1A	Type 1B
Specialized individual	Type 2A	Type 2B
CEO, etc.	Type 3A	Type 3B

<http://www.cistec.or.jp/export/jisyukanri/modelcp/modelcp.html>

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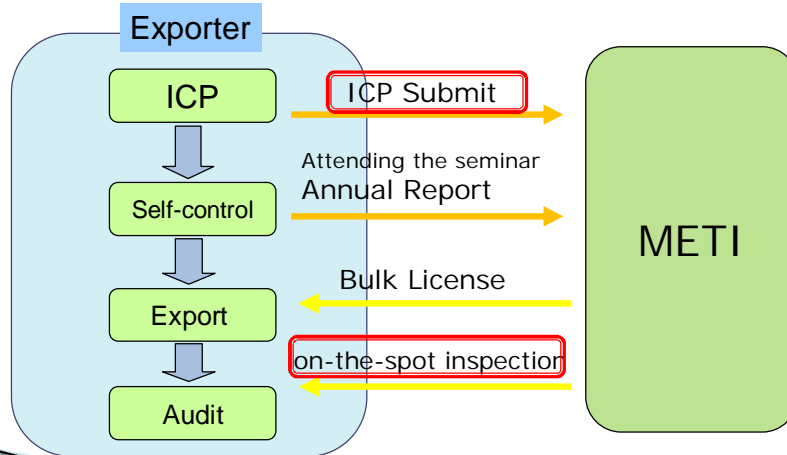
## Advantages of establishing ICP

- To be qualified to obtain a Bulk License  
Exporters who obtain a bulk license can export items covered under the license without an individual license.
- To be given priority in licensing procedure (First Track Systems)  
Exporters can acquire licensing priority even if it is an individual license.
- To announce the company list obtaining ICP  
The name of the company whose ICP is registered can be announced on METI's web-site.

- Over 1,400 exporters have submitted their ICP.
- METI's web-site has over 500 names of ICP-registered companies/institutions.

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## Activities between Exporters and METI



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## ICP submission

Exporters submit the following documents for Bulk licensing :

- Internal compliance program
- Application form
- Summarization of ICP
- Outline of exporter / **Check list for self-control**

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## Check list for self-control

### 自己管理チェックリスト

(記入要項)

1. A欄に輸出管理内閣規程の要項を記入する上は、①～④、⑤又は⑥を適用する適用枠以外の適用規程、輸出管理内閣規程の要項を適用する適用枠は、他のいずれかを適用した上、輸出管理内閣規程の適用がある場合はB欄に輸出管理内閣規程の名称及び適用する輸出管理内閣規程の条項を記入する。なお、A欄に記入不要な項目は空白にしておき、B欄の記入する。
2. B欄に、輸出管理内閣規程の要項を記入する上は、①～④、⑤又は⑥を適用する適用枠に適用する適用規程（一部適用規程）を適用した上、適用規程又は輸出の条項に適用規程が適用している適用規程を記入する。また、適用規程を適用する適用枠に適用した適用規程の名称を記入する。必要に応じて、具体的な適用規程の名称、適用規程の条項を記入する。
3. B欄に、⑤又は⑥を適用する適用枠に適用する上は、①～④、⑤又は⑥を適用する適用規程の名称、適用規程の条項を記入する。
4. 輸出管理内閣規程の⑤又は⑥を適用する上は、①～④、⑤又は⑥を適用する適用規程の名称、適用規程の条項を記入する。必要に応じて、具体的な適用規程の名称、適用規程の条項を記入する。
5. ⑤又は⑥を適用する適用枠に適用する上は、輸出管理内閣規程の⑤又は⑥を適用する適用規程の名称、適用規程の条項を記入する。

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Check list
Treatment in ICP
Actual treatment
Note : Article of ICP

## Contents of check list

- Export control organization
  - <examples>
  - ✓Chief Export Control Officer
  - ✓Clarity of responsibility
- Transaction screening procedures
  - <examples>
  - ✓Final judge of transaction screening procedures
  - ✓Organization to prevent final judge from doubts
- Shipment control
  - <example>
  - ✓Clearness of shipment control procedure
- Audit
  - <example>
  - ✓Clearness of Audit's target and audit's list
- Training and education
- Document control
- Guidance to subsidiaries
- Report and prevent from recurring

## On-the-spot inspection

- To conduct the inspection in order to ensure implementation when bulk license systems were introduced in June 2005.
- To conduct this inspection randomly for all exporters obtaining a bulk license, regardless of having violations.
- In this inspection, the maintenance of internal compliance systems and an actual state are inspected according to its checklist submitted to METI.

## Benefit of ICP system

### Exporters

To clarify internal procedures and responsibilities for safe and sound business

To conduct effective checks and minimize the risk of oversight

To promote itself to the public as a company of good standing

To apply for a bulk export license

### METI

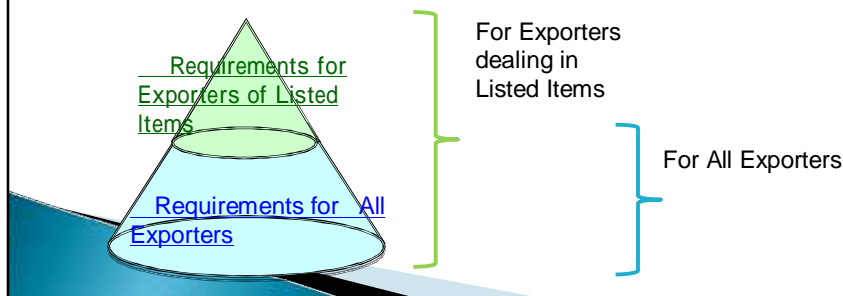
To reduce the risk of unintentional illegal exports

To concentrate human resources on sensitive cases

ICP is beneficial for both exporters and METI

### 3. Introducing Legal Framework for Securing Exporters' Compliance

- All exporters are requested to export goods and offer technologies appropriately according to "Compliance Requirements for Exporters".
- There are 2 type of Requirements: I and II.
- Exporters who don't deal in Listed Items are requested to observe I.
- Exporters who deal in Listed Items are requested to observe both I and II.



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### Compliance Requirements for Exporters



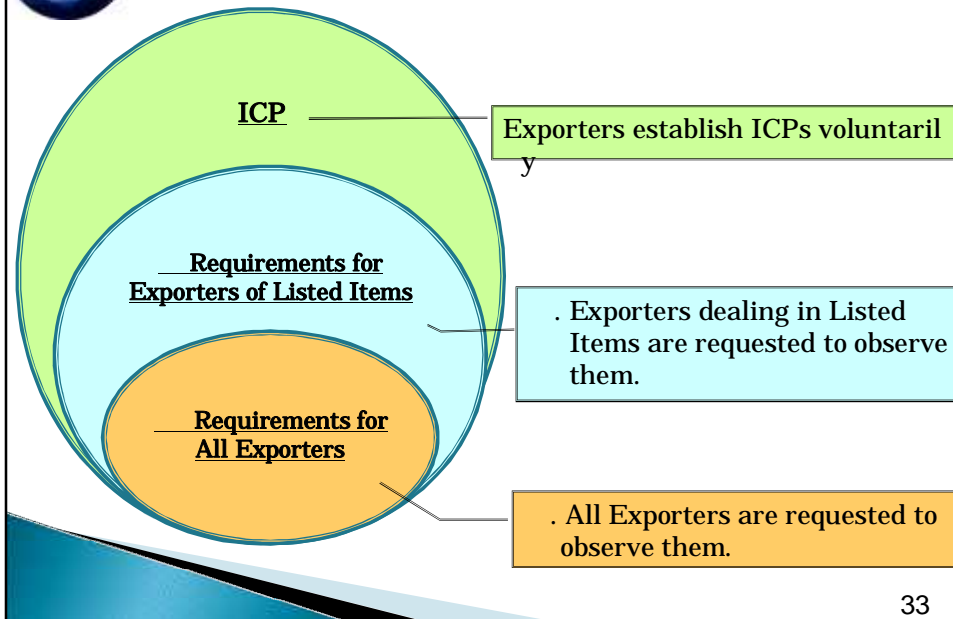
1. To appoint the representative as the responsible person for export control
2. To clarify the system, role and responsibility
3. To decide the procedure on classification
4. To confirm end-use and end-user according to the procedure when listed Items are exported
5. To confirm shipment if it goes through the necessary procedure
6. To strive to decide audit procedures and conduct audits appropriately.
7. To strive to conduct seminars for responsible persons and staff on export control
8. To store related documents for an appropriate period
9. To inform METI immediately and take action if exporters commit violations or may commit violations

1. To decide the responsible person on classification
2. To inform the latest laws and orders and make the staff observe them

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## The relationship between ICP, Requirements I and II



# Thank you for your attention

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